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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 330

RIN 3064–AF27

Simplification of Deposit Insurance Rules

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation is amending its regulations governing deposit insurance coverage. The amendments simplify the deposit insurance regulations by establishing a ''trust accounts'' category that governs coverage of deposits of both revocable trusts and irrevocable trusts using a common calculation, and provide consistent deposit insurance treatment for all mortgage servicing account balances held to satisfy principal and interest obligations to a lender.

DATES: The rule is effective on April 1, 2024.

FOR FURTHER INFORMATION CONTACT: James Watts, Counsel, Legal Division, (202) 898–6678, *jwatts@fdic.gov;* Kathryn Marks, Counsel, Legal Division, (202) 898–3896, *kmarks@fdic.gov.*

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I. Simplification of Deposit Insurance Coverage Rules for Trusts

A. Policy Objectives

The Federal Deposit Insurance Corporation (FDIC) is amending its regulations governing deposit insurance coverage for deposits held in connection with trusts.[1] The amendments merge the revocable and irrevocable trust categories into one category, ''trust accounts.'' Coverage for deposits in this category will be calculated through a simple calculation. Each grantor's trust deposits will be insured in an amount up to the standard maximum deposit insurance amount (currently $250,000) multiplied by the number of trust beneficiaries, not to exceed five. This, in effect, will limit coverage for a grantor's trust deposits at each IDI to a total of $1,250,000; in other words, maximum coverage of $250,000 per beneficiary for up to five beneficiaries.

The amendments: (1) Provide depositors and bankers with a rule for trust account coverage that is easy to understand; and (2) facilitate the prompt payment of deposit insurance in accordance with the Federal Deposit Insurance Act (FDI Act), among other objectives.

Simplifying Insurance Coverage for Trust Deposits

The amendments simplify for depositors, bankers, and other interested parties the insurance rules and limits for trust accounts. The deposit insurance rules for trust deposits, set forth in part 330 of the FDIC's regulations, have evolved over time and can be difficult to apply in some circumstances. The amendments reduce the number of rules governing coverage for trust accounts and establish a straightforward calculation to determine coverage. This should alleviate some of the confusion that depositors and bankers experience with respect to insurance coverage and limits.

Under the current regulations, there are distinct and separate sets of rules applicable to deposits of revocable trusts and irrevocable trusts. Each set of rules has its own criteria for coverage and methods by which coverage is calculated. Despite the FDIC's efforts to simplify the revocable trust rules in 2008,[2] FDIC deposit insurance specialists have responded to approximately 20,000 complex insurance inquiries per year on average over the last 13 years. More than 50 percent of inquiries pertain to deposit insurance coverage for trust accounts (revocable or irrevocable). The amendments further simplify insurance coverage of trust accounts (revocable and irrevocable) by harmonizing the coverage criteria for certain types of trust accounts and establishing a simplified formula for calculating coverage that applies to these deposits. The calculation is the same calculation that the FDIC first adopted in 2008 for revocable trust accounts with five or fewer beneficiaries. This formula is straightforward and is already generally familiar to bankers and depositors.[3]

Prompt Payment of Deposit Insurance

The FDI Act requires the FDIC to pay depositors ''as soon as possible'' after a bank failure.[4] However, the insurance determination and subsequent payment for many trust deposits must await the depositor's submission of complex trust agreements, followed by FDIC staff's review of that information and application of the rules to determine deposit insurance coverage. The final rule's amendments are expected to facilitate more timely deposit insurance determinations for trust accounts by reducing the amount of time needed for FDIC staff to review trust agreements and determine coverage. These amendments promote the FDIC's ability to pay insurance to depositors promptly

[1] Trusts include informal revocable trusts (commonly referred to as payable-on-death accounts, in-trust-for accounts, or Totten trusts), formal revocable trusts, and irrevocable trusts that do not have an IDI as trustee.

[2] *See* 73 FR 56706 (Sep. 30, 2008).

[3] In 2008, the FDIC adopted an insurance calculation for revocable trusts that have five or fewer beneficiaries. Pursuant to the 2008 amendments, each trust grantor is insured up to $250,000 per beneficiary.

[4] 12 U.S.C. 1821(f).

following the failure of an insured depository institution (IDI), enabling depositors to meet their financial needs and obligations.

Facilitating Resolutions

The changes will also facilitate the resolution of failed IDIs. The FDIC is routinely required to make deposit insurance determinations in connection with IDI failures. In many of these instances, however, deposit insurance coverage for trust deposits is based upon information that is not maintained in the failed IDI's deposit account records. As a result, FDIC staff works with depositors, trustees, and other parties to obtain trust documentation following an IDI's failure in order to complete deposit insurance determinations. The difficulties associated with completing such a determination have been exacerbated by the substantial growth in the use of formal trusts in recent decades. The amendments are expected to reduce the time spent reviewing such information and provide greater flexibility to automate deposit insurance determinations, thereby reducing potential delays in the completion of deposit insurance determinations and payments. Timely payment of deposit insurance also helps to avoid reductions in the franchise value of failed IDIs, expanding resolution options and mitigating losses.

Effects on the Deposit Insurance Fund

The FDIC is also mindful of the effect that changes to the deposit insurance regulations have on deposit insurance coverage and generally on the Deposit Insurance Fund (DIF), which is used to pay deposit insurance in the event of an IDI's failure. The FDIC manages the DIF according to parameters established by Congress and continually evaluates the adequacy of the DIF to resolve failed banks and protect insured depositors. The FDIC's general intent is that amendments to the trust rules are neutral with respect to the DIF.

B. Background

1. Deposit Insurance and the FDIC's Statutory and Regulatory Authority

The FDIC is an independent agency that maintains stability and public confidence in the nation's financial system by: Insuring deposits; examining and supervising IDIs for safety and soundness and compliance with consumer financial protection laws; and resolving IDIs and large and complex financial institutions, and managing receiverships. The FDIC has helped to maintain public confidence in times of financial turmoil, including the period from 2008 to 2013, when the United States experienced a severe financial crisis, and more recently in 2020 during the financial stress associated with the COVID–19 pandemic. During the more than 88 years since the FDIC was established, no depositor has lost a penny of FDIC-insured funds.

The FDI Act establishes the key parameters of deposit insurance coverage, including the standard maximum deposit insurance amount (SMDIA), currently $250,000.[5] In addition to providing deposit insurance coverage up to the SMDIA at each IDI where a depositor maintains deposits, the FDI Act also provides separate insurance coverage for deposits that a depositor maintains in different rights and capacities (also known as insurance categories) at the same IDI.[6] For example, deposits in the single ownership category are separately insured from deposits in the joint ownership category at the same IDI.

The FDIC's deposit insurance categories have been defined through both statute and regulation. Certain categories, such as the government deposit category, have been expressly defined by Congress.[7] Other categories, such as joint deposits and corporate deposits, have been based on statutory interpretation and recognized through regulations issued in 12 CFR part 330 pursuant to the FDIC's rulemaking authority. In addition to defining the insurance categories, the deposit insurance regulations in part 330 provide the criteria used to determine insurance coverage for deposits in each category.

Over the years, deposit insurance coverage has evolved to reflect both the FDIC's experience and changes in the banking industry. The FDI Act includes provisions defining the coverage for certain trust deposits,[8] while coverage for other trust deposits has been defined by regulation.[9]

2. Current Rules for Coverage of Trust Deposits

The FDIC currently recognizes three different insurance categories for deposits held in connection with trusts: (1) Revocable trusts; (2) irrevocable trusts; and (3) irrevocable trusts with an IDI as trustee.

Revocable Trust Deposits

The revocable trust category applies to deposits for which the depositor has evidenced an intention that the deposit will belong to one or more beneficiaries upon his or her death. This category includes deposits held in connection with formal revocable trusts—that is, revocable trusts established through a written trust agreement. It also includes deposits that are not subject to a formal trust agreement, where the IDI makes payment to the beneficiaries identified in the IDI's records upon the depositor's death based on account titling and applicable State law. The FDIC refers to these types of deposits, including Totten trust accounts, payable-on-death accounts, and similar accounts, as ''informal revocable trusts.'' Deposits associated with formal and informal revocable trusts are aggregated for purposes of the deposit insurance rules; thus, deposits that will pass from the same grantor to beneficiaries are aggregated and insured up to the SMDIA, currently $250,000, per beneficiary, regardless of whether the transfer would be accomplished through a written revocable trust or an informal revocable trust.[10]

Under the current revocable trust rules, beneficiaries include natural persons, charitable organizations, and non-profit entities recognized as such under the Internal Revenue Code of 1986.[11] If a named beneficiary does not qualify as a beneficiary under the rule, funds held in trust for that beneficiary are treated as single ownership funds of the grantor and aggregated with any other single ownership accounts that the grantor maintains at the same IDI.[12]

Certain requirements also must be satisfied for a deposit to be insured in the revocable trust category. The grantor must intend that the funds will belong to the beneficiaries upon the depositor's death, and this intention must be manifested in the ''title'' of the account using commonly accepted terms such as ''in trust for,'' ''as trustee for,'' ''payable-on-death to,'' or any acronym for these terms. For purposes of this requirement, ''title'' includes the IDI's electronic deposit account records. For example, an IDI's electronic deposit account records could identify the account as a revocable trust account through coding or a similar mechanism.[13]

[5] *See* 12 U.S.C. 1821(a)(1)(E).

[6] *See* 12 U.S.C. 1821(a)(1)(C) (deposits ''maintained by a depositor in the same capacity and the same right'' at the same IDI are aggregated for purposes of the deposit insurance limit).

[7] 12 U.S.C. 1821(a)(2).

[8] *See* 12 U.S.C. 1817(i), 1821(a).

[9] *See* 12 CFR 330.10, 330.13.

[10] 12 CFR 330.10(a). In this document, the term ''grantor'' is used to refer to the party that creates a trust, though trust agreements also may use terms such as ''settlor'' or ''trustor.''

[11] 12 CFR 330.10(c).

[12] 12 CFR 330.10(d).

[13] 12 CFR 330.10(b)(1).

In addition, the beneficiaries of informal trusts (*i.e.,* payable-on-death accounts) must be named in the IDI's deposit account records.[14] Since 2004, the requirement to name beneficiaries in the IDI's deposit account records has not applied to formal revocable trusts; the FDIC generally obtains information on beneficiaries of such trusts from depositors following an IDI's failure. Therefore, if a formal revocable trust deposit exceeds $250,000, and the depositor's IDI were to fail, it is likely that a hold would be placed on the deposit until the FDIC can review the trust agreement and verify that coverage criteria are satisfied.

The calculation of deposit insurance coverage for revocable trust deposits depends upon the number of unique beneficiaries named by a depositor. If five or fewer beneficiaries have been named, the depositor is insured in an amount up to the total number of named beneficiaries multiplied by the SMDIA, and the specific allocation of interests among the beneficiaries is not considered.[15] If more than five beneficiaries have been named, the depositor is insured up to the greater of: (1) Five times the SMDIA; or (2) the total of the interests of each beneficiary, with each such interest limited to the SMDIA.[16] For purposes of this calculation, a life estate interest is valued at the SMDIA.[17]

Where a revocable trust deposit is jointly owned by multiple co-owners, the interests of each account owner are separately insured up to the SMDIA per beneficiary.[18] However, if the co-owners are the only beneficiaries of the trust, the account is instead insured under the FDIC's joint account rule.[19]

The current revocable trust rule also contains a provision that was intended to reduce confusion and the potential for a decrease in deposit insurance coverage in the case of the death of a grantor. Specifically, if a revocable trust becomes irrevocable due to the death of the grantor, the trust's deposit may continue to be insured under the revocable trust rules.[20] Absent this provision, the irrevocable trust rules would apply following the grantor's death, as the revocable trust becomes irrevocable at that time, which could result in a reduction in coverage.[21]

Irrevocable Trust Deposits

Deposits held by an irrevocable trust that has been established either by written agreement or by statute are insured in the irrevocable trust deposit insurance category. Calculating coverage for deposits insured in this category requires a determination of whether beneficiaries' interests in the trust are contingent or non-contingent. Non-contingent interests are interests that may be determined without evaluation of any contingencies, except for those covered by the present worth and life expectancy tables and the rules for their use set forth in the Internal Revenue Service (IRS) Federal Estate Tax Regulations.[22] Funds held for non-contingent trust interests are insured up to the SMDIA for each such beneficiary.[23] Funds held for contingent trust interests are aggregated and insured up to the SMDIA in total.[24]

The irrevocable trust rules do not apply to deposits held for a grantor's retained interest in an irrevocable trust.[25] Such deposits are aggregated with the grantor's other single ownership deposits for purposes of applying the deposit insurance limit.

Deposits Held by an IDI as Trustee of an Irrevocable Trust

For deposits held by an IDI in its capacity as trustee of an irrevocable trust, deposit insurance coverage is governed by section 7(i) of the FDI Act, a provision rooted in the Banking Act of 1935. Section 7(i) provides that ''[t]rust funds held on deposit by an insured depository institution in a fiduciary capacity as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement shall be insured in an amount not to exceed the standard maximum deposit insurance amount . . . for each trust estate.'' [26]

The FDIC's regulations governing coverage for deposits held by an IDI in its capacity as trustee of an irrevocable trust are found in § 330.12. The rule provides that ''trust funds'' held by an IDI in its capacity as trustee of an irrevocable trust, whether held in the IDI's trust department or another department, or deposited by the fiduciary institution in another IDI, are insured up to the SMDIA for each owner or beneficiary represented.[27] This coverage is separate from the coverage provided for other deposits of the owners or the beneficiaries,[28] and deposits held for a grantor's retained interest are *not* aggregated with the grantor's single ownership deposits.

C. Final Rule

In July 2021, the FDIC proposed for comment a number of amendments to the rules governing deposit insurance coverage for trust deposits.[29] Generally, the FDIC proposed to: Merge the revocable and irrevocable trust categories into one category; apply a simpler, common calculation method to determine insurance coverage for deposits held by certain revocable and irrevocable trusts; and eliminate certain requirements found in the current rules for revocable and irrevocable trusts.

The FDIC received seven comments in response to the proposed rule. Commenters generally supported the proposed rule, as discussed below. After careful consideration of the comments, the FDIC is adopting the rule generally as proposed, with only technical, non-substantive changes.

Merger of Revocable and Irrevocable Trust Categories

The final rule amends § 330.10 of the FDIC's regulations, which currently applies only to revocable trust deposits, to establish a new ''trust accounts'' category that would include both revocable and irrevocable trust deposits. The rule defines the types of deposits that would be included in this category: (1) Informal revocable trust deposits, such as payable-on-death accounts, in-trust-for accounts, and Totten trust accounts; (2) formal revocable trust deposits, defined to mean deposits held pursuant to a written revocable trust agreement under which a deposit passes to one or more beneficiaries upon the grantor's death; and (3) irrevocable trust deposits, meaning deposits held

[14] 12 CFR 330.10(b)(2).

[15] 12 CFR 330.10(a).

[16] 12 CFR 330.10(e).

[17] 12 CFR 330.10(g). For example, if a revocable trust provides a life estate for the depositor's spouse and remainder interests for six other beneficiaries, the spouse's life estate interest would be valued at $250,000 for purposes of the deposit insurance calculation.

[18] 12 CFR 330.10(f)(1).

[19] 12 CFR 330.10(f)(2).

[20] 12 CFR 330.10(h).

[21] The revocable trust rules tend to provide greater coverage than the irrevocable trust rules because contingencies are not considered for revocable trusts. In addition, where five or fewer beneficiaries are named by a revocable trust, specific allocations to beneficiaries also are not considered.

[22] 12 CFR 330.1(m). For example, a life estate interest is generally non-contingent, as it may be valued using the life expectancy tables. However, where a trustee has discretion to divert funds from one beneficiary to another (for example, to provide for the second beneficiary's medical needs), the first beneficiary's interest is contingent upon the trustee's discretion.

[23] 12 CFR 330.13(a).

[24] 12 CFR 330.13(b).

[25] *See* 12 CFR 330.1(r) (definition of ''trust interest'' does not include any interest retained by the settlor).

[26] 12 U.S.C. 1817(i).

[27] Part 330 defines ''trust funds'' as ''funds held by an insured depository institution as trustee pursuant to any irrevocable trust established pursuant to any statute or written trust agreement.'' 12 CFR 330.1(q).

[28] 12 CFR 330.12(a).

[29] *See* 86 FR 41766 (Aug. 3, 2021).

pursuant to an irrevocable trust established by written agreement or by statute. Because these deposits would be considered to be part of the same category for deposit insurance purposes, they would be aggregated when applying the deposit insurance limit.

As amended, § 330.10 does not apply to deposits maintained by an IDI in its capacity as trustee of an irrevocable trust; these deposits are insured separately pursuant to section 7(i) of the FDI Act and § 330.12 of the deposit insurance regulations.

Calculation of Coverage

The FDIC will use one streamlined calculation to determine the amount of deposit insurance coverage for deposits of revocable and irrevocable trusts. This method is already utilized by the FDIC to calculate coverage for revocable trusts that have five or fewer beneficiaries and it is an aspect of the current rules that is generally well-understood by bankers and trust depositors. The rule provides that a grantor's trust deposits will be insured in an amount up to the SMDIA (currently $250,000) multiplied by the number of trust beneficiaries, not to exceed five beneficiaries. This, in effect, will limit coverage for a grantor's trust deposits at each IDI to a total of $1,250,000; in other words, maximum coverage of $250,000 per beneficiary for up to five beneficiaries. The $1,250,000 per-grantor, per-IDI limit is intended to be more straightforward and balance the objectives of simplifying the trust rules, promoting timely payment of deposit insurance, facilitating resolutions, ensuring consistency with the FDI Act, and limiting risk to the DIF.

Eliminating Certain Requirements

Eligible Beneficiaries

The current revocable trust rules provide that beneficiaries include natural persons, charitable organizations, and non-profit entities recognized as such under the Internal Revenue Code of 1986,[30] while the irrevocable trust rules do not establish criteria for beneficiaries. As stated in the proposed rule, the FDIC believes that a single definition should be used to determine whether an entity is an ''eligible'' beneficiary. The final rule will use the current revocable trust rule's definition.

The final rule also excludes from the calculation of deposit insurance coverage beneficiaries that only would obtain an interest in a trust if one or more beneficiaries are deceased. This codifies existing practice to include only primary, unique beneficiaries in the deposit insurance calculation.[31] Consistent with current treatment, naming a chain of contingent beneficiaries that would obtain trust interests only in event of a beneficiary's death will not increase deposit insurance coverage.

Finally, the FDIC is codifying a longstanding interpretation of the trust rules under which an informal revocable trust designates the depositor's formal trust as its beneficiary. A formal trust generally does not meet the definition of an eligible beneficiary for deposit insurance purposes, but the FDIC has treated such accounts as revocable trust accounts under the trust rules, insuring the account as if it were titled in the name of the formal trust.[32]

Retained Interests and Ineligible Beneficiaries' Interests

The current trust rules provide that in some instances, funds intended for specific beneficiaries are aggregated with a grantor's single ownership deposits at the same IDI for purposes of the deposit insurance calculation. These instances include a grantor's retained interest in an irrevocable trust[33] and interests of ineligible beneficiaries that do not satisfy the definition of a revocable trust ''beneficiary.''[34] This adds complexity to the deposit insurance calculation, as a detailed review of a trust agreement may be required to value such interests in order to aggregate them with a grantor's single ownership funds. In order to implement the streamlined calculation for trust deposits, the FDIC is eliminating these provisions. Under the final rule, the grantor and other beneficiaries that do not satisfy the definition of ''eligible beneficiary'' are not included in the deposit insurance calculation.[35] Importantly, this does not in any way limit a grantor's ability to establish such trust interests under State law; these interests simply do not factor into the calculation of deposit insurance coverage.

Future Trusts Named as Beneficiaries

Trusts often contain provisions for the establishment of one or more new trusts upon the grantor's death, and the final rule clarifies deposit insurance coverage in these situations. Specifically, if a trust agreement provides that trust funds will pass into one or more new trusts upon the death of the grantor (or grantors), the future trust (or trusts) will not be treated as beneficiaries for purposes of the calculation under the proposed rule. Rather, the future trust(s) will be considered mechanisms for distributing trust funds, and the natural persons or organizations that receive the trust funds through the future trusts will be considered the beneficiaries for purposes of the deposit insurance calculation. This clarification is consistent with published guidance and does not represent a substantive change in deposit insurance coverage.[36]

Naming of Beneficiaries in Deposit Account Records

Consistent with the current revocable trust rules, the final rule continues to require the beneficiaries of an informal revocable trust to be specifically named in the deposit account records of the IDI.[37]

Presumption of Ownership

Consistent with the current revocable trust rules, the final rule provides that, unless otherwise specified in an IDI's deposit account records, a deposit of a trust established by multiple grantors will be presumed to be owned in equal shares.[38]

Bankruptcy Trustee Deposits

The FDIC will maintain the current treatment of deposits placed at an IDI by a bankruptcy trustee. Under the final rule, if funds of multiple bankruptcy estates are commingled in a single account at the IDI, each estate will be separately insured up to the SMDIA.

[30] 12 CFR 330.10(c).

[31] *See FDIC Financial Institution Employee's Guide to Deposit Insurance* at 51 (''Sometimes the trust agreement will provide that if a primary beneficiary predeceases the owner, the deceased beneficiary's share will pass to an alternative or contingent beneficiary. Regardless of such language, if the primary beneficiary is alive at the time of an IDI's failure, only the primary beneficiary, and not the alternative or contingent beneficiary, is taken into account in calculating deposit insurance coverage.''). Including only unique beneficiaries means that when an owner names the same beneficiary on multiple trust accounts, the beneficiary will only be counted once in calculating trust coverage. For example, if a grantor has two trust deposit accounts and names the same beneficiary in both trust documents, the total deposit insurance coverage associated with that beneficiary is limited to $250,000 in total.

[32] *See FDIC Financial Institution Employee's Guide to Deposit Insurance* at 71.

[33] *See* 12 CFR 330.1(r); *see also FDIC Financial Institution Employee's Guide to Deposit Insurance* at 87.

[34] 12 CFR 330.10(d).

[35] In the unlikely event a trust does not name any eligible beneficiaries, the FDIC would treat the trust's deposits as single ownership deposits. Such deposits would be aggregated with any other single ownership deposits that the grantor maintains at the same IDI and insured up to the SMDIA of $250,000.

[36] *See FDIC Financial Institution Employee's Guide to Deposit Insurance* at 74.

[37] *See* 12 CFR 330.10(b)(2).

[38] *See* 12 CFR 330.10(f).

Deposits Covered Under Other Rules

The final rule excludes from coverage under § 330.10 certain trust deposits that are covered by other sections of the deposit insurance regulations. For example, employee benefit plan deposits are insured pursuant to § 330.14, and investment company deposits are insured as corporate deposits pursuant to § 330.11. Deposits held by an insured depository institution in its capacity as trustee of an irrevocable trust are insured pursuant to § 330.12. In addition, if the co-owners of an informal or formal revocable trust are the trust's sole beneficiaries, deposits held in connection with the trust are treated as joint deposits under § 330.9. In each of these cases, the FDIC will not alter the current rules.

Effective Date

The effective date of the final rule is April 1, 2024. This is intended to provide IDIs, depositors, and the FDIC time to prepare for the changes in deposit insurance coverage. IDIs will have an opportunity to review the changes in coverage, train employees, and update publications if necessary. In addition, ''covered institutions'' under the FDIC's rule entitled ''Recordkeeping for timely deposit insurance determination,'' codified at 12 CFR part 370 will need to prepare to implement changes to recordkeeping and information technology capabilities. Depositors may review insurance coverage for their deposits and adjust their deposit account arrangements and deposit relationships, if desired. In addition, the FDIC must reprogram the information technology infrastructure that it uses to determine deposit insurance coverage and to make payment to insured depositors and update its deposit insurance coverage publications, including publications that provide guidance to covered institutions.

D. Discussion of Comments

The FDIC received seven comments on the proposed rule, including one joint letter from three national trade associations and individual letters from another national trade association, a State banker's association, a deposit solutions provider, and three individuals. Several commenters expressed appreciation for the FDIC's efforts to simplify the trust rules and offered suggestions for modifications to the proposed rule.

Some commenters also offered suggestions that relate primarily to other parts of the FDIC's regulations and thus are outside the scope of the proposed rule. Nonetheless, the FDIC reviewed these suggestions as part of the process of developing the final rule as discussed below.

Institutional Trusts

Three trade associations raised a concern about the coverage that would apply to certain institutional trusts under the proposed rule, including common trust funds, collective investment funds, indenture bonds, and securitization trusts. The commenters explained that these types of irrevocable trusts are sometimes established by entities other than insured depository institutions—such as uninsured limited purpose nationally-chartered banks, limited purpose state-chartered banks, and state-chartered trust companies—to collectively invest funds, issue bonds, or form securitized investments. The commenters asserted that deposits of such trusts potentially fall within the scope of the existing irrevocable trust category and would experience a reduction in coverage under the proposed rule because per-beneficiary coverage would be provided only for up to five eligible beneficiaries. The commenters urged the FDIC to amend the pass-through deposit insurance rules and, in the interim, to clarify through guidance that institutional trusts qualify for pass-through insurance coverage.

Pass-through insurance coverage applies to deposits of specific types of institutional trusts under the current rules, and this coverage would not be affected by the rule. The commenters noted that collective trust funds are established for the purpose of investing assets of retirement, pension, profit sharing, stock bonus or other employee benefit trusts. Deposits of employee benefit plans are insured on a pass-through basis pursuant to statute and regulation.[39] Moreover, § 330.10(f)(2) of the proposed rule stated that deposits of employee benefit plans would be covered pursuant to the rules for employee benefit plan deposits found in § 330.14, even if such deposits belonged to a trust.

Pass-through insurance coverage generally does not apply to deposits of other types of investment trusts, such as mutual funds or other investment company structures.[40] While some institutional trusts (similarly to some individual trusts) may experience a reduction in deposit insurance coverage under this final rule, the FDIC believes that a simplified insurance calculation for trust deposits has substantial benefits for depositors and IDIs.

Per-Grantor Coverage Limit

Two individuals submitted comment letters questioning the elimination of coverage for a grantor's trust deposits exceeding $1,250,000 at a single IDI. The FDIC recognizes that this aspect of the proposed rule may result in a reduction in deposit insurance coverage for a small number of trust depositors that hold deposits exceeding $1,250,000 at a single IDI, and these depositors may wish to restructure their trust deposits. However, the FDIC believes that a simplified insurance calculation for trust deposits has substantial benefits for depositors and IDIs, as discussed above. The $1,250,000 per-grantor, per-IDI limit is intended to be more straightforward and balance the objectives of simplifying the trust rules, promoting timely payment of deposit insurance, facilitating resolutions, ensuring consistency with the FDI Act, and limiting risk to the DIF. In addition, as discussed below, the FDIC intends to update its publications and engage in public outreach to promote awareness of the changes in coverage.

Educational Materials

A trade association suggested that the FDIC provide template language for bankers to explain trust coverage changes to depositors and publish and regularly update guidance and frequently asked questions on its website to address specific scenarios. The FDIC appreciates this suggestion and recognizes the need for public outreach on a variety of fronts. The FDIC already has many resources for bankers and the public that help explain deposit insurance coverage generally, and several presentations that are specific to trust accounts, including the following:

- Financial Institution Employee's Guide to Deposit Insurance: Describes deposit insurance coverage for various account categories and provides examples of coverage in multiple different scenarios.
- Bankers' seminars: The FDIC holds deposit insurance seminars for bankers multiple times each year, during which FDIC staff discuss the current rules and take questions.
- Electronic Deposit Insurance Estimator (EDIE): A tool on the FDIC's website that can be used to help determine deposit insurance coverage for particular account arrangements.

[39] *See* 12 U.S.C. 1821(a)(1)(D); 12 CFR 330.14.

[40] Under the current deposit insurance rules, deposits maintained by trusts or other business arrangements that are subject to certain securities laws are insured for up to $250,000 in total, regardless of the number of underlying investors. 12 CFR 330.11(a)(2).

• Published guidance and materials relating to deposit insurance coverage intended to assist the covered institutions subject to part 370

As part of its implementation of the final rule by the effective date of April 1, 2024, the FDIC intends to review all relevant resources and publications and update or remove those materials, as appropriate. Additionally, the FDIC will ensure that all materials, including brochures and any other documents, are updated and available for distribution. The FDIC will also consider additional ways to inform the public regarding the final rule and ways to assist bankers in explaining any changes to depositors.

Comments Focused on Part 370

Commenters also addressed various aspects of the NPR that have implications for covered institutions. Issues raised by these commenters and the FDIC's responses are discussed below. The commenters also raised issues with part 370 that are outside the scope of this rulemaking effort. While the FDIC acknowledges those comments, it believes those comments are not directly related to the final rule.

Beneficiaries of Future Trusts

Several trade associations argued that the proposed rule's treatment of beneficiaries of future trusts would add considerable burden to compliance with part 370 and urged the FDIC to treat future trusts as another type of eligible beneficiary. The FDIC does not believe that looking through future trusts to identify potential beneficiaries will add any compliance burden for part 370 covered institutions. Under § 370.4(b)(2), a covered institution is not required to maintain the identity of a formal trust's beneficiary(ies) in its deposit account records for the trust's account(s) if it does not otherwise maintain the information that would be needed for its information technology system to meet the requirements set forth in § 370.3. Thus, to the extent a trust's beneficiaries include a future trust, the covered institution would not be required to collect information on the beneficiaries of a future trust in order to comply with part 370. It is important to note, however, that regardless of whether or not an insured depository institution is covered by part 370, if an insured depository institution were to fail, then the depositor may need to provide the identity(ies) of a future trust's beneficiary(ies) in order for the FDIC to make a complete and accurate deposit insurance determination. In addition, the FDIC notes that it is required by statute to aggregate each depositor's deposits within each insurance category when making an insurance determination.[41] Recognizing a future trust as an eligible beneficiary could result in duplicative coverage to the extent the beneficiaries of the existing trust and the future trust overlap.

Multiple Beneficiaries Across Multiple Trust Accounts

Three trade associations recommended that any final rulemaking for trust coverage simplification should include a specific example to explain part 370 recordkeeping requirements when there are more than five beneficiaries associated with more than one trust account established by the same grantor. According to the example recommended by commenters, when a grantor has established both an informal trust account (*e.g.,* a payable-on-death (POD) account) and a formal trust that also has accounts at the same covered institution, the covered institution would be required to identify the beneficiary(ies) only for the informal trust account in the deposit account records.

As the commenters note, accounts held in connection with a formal trust that are insured under § 330.10, as amended pursuant to this final rule (or § 330.13 prior to the effective date of this final rule), are eligible for alternative recordkeeping under § 370.4(b)(2). A covered institution is not required to maintain information identifying the beneficiaries of a formal trust in the deposit account records for purposes of part 370 if it does not otherwise maintain the information that would be needed for its information technology system to meet the requirements set forth in § 370.3. Nevertheless, if a covered institution should fail, the depositor (or the trustee for the formal trust) may need to submit to the FDIC information identifying the formal trust's beneficiary(ies).

Need To Provide Trust Documentation Upon Bank Failure

A deposit solutions provider submitted a comment letter describing its operation of a sweep program and the method by which it allocates trust deposits among several banks. The commenter indicated that if the depositor's originating bank does not provide information on trust beneficiaries, only up to $250,000 of that depositor's funds will be allocated to a single bank in the network. The commenter requested the FDIC recognize that operating the program in this way eliminates the need for the originating bank to provide trust documentation to the FDIC after a bank failure or for the purpose of complying with part 370's recordkeeping requirements.

The deposit solutions provider's methodology for allocating the trust deposits is intended to ensure that the total corpus of trust funds would be eligible for deposit insurance (because the amount placed at each receiving bank would not exceed the SMDIA for each beneficial owner of the deposits). That methodology, however, would not necessarily provide the FDIC with all of the requisite information to complete an accurate deposit insurance determination on a particular depositor's accounts. Several other factors must be considered and evaluated.

Although it may be uncommon for an individual depositor participating in the commenter's program to maintain other deposit accounts at a bank holding the swept trust funds, the FDIC is required by statute to aggregate all of a beneficial owner's funds placed in one bank in the same right and capacity. Consequently, the FDIC would have to obtain any additional depositor or trust account information (or confirm that there is none) in order to aggregate all the depositor's accounts in the trust category. The requisite information would include identification of both the grantor(s) and the beneficiaries of the trust. For example, in the event that a depositor maintained more than one trust account with the same beneficiary, that particular beneficiary would only count once for purposes of deposit insurance eligibility. Additionally, it is possible that an entity listed as a beneficiary would not meet the definition of a ''beneficiary'' as set forth in § 330.10(c).[42] Finally, if the grantor has multiple trust accounts at the same bank, it is possible that the FDIC would provide deposit insurance for one trust account before receiving the necessary trust account information for another trust account. As stated previously, the FDIC would have to ensure that both trust accounts are aggregated before paying additional deposit insurance for the second trust account. The FDIC would be unable to perform this function without the relevant grantor and beneficiary information.

The part 370 recordkeeping requirements for informal revocable trust accounts closely track the recordkeeping requirements set forth in

[41] 12 U.S.C. 1821(a)(1)(C).

[42] 12 CFR 330.10(c) provides that ''[f]or purposes of this section, a beneficiary includes a natural person as well as a charitable organization and other non-profit entity recognized as such under the Internal Revenue Code of 1986, as amended.''

12 CFR 330.10, as amended. For example, § 370.4(a)(1)(iii) requires the covered institution to maintain information concerning the beneficiaries of a payable-on-death account in the covered institution's records.[43] Therefore, this information should be immediately available to the FDIC at a covered institution's failure. In contrast, for formal trust accounts, § 370.4(b)(2) permits alternative recordkeeping treatment and requires a covered institution to maintain some, but not all, of the requisite information the FDIC would need to have to complete an accurate deposit insurance determination. Nevertheless, the FDIC would require this information to be available after a covered institution's failure for the reasons discussed above.

Implementation of Part 370 Capabilities

Three trade associations urged the FDIC to postpone part 370 examinations on the types of deposit accounts impacted. Part 370 requires a covered institution to implement information technology and recordkeeping capabilities to calculate deposit insurance as provided under part 330. The final rule has a delayed effective date and will not go into effect until April 1, 2024.[44] Accordingly, covered institutions will have at least 24 months after the FDIC's adoption of the final rule to prepare the updates or changes to its information technology system or recordkeeping capabilities that will be necessary to satisfy part 370 requirements as of the effective date of the final rule. The FDIC is also publishing a separate notification elsewhere in this issue of the **Federal Register** to part 370 covered institutions regarding the final rule's implications regarding compliance with part 370.

FDIC Testing of Part 370 Capabilities

Several trade associations suggested that the FDIC delay part 370 compliance tests for three years after a covered institution's part 370 annual certification following the effective date of the final rule. The FDIC will continue to conduct periodic tests pursuant to 12 CFR 370.10(b) and evaluate the part 370 capabilities under the rules effective at the time of the compliance test. Ongoing compliance testing is necessary because a covered institution could fail at any time, and the FDIC would need to utilize the covered institution's part 370 capabilities to effectively conduct a timely deposit insurance determination. The FDIC relies on compliance testing to provide it with insight regarding how comprehensive a covered institution's part 370 capabilities are. Further, the revisions to deposit insurance coverage made by the final rule are expected to impact a relatively small volume of a covered institution's deposit balances so should not significantly impact compliance testing, and would nonetheless be useful in assessing a covered institution's part 370 capabilities.

Comments Outside the Scope of This Rulemaking

Finally, commenters recommended certain changes to part 370 requirements. Three trade associations suggested that the FDIC limit the annual certification requirement for testing and attestation to material changes only and waive certain recordkeeping requirements for grantors. The FDIC believes that the recommendations to change part 370 compliance and recordkeeping requirements are outside the scope of the current part 330 rulemaking and would require an amendment to part 370 instead. Currently, covered institutions are required to submit to the FDIC a certification of compliance that must, among other requirements, ''confirm that the covered institution has implemented all required capabilities and tested its information technology system during the proceeding twelve months.'' [45] The purpose of this requirement is to guarantee that a covered institution perform an end-to-end test of its part 370 capabilities at least once per year and to confirm that those capabilities function properly. In the event that a covered institution were to fail, the FDIC would rely upon all of the covered institution's part 370 capabilities to complete the deposit insurance calculations. Moreover, the FDIC would not limit its testing to only the capabilities that the covered institution has materially changed during the preceding compliance year. Rather it would test the covered institution's capabilities to calculate deposit insurance should the need arise and understand which capabilities function properly and which do not.

Among the comments related solely to part 370, a trade association requested that the FDIC waive certain recordkeeping requirements under § 370.4 that are applicable to formal revocable trust and irrevocable trust accounts with transactional features, namely the requirement that a covered institution maintain a unique identifier for the trust's grantor. In the preamble to the 2019 part 370 final rule, the FDIC stated that having a method to identify the grantor at failure (*i.e.,* a unique identifier) would enable the FDIC to aggregate the deposits of formal revocable trusts established by the same grantor and insure those accounts up to the SMDIA.[46] This could enable payment instructions presented against those accounts to be completed after failure.[47] The same approach would be used for certain irrevocable trust accounts that have a common grantor.[48]

Trade association commenters also recommended that the FDIC allow covered institutions to amend existing exception requests and provide extensions for granted relief to account for changes to part 330. This request is outside the scope of this rulemaking, and the FDIC will consider this outside the scope of this rulemaking.

The FDIC reiterates that recommendations to amend part 370 are beyond the scope of this final rule.

E. Alternatives Considered

The FDIC considered a number of alternatives to the amendments to the trust rules that could meet its objectives, as described in the preamble to the proposed rule.[49] Commenters generally did not address these alternatives, and for the reasons stated in the preamble to the proposed rule, the FDIC concludes that the proposed rule was preferable to the alternatives.

II. Amendments to Mortgage Servicing Account Rule

A. Policy Objectives

The FDIC's regulations governing deposit insurance coverage include specific rules on deposits maintained at IDIs by mortgage servicers. These rules are intended to be easy to understand and apply in determining the amount of

[43] See § 330.10(b)(2) which requires ''[f]or informal revocable trust accounts, the beneficiaries must be specifically named in the deposit account records of the insured depository institution.''

[44] Although § 370.10(d) provides that ''[a] covered institution will not be considered to be in violation of this part as a result of a change in law that alters the availability or calculation of deposit insurance for such period as specified by the FDIC following the effective date of such change[,]'' the FDIC is not providing an additional period of time pursuant to § 370.10(d) because the delayed effective date of the final rule provides covered institutions with at least 24 months to prepare the changes that will need to be operational on April 1, 2024.

[45] 12 CFR 370.10(a).

[46] 84 FR 37020, 37029 (July 30, 2019).

[47] *Id.* The FDIC explained further that ''[t]his capability will facilitate the FDIC's resolution efforts by enabling a successor [insured depository institution] to continue payments processing uninterrupted, and will also mitigate adverse effects of the covered institution's failure on these account holders.''

[48] *Id.,* discussing trust deposits insured pursuant to 12 CFR 330.13, which coverage is now combined under revised 12 CFR 330.10.

[49] *See* 86 FR 41766, 41776 (Aug. 3, 2021).

deposit insurance coverage for a mortgage servicer's deposits. The FDIC also seeks to avoid uncertainty concerning the extent of deposit insurance coverage for such deposits, as deposits in mortgage servicing accounts (MSAs) provide a source of funding for IDIs.

The FDIC is amending its rules governing insurance coverage for deposits maintained at IDIs by mortgage servicers that are comprised of mortgagors' principal and interest payments. The amendments are intended to address an aspect of servicing arrangements that was not previously covered by the mortgage servicing account rule. Specifically, some servicing arrangements may permit or require servicers to advance their own funds to the lenders when mortgagors are delinquent in making principal and interest payments, and servicers might commingle such advances in the MSA with principal and interest payments collected directly from mortgagors. This may be required, for example, under certain mortgage securitizations. The FDIC believes that the factors that motivated the FDIC to establish its current rules for mortgage servicing accounts, described below, argue for treating funds advanced by a mortgage servicer in order to satisfy mortgagors' principal and interest obligations to the lender as if such funds were collected directly from borrowers.[50]

B. Background

The FDIC's rules governing coverage for mortgage servicing accounts were originally adopted in 1990 following the transfer of responsibility for insuring deposits of savings associations from the Federal Savings and Loan Insurance Corporation (FSLIC) to the FDIC. Under the rules adopted in 1990, deposits comprised of payments of principal and interest were insured on a pass-through basis to lenders, mortgagees, investors, or security holders (lenders). In adopting this rule, the FDIC focused on the fact that principal and interest funds were generally owned by lenders, on whose behalf the servicer, as agent, accepted principal and interest payments. By contrast, payments of taxes and insurance were insured to the mortgagors or borrowers on a pass-through basis because the borrower owns such funds until tax and insurance bills are paid by the servicer.

In 2008, however, the FDIC recognized that securitization methods and vehicles for mortgages had become more complex, exacerbating the difficulty of determining the ownership of deposits comprised of principal and interest payments by mortgagors and extending the time required to make a deposit insurance determination for deposits of a mortgage servicer in the event of an IDI's failure.[51] The FDIC expressed concern that a lengthy insurance determination could lead to continuous withdrawal of deposits of principal and interest payments from IDIs and unnecessarily reduce a funding source for such institutions. The FDIC therefore amended its rules to provide coverage to lenders based on each mortgagor's payments of principal and interest into the mortgage servicing account, up to the SMDIA (currently $250,000) per mortgagor. The FDIC did not amend the rule for coverage of tax and insurance payments, which continued to be insured to each mortgagor on a pass-through basis and aggregated with any other deposits maintained by each mortgagor at the same IDI in the same right and capacity.

The 2008 amendments to the rules for mortgage servicing accounts did not provide for the fact that servicers may be required to advance their own funds to make payments of principal and interest on behalf of delinquent borrowers to the lenders. However, this is required of mortgage servicers under some mortgage servicing arrangements. Covered institutions identified challenges to implementing certain recordkeeping requirements with respect to MSA deposit balances as a result of the ways in which servicer advances are administered and accounted.[52]

The current rule provides coverage for principal and interest funds only to the extent ''paid into the account by the mortgagors''; it does not provide coverage for funds paid into the account from other sources, such as the servicer's own operating funds, even if those funds satisfy mortgagors' principal and interest payments. As a result, deposits into an MSA by a servicer for the purpose of making an advance are not provided the same level of coverage as other deposits in a mortgage servicing account consisting of principal and interest payments directly from the borrower, which are insured up to the SMDIA for each borrower. Instead, the advances are aggregated and insured to the servicer as corporate funds for a total of $250,000. The FDIC is concerned that this inconsistent treatment of principal and interest amounts could result in financial instability during times of stress, and could further complicate the insurance determination process, a result that is inconsistent with the FDIC's policy objectives.

C. Final Rule

In July 2021, the FDIC proposed to amend the rules governing coverage for deposits in mortgage servicing accounts to provide consistent deposit insurance treatment for all MSA deposit balances held to satisfy principal and interest obligations to a lender, regardless of whether those funds are paid into the account by borrowers, or paid into the account by another party (such as the servicer) in order to satisfy a periodic obligation to remit principal and interest due to the lender.[53] Under the rule, accounts maintained by a mortgage servicer in an agency, custodial, or fiduciary capacity, for the purpose of payment of a borrower's principal and interest obligations, would be insured for the cumulative balance paid into the account in order to satisfy principal and interest obligations to the lender, whether paid directly by the borrower or by another party, up to the limit of the SMDIA per mortgagor. Mortgage servicers' advances of principal and interest funds on behalf of delinquent borrowers would therefore be insured up to the SMDIA per mortgagor, consistent with the coverage rules for payments of principal and interest collected directly from borrowers.[54]

The FDIC received one joint comment letter responding to the proposed change in coverage for mortgage servicing accounts, discussed below.

Under the final rule, the composition of an MSA attributable to principal and interest payments would also include collections by a servicer, such as foreclosure proceeds, that are used to satisfy a borrower's principal and interest obligations to the lender. These

[50] Certain funds collected from mortgagors and held by a bank may not be ''deposits'' under the FDI Act, and thus fall outside the scope of deposit insurance coverage. For example, funds received by a bank that are immediately applied to reduce the debt owed to that bank are specifically excluded from the statutory definition of ''deposit.'' 12 U.S.C. 1813(*l*)(3).

[51] *See* 73 FR 61658, 61658–59 (Oct. 17, 2008).

[52] In order to fulfill their contractual obligations with investors, covered institutions maintain mortgage principal and interest balances at a pool level and remittances, advances, advance reimbursement and excess funds applications that affect pool-level balances are not allocated back to individual borrowers.

[53] *See* 86 FR 41766 (Aug. 3, 2021).

[54] Servicers' advances may have been insured under the rule that applied to mortgage servicing account deposits prior to 2008. Prior to 2008, mortgage servicing deposits were insured on a pass-through basis. Under the pass-through insurance rules, the identity of the party that pays funds into a deposit account does not generally factor into insurance coverage. In this sense, the proposed rule can be viewed as restoring coverage to the previous level.

funds will be insured up to the limit of the SMDIA per mortgagor.

The FDIC did not propose changes to the deposit insurance coverage provided for mortgage servicing accounts comprised of payments from mortgagors of taxes and insurance premiums. Such aggregate escrow accounts are held separately from the principal and interest MSAs and the deposits therein are held in trust for the mortgagors until such time as tax and insurance payments are disbursed by the servicer on the borrower's behalf. Such deposits continued to be insured based on the ownership interest of each mortgagor in the account and aggregated with other deposits maintained by the mortgagor at the same IDI in the same capacity and right.

D. Discussion of Comments

The proposed rule provided that balances in mortgage servicing accounts that were paid into the account by either the borrower or another party would be insurable if they were held to satisfy the principal and interest obligations of a mortgagor. The comment was supportive of this change, noting that the allocations provided would allow for more stability in these types of accounts in periods of turmoil. The FDIC is finalizing the rule as proposed.

Three trade associations, through a joint comment letter, specifically requested additional clarity on the coverage that would be provided for three specific types of funds placed into mortgage servicing accounts by the servicer—interest shortfall payments, funds from distressed homeowner programs, and funds used to satisfy buyout or repurchase obligations.

Interest shortfall payments are funded by the servicer when a loan is refinanced or paid off before the end of a month. The associations noted that servicers are generally required to fund the interest that would have accrued during the month, just as if the borrower had continued the payment stream as agreed. Because these payments are traceable at the loan level and held to satisfy the interest obligation of the mortgagor, they are covered under the mortgage servicing account rule. Federal, state, and local governments have created various programs during emergencies that provide funds to borrowers who are having difficulties paying their home mortgages. While the most recent iterations of these programs were spurred by the COVID–19 pandemic, these types of programs can result from other types of emergencies as well (*e.g.,* natural disasters) and can vary in duration. While each program would need to be evaluated on its individual terms, the FDIC expects that funds originating from most government programs designed to help homeowners with mortgage payments would be included in the borrower's insurable balance covered by the mortgage servicing account rule due to the provision of funds to satisfy the borrower's principal and interest obligations.

With respect to servicer-funded buyouts and repurchases of loans, it is common for the servicer to be requested to repurchase or substitute a loan in a securitization if the loan is defective or in a specific delinquency status. Although the amount of unpaid principal balance plus the accrued but unpaid interest on that loan is the price paid to repurchase the loan from the pool, the repurchase of the loan from the investor pool does not satisfy the borrower's principal and interest obligation, and thus, falls outside the scope of the rule.

Alternatively, the associations suggested that the FDIC eliminate the borrower-level allocation, as most mortgage servicers account for the deposits in their account on the portfolio level as opposed to the loan-specific level. The commenters' suggested removal of the borrower allocation would change the insurable amount calculation to insure the lesser of the balance in the mortgage servicing account or the number of borrowers multiplied by the SMDIA. The FDIC believes that the elimination of the borrower-level allocation would significantly expand deposit insurance coverage in some circumstances and declines to adopt the suggested alternative. For example, a balance representing a large commercial mortgage payment could be fully insured if the pooled custodial account contained funds for a large number of other borrowers, even if this large payment significantly exceeded the $250,000 deposit insurance limit.

III. Regulatory Analysis

A. Expected Effects

1. Simplification of Trust Rules

Generally, the simplification of the trust rules is expected to have benefits including clarifying depositors' and bankers' understanding of the insurance rules, promoting the timely payment of deposit insurance following an IDI's failure, facilitating the transfer of deposit relationships to failed bank acquirers (thereby potentially reducing the FDIC's resolution costs), and addressing differences in the treatment of revocable trust deposits and irrevocable trust deposits contained in the current rules. The changes to the current rules would directly affect the level of deposit insurance coverage provided to some depositors with trust deposits. In some cases, which the FDIC expects are rare, the changes could reduce deposit insurance coverage; for the vast majority of depositors, the FDIC expects the coverage level to be unchanged. The FDIC has also considered the impact of any changes in the deposit insurance rules on the DIF and on the covered institutions that are subject to part 370. Finally, the FDIC describes other potential effects of the changes, such as the effects on information technology (IT) service providers to the institutions that could be affected by the final rule. These effects are discussed in greater detail below.

Effects on Deposit Insurance Coverage

The final rule would affect deposit insurance coverage for deposits held in connection with trusts. According to September 30, 2021 Call Report data, the FDIC insures 4,923 depository institutions [55] that report holding approximately 812 million deposit accounts. Additionally, 1,551 IDIs have powers granted by a state or national regulatory authority to administer accounts in a fiduciary capacity (*i.e.,* trust powers) and 1,155 exercise those powers, comprising 31.5 percent and 23.5 percent, respectively, of all IDIs.[56] However, individual depositors may establish a trust account at an IDI even if that IDI does not itself have or exercise trust powers, and in fact, as discussed below, 99 percent of a sample of failed banks had trust accounts. Therefore, the FDIC estimates that the final rule could affect between 1,155 and 4,923 IDIs.

The FDIC does not have detailed data on depositors' trust arrangements that would allow it to precisely estimate the number of trust accounts that are currently held by FDIC-insured institutions. However, the FDIC estimated the number of trust accounts and trust account depositors utilizing data from failed banks. Based on data from 249 failed banks [57] between 2010 and 2020, 335,657 deposit accounts—owned by 250,139 distinct depositors—were trust accounts (revocable or irrevocable), out of a total of 3,013,575 deposit accounts. Thus, about 11.14

[55] The count of institutions includes FDIC-insured U.S. branches of institutions headquartered in foreign countries.

[56] FDIC Call Report data, September 30, 2021.

[57] Data on failed banks comes from the FDIC's Claims Administration System, which contains data on depositors' funds from every failed IDI since September 2010.

percent of the deposit accounts at the 249 failed banks were trust accounts. Of the 249 institutions, 247 (99 percent) reported having trust accounts at time of failure. Of the 247 failed banks that reported trust accounts, 212 reported not having trust powers as of their last Call Report. Assuming the percentage of trust accounts at failed banks is representative of the percentage of trust accounts among all FDIC-insured institutions, the FDIC estimates, for purposes of this analysis, that there are approximately 90.5 million trust accounts in existence at FDIC-insured institutions.[58] Additionally, based on the observed number of trust account depositors per trust account in the population of 249 failed banks, the FDIC estimates, for purposes of this analysis, that there are approximately 67.4 million trust depositors.[59] These estimates are subject to considerable uncertainty, since the percentage of deposit accounts that are trust accounts and the number of depositors per trust account for all FDIC insured institutions may differ from what was observed at the 249 failed banks. The FDIC does not have information that would shed light on whether or how the numbers of trust accounts and trust depositors at failed banks differs from the corresponding numbers for other FDIC-insured institutions.

The FDIC also does not have detailed data on depositors' trust arrangements that would allow the FDIC to precisely estimate the quantitative effects of the final rule on deposit insurance coverage. Thus, the effects of the changes to the insurance rules are outlined qualitatively below. The FDIC expects that most depositors would experience no change in the coverage for their deposits under the final rule. However, some depositors that maintain trust deposits would experience a change in their insurance coverage under the final rule.

The FDIC anticipates that deposit insurance coverage for some irrevocable trust deposits would increase under the final rule. The FDIC's experience suggests that the provisions of the current irrevocable trust rules that require the identification and aggregation of contingent interests often apply due to the inclusion of contingencies in such trusts.[60] Thus, even where an irrevocable trust names multiple beneficiaries, the current trust rules often provide a total of only $250,000 in deposit insurance coverage. The final rule would not consider such contingencies in the calculation of coverage, and per-beneficiary coverage would apply.

In limited instances, the merger of the revocable trust and irrevocable trust categories may decrease coverage for depositors. Deposits of revocable trusts and deposits of irrevocable trusts are currently insured separately. The final rule would require aggregation for purposes of applying the deposit insurance limit, thereby increasing the likelihood of the combined trust account balances exceeding the insurance limit.[61] However, the FDIC's experience is that irrevocable trust deposits comprise a relatively small share of the average IDI's deposit base,[62] and that it is rare for IDIs to hold deposits in connection with irrevocable and revocable trusts established by the same grantor(s).[63] Individual grantors' trust deposits held for the benefit of up to five different beneficiaries would continue to be separately insured.

With respect to revocable and irrevocable trusts, depositors who have designated more than five beneficiaries and structured their trust accounts in a manner that provides for more than $1,250,000 in coverage per grantor, per IDI under the current rules would experience a reduction in coverage. The FDIC's experience suggests that the $1,250,000 maximum coverage amount per grantor, per IDI would not affect the vast majority of trust depositors, as most trusts have either five or fewer beneficiaries, less than $1,250,000 per grantor on deposit at the same IDI, or are structured in a manner that results in only $1,250,000 in coverage under the current rules. The FDIC estimates that approximately 26,959 trust account depositors and approximately 36,175 trust accounts could be directly affected by this aspect of the final rule, representing about 0.04 percent of both the estimated number of trust account depositors and the estimated number of trust accounts.[64] The actual number of trust depositors and trust accounts impacted will likely differ, as the estimates rely on data from failed banks, and failed banks may differ from other institutions in their percentages of trust depositors or trust accounts. It is also possible depositors may restructure their deposits in response to changes to the rule, thus mitigating the potential effects on deposit insurance coverage.

Clarification of Insurance Rules

The merger of certain revocable and irrevocable trust categories is intended to simplify deposit insurance coverage for trust accounts. Specifically, the merger of these categories would mostly eliminate the need to distinguish revocable and irrevocable trusts currently required to determine coverage for a particular trust deposit. The benefit of the common set of rules would likely be particularly significant for depositors that have established arrangements involving multiple trusts, as they would no longer need to apply two different sets of rules to determine the level of deposit insurance coverage that would apply to their deposits. For example, the final rule would eliminate the need to consider the specific

[58] There were approximately 812 million deposit accounts reported by FDIC-insured institutions as of September 30, 2021, based on Call Report data. Assuming that 11.14 percent of accounts are trust accounts, then there are an estimated 90.5 million trust accounts as of September 30, 2021.

[59] Using the data from failed banks, 250,139 distinct depositors held 335,657 revocable or irrevocable trust accounts, or there were 0.745 trust account depositors per trust account (250,139 divided by 335,657). The estimated number of trust depositors at FDIC-insured institutions (67.4 million) is obtained by multiplying the estimated number of trust accounts by the number of trust account depositors per trust account (90.5 million multiplied by 0.745).

[60] As discussed above, the provisions relating to contingent interests may not apply when a trust has become irrevocable due to the death of one or more grantors. In such instances, the revocable trust rules continue to apply.

[61] As discussed above, deposits maintained by an IDI as trustee of an irrevocable trust would not be included in this aggregation, and would remain separately insured pursuant to section 7(i) of the FDI Act and 12 CFR 330.12.

[62] Data obtained in connection with IDI failures during the recent financial crisis suggests that irrevocable trust deposits comprise less than one percent of trust deposits. However, as discussed above, the FDIC does not possess sufficient information to enable it to estimate the effects of the final rule on trust account depositors at all IDIs.

[63] In the data obtained in connection with IDI failures during the recent financial crisis, only 51 out of 250,139 depositors with trust accounts had both revocable and irrevocable types. Of these 51 depositors, nine had total trust account balances greater than $250,000, and only one had a total trust balance of more than $1,250,000.

[64] To estimate the numbers of trust account depositors and trust accounts affected, the FDIC performed the following calculation. First, based on data from 249 failed banks between 2010 and 2020, the FDIC determined that there were 335,657 trust accounts out of 3,013,575 deposit accounts (trust account share). Second, the FDIC determined the number of trust accounts per trust depositor (335,657/250,139). The FDIC then estimated the number of trust accounts by multiplying the trust account share (335,657/3,013,575) by the number of deposit accounts across all IDIs (812,414,977) according to September 30, 2021, Call Report data. This step yielded an estimate of 90,488,133 trust accounts. Based on the estimated number of trust accounts per trust depositor from the failed bank data, the FDIC estimated the total number of trust depositors to be 67,433,752. Using failed bank data, 100 out of 250,139 trust depositors had balances in excess of $1,250,000 in their trust accounts. Thus, the FDIC estimated that, of the approximately 67.4 million trust depositors, (100/250,139) of them—approximately 26,959—had balances in excess of $1,250,000 in their trust accounts, and therefore could be directly affected by the final rule. These estimated 26,959 trust depositors are associated with an estimated 36,175 trust accounts, based on the observed number of trust accounts per trust depositor from the data from 249 failed banks between 2010 and 2020.

allocation of interests among the beneficiaries of revocable trusts with six or more beneficiaries, as well as contingencies established in irrevocable trusts. The merger of the categories also would eliminate the need for current § 330.10(h) and (i), which allows for the continued application of the revocable trust rules to the account of a revocable trust that becomes irrevocable due to the death of the trust's owner. As previously discussed, these provisions of the current trust rules have proven confusing as illustrated by the numerous inquiries that are consistently submitted to the FDIC on these topics.

FDIC-insured depository institutions may incur some regulatory costs associated with making necessary changes to internal processes and systems and bank personnel training in order to accommodate the final rule's definition of ''trust accounts'' and attendant deposit insurance coverage terms. There also may be some initial cost for IDIs to become familiar with the changes to the trust insurance coverage rules in order to be able to explain them to potential trust customers, counterbalanced to some extent by the fact that the rules should be simpler for IDIs to understand and explain going forward.

Prompt Payment of Deposit Insurance

The FDIC also expects that simplification of the trust rules would promote the timely payment of deposit insurance in the event of an IDI's failure. The FDIC's experience has been that the current trust rules often require detailed, time-consuming, and resource-intensive review of trust documentation to obtain the information that is necessary to calculate deposit insurance coverage. This information is often not found in an IDI's records and must be obtained from depositors after the IDI's failure. The final rule would ameliorate the operational challenge of calculating deposit insurance coverage, which could be particularly acute in the case of a failure of a large IDI with a large number of trust accounts. The final rule would streamline the review of trust documents required to make a deposit insurance determination, promoting more prompt payment of deposit insurance. Timely payment of deposit insurance also can help to facilitate the transfer of depositor relationships to a failed bank's acquirer, potentially expand resolution options, potentially reduce the FDIC's resolution costs, and support greater confidence in the banking system.

Deposit Insurance Fund Impact

As discussed above, the final rule is expected to have mixed effects on the level of insurance coverage provided for trust deposits. Coverage for some irrevocable trust deposits would be expected to increase, but in the FDIC's experience, irrevocable trust deposits are not nearly as common as revocable trust deposits. The level of coverage for some trust deposits would be expected to decrease due to the final rule's simplified calculation of coverage and its aggregation of revocable and irrevocable trust deposits. As noted above, the FDIC does not have detailed data on depositors' trust arrangements to allow it to precisely project the quantitative effects of the final rule on deposit insurance coverage.

Indirect Effects

A change in the level of deposit insurance coverage does not necessarily result in a direct economic impact, as deposit insurance is only paid to depositors in the event of an IDI's failure. However, changes in deposit insurance coverage may prompt depositors to take actions with respect to their deposits. In response to changes in the level of coverage under the final rule, trust depositors could maximize coverage relative to the coverage under the current rule by transferring some of their trust deposits to other types of accounts that provide similar or higher amounts of coverage or by amending the terms of their trusts. Parties affected could include IDIs, depositors, and other firms in the financial services marketplace (*e.g.,* deposit brokers). Any costs borne by the depositor in moving a portion of the funds to a different IDI to stay under the insurance limit would be accompanied by benefits, such as more prompt deposit insurance determinations, and quicker access to insured deposits for depositors during the resolution process. The FDIC cannot estimate these effects because it does not have information on the individual costs of each action that confronts each depositor, their ability to amend their trust structure or move funds, and their subjective risk preference with respect to holding insured and uninsured deposits.

Part 370 Covered Institutions

As discussed previously, institutions covered by part 370 must maintain deposit account records and systems capable of applying the deposit insurance rules in an automated manner. The final rule would change certain aspects of how coverage is determined for trust deposits. This could require covered institutions to reprogram certain systems to ensure that those systems continue to be capable of applying the deposit insurance rules as part 370 requires.

The FDIC expects that the final rule would make the deposit insurance status of a trust account generally clearer. Moreover, since part 370 requires covered institutions to develop and maintain the capabilities to calculate deposit insurance for its deposits, the final rule could make compliance with part 370 relatively less burdensome. This is because the underlying rules that would be applied to most trust deposits would be simplified. In particular, the final rule requires the aggregation of revocable and irrevocable trust deposits, categories that are currently separated for purposes of the deposit insurance calculation capabilities required by part 370. The FDIC does not expect that the final rule would require significant changes with respect to covered institutions' treatment of informal revocable trust deposits. Moreover, many deposits of formal revocable trusts and irrevocable trusts currently fall within the scope of part 370's alternative recordkeeping provisions, meaning that covered institutions are not required to maintain all of the records necessary to calculate the maximum amount of deposit insurance coverage available for these deposits. These factors may diminish the impact of the final rule on the part 370 covered institutions, but the FDIC does not have sufficient information on covered institutions' systems and records to quantify this effect.

Other Potential Effects

Although the FDIC expects that coverage for most trust depositors will be unchanged under the final rule, and that the rule's changes simplify the FDIC's insurance rules for trust accounts, the rule may have other potential effects. For example, the IDIs affected by the rule may rely on third-party IT service providers to perform insurance coverage estimates for their trust depositors. The final rule may lead such IT service providers to revise their systems to account for the final rule's changes.

2. Amendments to Mortgage Servicing Account Rule

The final rule would affect the deposit insurance coverage for certain principal and interest payments within MSA deposits maintained at IDIs by mortgage servicers. According to the September 30, 2021 Call Report data, the FDIC

insures 4,923 IDIs.[65] Of the 4,923 IDIs, 1,161 IDIs (23.6 percent) report holding mortgage servicing assets, which indicates that they service mortgage loans and could thus be affected by the rule. In addition, mortgage servicing accounts may be maintained at IDIs that do not themselves service mortgage loans. The FDIC does not know how many IDIs are recipients of mortgage servicing account deposits, but believes that most IDIs are not. Therefore, the FDIC estimates that the number of IDIs potentially affected by the final rule is greater than 1,161 but substantially less than 4,923.

The FDIC does not have detailed data on MSAs that would allow the FDIC to reliably estimate the number of MSAs maintained at IDIs that would be affected by the rule, or any potential change in the total amount of insured deposits. Thus, the potential effects of the amendments regarding governing deposit insurance coverage for MSAs are outlined qualitatively below.

The final rule directly affects the level of deposit insurance coverage provided for some MSAs. Under the rule, the composition of an MSA attributable to mortgage servicers' advances of principal and interest funds on behalf of delinquent borrowers and collections such as foreclosure proceeds would be insured up to the SMDIA per mortgagor, consistent with the coverage for payments of principal and interest collected directly from borrowers. Under the current rules, principal and interest funds advanced by a servicer to cover delinquencies, and foreclosure proceeds collected by servicers, are not insured under the rules for MSA deposits, but instead are insured to the servicer as corporate funds up to the SMDIA. Therefore, the final rule expands deposit insurance coverage in instances where an account maintained by a mortgage servicer contains principal and interest funds advanced by the servicer in order to satisfy the obligations of delinquent borrowers to the lender, or foreclosure proceeds collected by the servicers; and where the funds in such instances exceed the mortgage servicer's SMDIA.

The final rule is likely to benefit a servicer compelled by the terms of a pooling and servicing agreement to advance principal and interest funds to note holders when a borrower is delinquent, and therefore the servicer has not received such funds from the borrower. In the event that the IDI hosting the MSA for the servicer fails, the rule reduces the likelihood that the funds advanced by the servicer are uninsured, and thereby facilitates access to, and helps avoids losses of, those funds. As previously discussed, the FDIC does not have detailed data on MSAs held at IDIs, pooling and servicing agreements for outstanding mortgage loans, or servicer payments into MSAs that would allow the FDIC to reliably estimate the number of, and volume of funds within, MSAs maintained at IDIs that would be affected by the final rule.

Further, the final rule is likely to benefit an IDI who is hosting an MSA for a servicer that is compelled by the terms of a pooling and servicing agreement to advance principal and interest funds to note holders on behalf of delinquent borrowers by increasing the volume of insured funds. In the event that the IDI enters into a troubled condition, the rule could marginally increase the stability of MSA deposits from such servicers, thereby increasing the general stability of funding.

Finally, the FDIC believes that the rule poses general benefits to parties that provide or utilize financial services related to mortgage products by amending an inconsistency in the deposit insurance treatment for principal and interest payments made by the borrower and such payments made by the servicer on behalf of the borrower.

Effects on Part 370 Covered Institutions

Part 370 covered institutions may bear some costs in recognizing the expanded coverage for servicer advances and foreclosure proceeds. However, part 370 covered institutions already are responsible for calculating coverage for MSA accounts based on each borrower's payments. Therefore, the FDIC does not believe the impact of the rule on part 370 covered institutions will be significant.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), requires that, in connection with a final rulemaking, an agency prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the final rule on small entities.[66] However, a regulatory flexibility analysis is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short explanatory statement in the **Federal Register** together with the rule. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets of less than or equal to $600 million.[67] Generally, the FDIC considers a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total noninterest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for small entities. The FDIC does not believe that the final rule will have a significant economic effect on a substantial number of small entities. However, some expected effects of the rule are difficult to assess or accurately quantify given current information, therefore the FDIC has included a Regulatory Flexibility Act Analysis in this section.

1. Simplification of Trust Rules

Reasons Why This Action Is Being Considered

As previously discussed, the rules governing deposit insurance coverage for trust deposits have been amended on several occasions, but still frequently cause confusion for depositors. Under the current regulations, there are distinct and separate sets of rules applicable to deposits of revocable trusts and irrevocable trusts. Each set of rules has its own criteria for coverage and methods by which coverage is calculated. Despite the FDIC's efforts to simplify the revocable trust rules in 2008,[68] over the last 10 years, FDIC deposit insurance specialists have responded to approximately 20,000 complex insurance inquiries per year on average. More than 50 percent pertain to deposit insurance coverage for trust accounts (revocable or irrevocable). The consistently high volume of complex inquiries about trust accounts over an extended period of time suggests continued confusion about insurance limits.

The FDI Act requires the FDIC to pay depositors ''as soon as possible'' after a bank failure. However, the insurance determination and subsequent payment

[65] The count of institutions includes FDIC-insured U.S. branches of institutions headquartered in foreign countries.

[66] 5 U.S.C. 601 *et seq.*

[67] The SBA defines a small banking organization as having $600 million or less in assets, where ''a financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). ''SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the FDIC-supervised institution is ''small'' for the purposes of RFA.

[68] *See* 73 FR 56706 (Sep. 30, 2008).

for many trust deposits can be delayed while FDIC staff reviews complex trust agreements and apply the rules for determining deposit insurance coverage. Moreover, in many of these instances, deposit insurance coverage for trust deposits is based upon information that is not maintained in the failed IDI's deposit account records. This requires FDIC staff to work with depositors, trustees, and other parties to obtain trust documentation following an IDI's failure in order to complete deposit insurance determinations. The difficulties associated with this are exacerbated by the substantial growth in the use of formal trusts in recent decades. For example, following the 2008 failure of IndyMac Federal Bank, FSB (IndyMac), FDIC claims personnel contacted more than 10,500 IndyMac depositors to obtain the trust documentation necessary to complete deposit insurance determinations for their revocable trust and irrevocable trust deposits. As noted previously, delays in the payment of deposit insurance could be consequential, as revocable trust deposits in particular can be used by depositors to satisfy their daily financial obligations.

Policy Objectives

As discussed previously, the changes adopted by the final rule are intended to provide depositors and bankers with a rule for trust account coverage that is easy to understand, and also to facilitate the prompt payment of deposit insurance in accordance with the FDI Act. The FDIC believes that accomplishing these objectives also would further the agency's mission in other respects. Specifically, the changes would promote depositor confidence and further the FDIC's mission to maintain stability and promote public confidence in the U.S. financial system by assisting depositors to more readily and accurately determine their insurance limits. The changes will also facilitate the resolution of failed IDIs in a least costly manner. The changes could reduce the FDIC's reliance on trust documentation (which could be difficult to obtain in a timely manner during resolutions of IDI failures) and provide greater flexibility to automate deposit insurance determinations, thereby reducing potential delays in the completion of deposit insurance determinations and payments. Finally, in amending the trust rules, the FDIC's intent is that the changes would generally be neutral with respect to the DIF.

Legal Basis

The FDIC's deposit insurance categories have been defined through both statute and regulation. Certain categories, such as the government deposit category, have been expressly defined by Congress.[69] Other categories, such as joint deposits and corporate deposits, have been based on statutory interpretation and recognized through regulations issued in 12 CFR part 330 pursuant to the FDIC's rulemaking authority. In addition to defining the insurance categories, the deposit insurance regulations in part 330 provide the criteria used to determine insurance coverage for deposits in each category. The FDIC is amending § 330.10 of its regulations, which currently applies only to revocable trust deposits, to establish a new ''trust accounts'' category that would include both revocable and irrevocable trust deposits. For a more detailed discussion of the rule's legal basis please refer to section I.C entitled ''Proposed Rule'' and section I.D entitled ''Discussion of Comments and Final Rule.''

The Final Rule

The FDIC is amending the rules governing deposit insurance coverage for trust deposits. Generally, the amendments would: Merge the revocable and irrevocable trust categories into one category; apply a simpler, common calculation method to determine insurance coverage for deposits held by revocable and irrevocable trusts; eliminate certain requirements found in the current rules for revocable and irrevocable trusts; and amend certain recordkeeping requirements for trust accounts. For a more detailed discussion of the final rule please refer to section I.C entitled ''Proposed Rule'' and section I.D entitled ''Discussion of Comments and Final Rule.''

Small Entities Affected

Based on the September 30, 2021 Call Report data, the FDIC insures 4,923 depository institutions,[70] of which 3,303 are considered small entities for the purposes of RFA.[71] Of the 3,303 small IDIs, 783 have powers granted by a state or national regulatory authority to administer accounts in a fiduciary capacity and 539 exercise those powers, comprising 23.7 percent and 16.3 percent, respectively, of small IDIs.[72] However, individuals may establish trust accounts at an IDI even if that IDI does not itself have or exercise authority to administer accounts in a fiduciary capacity, and in fact, as noted earlier, 99 percent of a sample of failed banks had trust accounts. Therefore, the FDIC estimates that the rule could affect between 539 and 3,303 small, FDIC-insured institutions.

As noted above, the FDIC does not have detailed data on depositors' trust arrangements for trust accounts held at small FDIC-insured institutions. Therefore, it is difficult to accurately estimate the number of small IDIs that would be potentially affected by the final rule. However, the FDIC believes that the number of small IDIs that will be directly affected by the rule is likely to be small, given that in the agency's resolution experience only a small number of trust accounts have balances above the adopted coverage limit of $1,250,000 per grantor, per IDI for trust deposits. For example, data obtained from a sample of 249 IDIs that failed between 2010 and 2020 show that only 100 depositors out of 250,139 (or 0.04 percent) had trust account balances greater than $1,250,000; at small IDIs, 18 out of 34,304 depositors (or 0.05 percent) had trust account balances greater than $1,250,000.[73] The data from failed banks suggest small IDIs could be affected by the rule roughly in proportion to the share of trust depositors with account balances greater than $1,250,000 at IDIs of all sizes which failed between 2010 and 2020.

Expected Effects

The simplification of the deposit insurance rules for trust deposits is expected to have a variety of effects. The changes will directly affect the level of deposit insurance coverage provided to some depositors with trust deposits. In addition, simplification of the rules is expected to have benefits in terms of promoting the timely payment of deposit insurance following a small IDI's failure, facilitating the transfer of deposit relationships to failed bank acquirers with consequent potential reductions to the FDIC's resolution costs, and addressing differences in the treatment of revocable trust deposits and irrevocable trust deposits contained in the current rules. The FDIC has also considered the impact of any changes in the deposit insurance rules on the DIF and other potential effects.[74] These

[69] 12 U.S.C. 1821(a)(2).

[70] The count of institutions includes FDIC-insured U.S. branches of institutions headquartered in foreign countries.

[71] FDIC Call Report data, September 30, 2021.

[72] Id.

[73] Whether a failed IDI is considered small is based on data from its four quarterly Call Reports prior to failure.

[74] The FDIC has also considered the impact of any changes in the deposit insurance rules on the

Continued

effects are discussed in greater detail in section III.A entitled ''Expected Effects.''

Overall, due to the fact that the FDIC expects most small IDIs to have only a small number of trust accounts with balances above the adopted coverage limit of $1,250,000 per grantor, per IDI for trust deposits, effects on the deposit insurance coverage of small entities' customers are likely to be small. There also may be some initial cost for small entities to become familiar with the changes to the trust insurance coverage rules in order to be able to explain them to potential trust customers, counterbalanced to some extent by the fact that the rules should be simpler to understand and explain going forward.

Alternatives Considered

The FDIC has considered a number of alternatives to the final rule that could meet its objectives in this rulemaking. However, for reasons previously stated in section I.E ''Alternatives Considered,'' the FDIC considers the final rule to be a more appropriate alternative.

The FDIC also considered the status quo alternative to not amend the existing trust rules. However, for reasons previously stated in section I.E ''Alternatives Considered,'' the FDIC considers the final rule to be a more appropriate alternative.

Other Statutes and Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between this final rule and any other federal rule.

2. Amendments to Mortgage Servicing Account Rule

Reasons Why This Action Is Being Considered

As previously discussed, the FDIC provides coverage, up to the SMDIA for each borrower, for principal and interest funds in MSAs only to the extent ''paid into the account by the mortgagors,'' and does not provide coverage for funds paid into the account from other sources, such as the servicer's own operating funds, even if those funds satisfy mortgagors' principal and interest payments under the current rules. The advances are aggregated and insured to the servicer as corporate funds for a total of $250,000. Under some servicing arrangements, however, mortgage servicers may be required to advance their own funds to make payments of principal and interest on behalf of delinquent borrowers to the lenders in certain circumstances. Thus, under the current rules, such advances are not provided the same level of coverage as other deposits in a mortgage servicing account comprised of principal and interest payments directly from the borrower. This could result in delayed access to certain funds in an MSA, or to the extent that aggregated advances insured to the servicer exceed the insurance limit, loss of such funds, in the event of an IDI's failure. The FDIC is therefore amending its rules governing coverage for deposits in mortgage servicing accounts to address this inconsistency.

Policy Objectives

As discussed previously, the FDIC's regulations governing deposit insurance coverage include specific rules on deposits maintained at IDIs by mortgage servicers. With the final rule, the FDIC seeks to address an inconsistency concerning the extent of deposit insurance coverage for such deposits, as in the event of an IDI's failure the current rules could result in delayed access to certain funds in a mortgage servicing account (MSA) that have been aggregated and insured to a mortgage servicer, or to the extent that aggregated funds insured to a servicer exceed the insurance limit, loss of such funds.

The final rule also addresses a servicing arrangement that is not specifically addressed in the current rules. Specifically, some servicing arrangements may permit or require servicers to advance their own funds to the lenders when mortgagors are delinquent in making principal and interest payments, and servicers might commingle such advances in the MSA with principal and interest payments collected directly from mortgagors. This may be required, for example, under certain mortgage securitizations. The FDIC believes that the factors that motivated the FDIC to establish its current rules for MSAs, described previously, argue for treating funds advanced by a mortgage servicer in order to satisfy mortgagors' principal and interest obligations to the lender as if such funds were collected directly from borrowers.

Legal Basis

The FDIC's deposit insurance categories have been defined through both statute and regulation. Certain categories, such as the government deposit category, have been expressly defined by Congress. Other categories, such as joint deposits and corporate deposits, have been based on statutory interpretation and recognized through regulations issued in 12 CFR part 330 pursuant to the FDIC's rulemaking authority. In addition to defining the insurance categories, the deposit insurance regulations in part 330 provide the criteria used to determine insurance coverage for deposits in each category. The FDIC is amending § 330.7(d) of its regulations, which currently applies only to cumulative balance paid by the mortgagors into an MSA maintained by a mortgage servicer, to include balances paid in to the account to satisfy mortgagors' principal or interest obligations to the lender. For a more detailed discussion of the rule's legal basis please refer to section II.C entitled ''Proposed Rule'' and section II.D entitled ''Discussion of Comments and Final Rule.''

The Final Rule

The FDIC is amending the rules governing deposit insurance coverage for deposits maintained at IDIs by mortgage servicers. Generally, the amendments would provide consistent deposit insurance treatment for all MSA deposit balances held to satisfy principal and interest obligations to a lender, regardless of whether those funds are paid into the account by borrowers, or paid into the account by another party (such as the servicer) in order to satisfy a periodic obligation to remit principal and interest due to the lender. The composition of an MSA attributable to principal and interest payments would include mortgage servicers' advances of principal and interest funds on behalf of delinquent borrowers, and collections by a servicer such as foreclosure proceeds. The final rule makes no change to the deposit insurance coverage provided for mortgage servicing accounts comprised of payments from mortgagors of taxes and insurance premiums. For a more detailed discussion of the rule please refer to section II.C entitled ''Proposed Rule'' and section II.D entitled ''Discussion of Comments and Final Rule.''

Small Entities Affected

Based on the September 30, 2021 Call Report data, the FDIC insures 4,923 depository institutions, of which 3,303 are considered small entities for the purposes of RFA. Of the 3,303 small IDIs, 473 IDIs (14.3 percent) report holding mortgage servicing assets, which indicates that they service mortgage loans and could thus be affected by the final rule. However, mortgage servicing accounts may be maintained at small IDIs that do not

covered institutions that are subject to part 370. As described previously, part 370 affects IDIs with two million or more deposit accounts. Based on Call Report data as of September 30, 2021, the FDIC insures one institution with two million or more deposit accounts that is also considered a small entity.

themselves service mortgage loans. The FDIC does not know how many IDIs that are small entities are recipients of mortgage servicing account deposits, but believes that most such entities are not because there are relatively few mortgage servicers.[75] Therefore, the FDIC estimates that the number of small IDIs potentially affected by the proposed rule, if adopted, would be between 473 and 3,303, but believes that the number is close to the lower end of the range.

As noted in section III.A, titled ''Expected Effects,'' the FDIC does not have detailed data on MSAs that would allow the FDIC to reliably estimate the number of MSAs maintained at IDIs that would be affected by the final rule, or any potential change in the total amount of insured deposits. Therefore, it is difficult to accurately estimate the number of small IDIs that would be potentially affected by the final rule.

Expected Effects

The final rule would directly affect the level of deposit insurance coverage for certain funds within MSAs. The rule is likely to benefit a servicer compelled by the terms of a pooling and servicing agreement to advance principal and interest funds to note holders when a borrower is delinquent, and therefore the servicer has not received such funds from the borrower. In the event that the IDI hosting the MSA for the servicer fails, the final rule reduces the likelihood that the funds advanced by the servicer are uninsured, and thereby facilitates access to, and helps avoids losses of, those funds. As previously discussed, the FDIC does not have detailed data on MSAs held at IDIs, pooling and servicing agreements for outstanding mortgage loans, or servicer payments into MSAs that would allow the FDIC to reliably estimate the number of, and volume of funds within, MSAs maintained at IDIs that would be affected by the final rule.

Further, the final rule is likely to benefit a small IDI who is hosting an MSA for a servicer that is compelled by the terms of a pooling and servicing agreement to advance principal and interest funds to note holders on behalf of delinquent borrowers by increasing the volume of insured funds. In the event that the small IDI enters into a troubled condition, the proposed rule could marginally increase the stability of MSA deposits from such servicers, thereby increasing the general stability of funding.

Based on the preceding information the FDIC believes that the final rule is unlikely to have a significant economic effect on a substantial number of small entities.

Alternatives Considered

The FDIC is adopting revising to the deposit insurance rules for MSAs to advance the objectives discussed above. The FDIC considered the status quo alternative to not revise the existing rules for MSAs and not propose the revisions. However, for reasons previously stated in section II.B, entitled ''Background,'' the FDIC considers the final rule to be a more appropriate alternative. Were the FDIC to not adopt the rule, then in the event of an IDI's failure the current rules could result in delayed access to certain funds in an MSA that have been aggregated and insured to a mortgage servicer, or to the extent that aggregated funds insured to a servicer exceed the insurance limit, loss of such funds.

Other Statutes and Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between this rule and any other federal rule.

C. Congressional Review Act

For purposes of the Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule. If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. The FDIC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) states that no agency may conduct or sponsor, nor is the respondent required to respond to, an information collection unless it displays a currently valid OMB control number. The final rule does not create any new, or revise any existing, collections of information under section 3504(h) of the Paperwork Reduction Act. Consequently, no information collection request will be submitted to the OMB for review.

E. Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that the Federal banking agencies, including the FDIC, in determining the effective date and administrative compliance requirements of new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[76] Subject to certain exceptions, new regulations and amendments to regulations prescribed by a Federal banking agency which impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form.[77]

The final rule does not impose additional reporting or disclosure requirements on insured depository institutions, including small depository institutions, or on the customers of depository institutions. However, it may require part 370 covered institutions to update their reporting or recordkeeping to reflect the revised deposit insurance rules. Accordingly, the FDIC has established the effective date of the final rule as the first day of a calendar quarter, April 1, 2024.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act[78] requires the Federal

[75] According to the U.S. Census Bureau within the ''Other Activities Related to Credit Intermediation'' (NAICS 522390) national industry where mortgage servicers are captured there were 3,595 firms in 2018, relative to the 37,627 firms in the Credit Intermediation and Related Activities subsector (NAICS 522).

[76] 12 U.S.C. 4802(a).

[77] 12 U.S.C. 4802(b).

[78] Public Law 106–102, section 722, 113 Stat. 1338, 1471 (1999), 12 U.S.C. 4809.

banking agencies to use plain language in all proposed and final rulemakings published in the **Federal Register** after January 1, 2000. FDIC staff believes the final rule is presented in a simple and straightforward manner. The FDIC did not receive any comments with respect to the use of plain language.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Reporting and recordkeeping requirements, Savings associations.

Authority and Issuance

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation amends part 330 of title 12 of the Code of Federal Regulations as follows:

PART 330—DEPOSIT INSURANCE COVERAGE

■ 1. The authority citation for part 330 continues to read as follows:

Authority: 12 U.S.C. 1813(*l*), 1813(m), 1817(i), 1818(q), 1819(a)(Tenth), 1820(f), 1820(g), 1821(a), 1821(d), 1822(c).

§ 330.1 [Amended]

■ 2. Amend § 330.1 by removing and reserving paragraphs (m) and (r).

■ 3. Revise § 330.7(d) to read as follows:

§ 330.7 Accounts held by an agent, nominee, guardian, custodian or conservator.

* * * * *

(d) *Mortgage servicing accounts.* Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments of principal and interest, shall be insured for the cumulative balance paid into the account by mortgagors, or in order to satisfy mortgagors' principal or interest obligations to the lender, up to the limit of the SMDIA per mortgagor. Accounts maintained by a mortgage servicer, in a custodial or other fiduciary capacity, which are comprised of payments by mortgagors of taxes and insurance premiums shall be added together and insured in accordance with paragraph (a) of this section for the ownership interest of each mortgagor in such accounts.

* * * * *

■ 4. Revise § 330.10 to read as follows:

§ 330.10 Trust accounts.

(a) *Scope and definitions.* This section governs coverage for deposits held in connection with informal revocable trusts, formal revocable trusts, and irrevocable trusts not covered by § 330.12 (''trust accounts''). For purposes of this section:

(1) *Informal revocable trust* means a trust under which a deposit passes directly to one or more beneficiaries upon the depositor's death without a written trust agreement, commonly referred to as a payable-on-death account, in-trust-for account, or Totten trust account.

(2) *Formal revocable trust* means a revocable trust established by a written trust agreement under which a deposit passes to one or more beneficiaries upon the grantor's death.

(3) *Irrevocable trust* means an irrevocable trust established by statute or a written trust agreement, except as described in paragraph (f) of this section.

(b) *Calculation of coverage*—(1) *General calculation.* Trust deposits are insured in an amount up to the SMDIA multiplied by the total number of beneficiaries identified by each grantor, up to a maximum of 5 beneficiaries.

(2) *Aggregation for purposes of insurance limit.* Trust deposits that pass from the same grantor to beneficiaries are aggregated for purposes of determining coverage under this section, regardless of whether those deposits are held in connection with an informal revocable trust, formal revocable trust, or irrevocable trust.

(3) *Separate insurance coverage.* The deposit insurance coverage provided under this section is separate from coverage provided for other deposits at the same insured depository institution.

(4) *Equal allocation presumed.* Unless otherwise specified in the deposit account records of the insured depository institution, a deposit held in connection with a trust established by multiple grantors is presumed to have been owned or funded by the grantors in equal shares.

(c) *Number of beneficiaries.* The total number of beneficiaries for a trust deposit under paragraph (b) of this section will be determined as follows:

(1) *Eligible beneficiaries.* Subject to paragraph (c)(2) of this section, beneficiaries include natural persons, as well as charitable organizations and other non-profit entities recognized as such under the Internal Revenue Code of 1986, as amended.

(2) *Ineligible beneficiaries.* Beneficiaries do not include:

(i) The grantor of a trust; or

(ii) A person or entity that would only obtain an interest in the deposit if one or more identified beneficiaries are deceased.

(3) *Future trust(s) named as beneficiaries.* If a trust agreement provides that trust funds will pass into one or more new trusts upon the death of the grantor(s) (''future trusts''), the future trust(s) are not treated as beneficiaries of the trust; rather, the future trust(s) are viewed as mechanisms for distributing trust funds, and the beneficiaries are the natural persons or organizations that shall receive the trust funds through the future trusts.

(4) *Informal trust account payable to depositor's formal trust.* If an informal revocable trust designates the depositor's formal trust as its beneficiary, the informal revocable trust account will be treated as if titled in the name of the formal trust.

(d) *Deposit account records*—(1) *Informal revocable trusts.* The beneficiaries of an informal revocable trust must be specifically named in the deposit account records of the insured depository institution.

(2) *Formal revocable trusts.* The title of a formal trust account must include terminology sufficient to identify the account as a trust account, such as ''family trust'' or ''living trust,'' or must otherwise be identified as a testamentary trust in the account records of the insured depository institution. If eligible beneficiaries of such formal revocable trust are specifically named in the deposit account records of the insured depository institution, the FDIC shall presume the continued validity of the named beneficiary's interest in the trust consistent with § 330.5(a).

(e) *Commingled deposits of bankruptcy trustees.* If a bankruptcy trustee appointed under title 11 of the United States Code commingles the funds of various bankruptcy estates in the same account at an insured depository institution, the funds of each title 11 bankruptcy estate will be added together and insured up to the SMDIA, separately from the funds of any other such estate.

(f) *Deposits excluded from coverage under this section*—(1) *Revocable trust co-owners that are sole beneficiaries of a trust.* If the co-owners of an informal or formal revocable trust are the trust's sole beneficiaries, deposits held in connection with the trust are treated as joint ownership deposits under § 330.9.

(2) *Employee benefit plan deposits.* Deposits of employee benefit plans, even if held in connection with a trust, are treated as employee benefit plan deposits under § 330.14.

(3) *Investment company deposits.* This section shall not apply to deposits of trust funds belonging to a trust classified as a corporation under § 330.11(a)(2).

(4) *Insured depository institution as trustee of an irrevocable trust.* Deposits held by an insured depository institution in its capacity as trustee of an irrevocable trust are insured as provided in § 330.12.

§ 330.13 [Removed and Reserved]

■ 5. Remove and reserve § 330.13.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, this 21st day of January, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–01607 Filed 1–27–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 370

Notification to Institutions Covered by the FDIC's Recordkeeping for Timely Deposit Insurance Determination Rule Regarding Amendments to the Deposit Insurance Coverage Rules

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notification.

SUMMARY: The FDIC is publishing this notification to insured depository institutions covered by its Recordkeeping for Timely Deposit Insurance Determination rule that it has amended its deposit insurance coverage rules for certain trust accounts and mortgage servicing accounts and such amendments will take effect on April 1, 2024. The FDIC is publishing this notification to specify for covered institutions that they must prepare updates or changes to their deposit insurance calculation capabilities as a result of the amendments, and such changes must be implemented and operational on April 1, 2024, the effective date of the amendments.

DATES: January 28, 2022.

FOR FURTHER INFORMATION CONTACT: Cassandra Knighton, Section Chief, Division of Complex Institution Supervision and Resolution, (972) 761–2802, *cknighton@FDIC.gov*; Shane Kiernan, Counsel, Legal Division, (202) 898–8512, *skiernan@fdic.gov.*

SUPPLEMENTARY INFORMATION: The FDIC is providing notice to insured depository institutions covered by its rule entitled ''Recordkeeping for Timely Deposit Insurance Determination,'' 12 CFR part 370 (each a ''covered institution'' under ''part 370''), that it amended its deposit insurance coverage rules for certain trust accounts and mortgage servicing accounts on January 21, 2022 (the ''amendments''). The amendments take effect on April 1, 2024. The FDIC delayed the effective date of the amendments until April 1, 2024, to provide time before the amendments take effect to: Insured depository institutions and their depositors to review deposit insurance coverage and adjust their deposit account arrangements and deposit relationships, if desired; FDIC staff to reprogram the information technology infrastructure that the FDIC uses to determine deposit insurance coverage and to make payment to insured depositors and update the FDIC's deposit insurance coverage publications, including publications that provide guidance to covered institutions; and covered institutions to prepare to implement changes to recordkeeping and information technology capabilities required under part 370.

Part 370 generally requires each covered institution to implement the information technology system and recordkeeping capabilities needed to quickly calculate the amount of deposit insurance coverage available for each deposit account in the event of failure (''part 370 capabilities''). Pursuant to § 370.10(d), ''[a] covered institution will not be considered to be in violation of this part as a result of a change in law that alters the availability or calculation of deposit insurance for such period as specified by the FDIC following the effective date of such change.'' 12 CFR 370.10(d). The FDIC is publishing this document pursuant to § 370.10(d) to specify for covered institutions that they must prepare updates or changes to their part 370 capabilities as a result of the amendments, and such changes must be implemented and operational on April 1, 2024, the effective date of the amendments. The delayed effective date of the amendments provides covered institutions with at least 24 months following adoption to prepare the updates or changes to their part 370 capabilities. Therefore, the FDIC is not providing an additional period of time pursuant to § 370.10(d) after April 1, 2024.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on January 21, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–01608 Filed 1–27–22; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0013; Project Identifier MCAI–2021–01371–E; Amendment 39–21920; AD 2022–03–03]

RIN 2120–AA64

Airworthiness Directives; Austro Engine GmbH Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–22–20 which applied to certain Austro Engine GmbH E4 and E4P model diesel piston engines. AD 2021–22–20 required, for engines with an affected cylinder head, inspection of the high pressure pump (HPP) driving gear and, depending on the results of the inspection, replacement of the HPP driving gear with a part eligible for installation. AD 2021–22–20 also required, for engines with an affected HPP driving gear, replacement of the HPP driving gear before further flight or within a certain number of flight hours, depending on the engine configuration and number of affected engines installed. This AD requires, for engines equipped with a certain cylinder head and HPP driving gear combination, removal, inspection, and replacement of the HPP driving gear before further flight and, depending on the inspection findings, replacement of the HPP shaft, cylinder head, camshaft gear, or inlet/outlet camshaft bushing. This AD also requires, for engines with an affected HPP driving gear, replacement of the HPP driving gear before further flight or within a certain number of flight hours, depending on the engine configuration and number of affected engines installed. This AD was prompted by reports of failure of the HPP driving gear and a subsequent determination that a batch of HPP driving gears may have been damaged during assembly. This AD was also prompted by an investigation which found that certain cylinder heads installed in combination with certain HPP driving gear on the same engine may cause damage to the HPP driving gear. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 14, 2022.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in this AD as of February 14, 2022.

The FAA must receive any comments on this AD by March 14, 2022.

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

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

For service information identified in this final rule, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, 2700 Weiner Neustadt, Austria; phone: +43 2622 23000; website: *https://www.austroengine.at.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0013.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0013; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7134; fax: (781) 238–7199; email: *wego.wang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued AD 2021–22–20, Amendment 39–21793 (86 FR 60159, November 1, 2021), (AD 2021–22–20), for Austro Engine GmbH E4 and E4P model diesel piston engines with a certain cylinder head or HPP driving gear installed.

AD 2021–22–20 required, for engines with an affected cylinder head, inspection of the HPP driving gear and, depending on the results of the inspection, replacement of the HPP driving gear with a part eligible for installation. AD 2021–22–20 also required, for engines with an affected HPP driving gear, replacement of the HPP driving gear either before further flight or within a certain number of flight hours, depending on the engine configuration and number of affected engines installed. AD 2021–22–20 resulted from reports of failure of the HPP driving gear and a subsequent investigation by the manufacturer, which determined that a certain batch of HPP driving gears may have been damaged during assembly. The investigation also determined that affected engines equipped with an affected cylinder head were also subject to premature failure of the HPP driving gear. The FAA issued AD 2021–22–20 to prevent the failure of the HPP driving gear.

Actions Since AD 2021–22–20 Was Issued

Since the FAA issued AD 2021–22–20, the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2021–0274–E, dated December 9, 2021, to address an unsafe condition for the specified products. The MCAI states:

> Occurrences were reported of HPP driving gear failure. Subsequent investigation determined that a certain batch of HPP driving gears was produced with a worn out assembly tool P/N AE300T012–1. Those HPP driving gears may have been damaged during assembly. Concurrently, it was determined that, for engines equipped with a certain cylinder head, a stack up of tolerances exists between the cylinder head, cylinder head backside cover, camshaft gear and HPP driving gear. Both scenarios could result in premature HPP driving gear failure.
>
> This condition, if not detected and corrected, could lead to engine in-flight shut-down with consequent forced landing, possibly resulting in damage to the aeroplane and injury to occupants.
>
> To address this potential unsafe condition, Austro Engine published MSB–E4–035 to provide instructions for HPP driving gear inspection on engines equipped with a cylinder head P/N E4A–12–500–000, and MSB–E4–034/1 to provide instructions for replacement of affected HPP gears, as defined in this [EASA] AD. Consequently, EASA issued Emergency AD 2021–0203–E (later revised) to require inspection and/or replacement of HPP gears.
>
> Since that [EASA] AD was issued, it has been determined that an affected cylinder head/HPP driving gear combination, as defined in this [EASA] AD, may cause damage to the HPP driving gears. Austro Engine issued the SB, as defined in this [EASA] AD, incorporating the requirements of MSB–E4–034/1 and MSB–E4–035, to provide instructions for HPP driving gear inspection and replacement. The SB also prohibits (re-)installation of a HPP driving gear E4A–30–000–601 or P/N E4A–30–000–201 rev. AB.1 on engines having a cylinder head P/N E4A–12–500–000 installed. The SB further removes from the list of affected HPP driving gears certain engines and HPPs, which were reworked by Austro Engine pending approval of MSB–E4–034.
>
> For the reason described above, this [EASA] AD partially retains the requirements of EASA AD 2021–0203R1, which is superseded, and requires replacement of the HPP driving gear on engines with an affected cylinder head/HPP driving gear combination installed. This [EASA] AD also provides requirements for HPP driving gear installation.

You may obtain further information by examining the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0013.

The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

This product has been approved by EASA and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified the FAA of the unsafe condition described in the MCAI. The FAA is issuing this AD because the agency evaluated all the relevant information provided by EASA and has determined that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Austro Engine Mandatory Service Bulletin No. MSB–E4–036/1, Revision No. 1, dated December 14, 2021 (MSB–E4–036/1). This service information specifies procedures for inspecting and replacing HPP driving gears installed on E4 and E4P model diesel piston engines equipped with an affected cylinder head. Austro Engine MSB–E4–036/1 also identifies the applicable part number and serial numbers of affected HPP driving gears and affected cylinder head/HPP driving gear combinations installed on Austro Engine GmbH E4 and E4P model diesel piston engines. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES**.

AD Requirements

This AD requires, for engines equipped with an affected cylinder head and HPP driving gear combination,

removal, inspection, and replacement of the HPP driving gear before further flight and, depending on the inspection findings, replacement of the HPP shaft, cylinder head, camshaft gear, or inlet/outlet camshaft bushing. This AD also requires, for engines with an affected HPP driving gear, replacement of the HPP driving gear before further flight or within a certain number of flight hours, depending on the engine configuration and number of affected engines installed.

Differences Between This AD and the MCAI

The MCAI requires inspection and replacement of the HPP driving gear using Austro Engine MSB–E4–036, Initial Issue, dated November 30, 2021, while this AD requires using Austro Engine MSB–E4–036/1 to inspect and replace the HPP driving gear.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule. The FAA received a report of occurrences of failure of the HPP driving gear. The manufacturer subsequently determined that a certain batch of HPP driving gears was produced with a worn out assembly tool, and may have been damaged during assembly. The manufacturer determined that, for engines equipped with a certain cylinder head, a stack up of tolerances exists between the cylinder head, cylinder head cover, camshaft gear and HPP driving gear. Since the FAA issued AD 2021–22–20 the manufacturer determined that the combination of a certain affected cylinder head installed with a certain affected HPP driving gear on the same engine may cause damage to the HPP driving gear. These conditions could result in failure of the HPP driving gear. Austro Engine subsequently published Austro Engine MSB–E4–036/1, Revision No. 1, dated December 14, 2021, providing instructions for inspection and replacement of certain HPP driving gears installed on Austro Engine E4 and E4P model diesel piston engines. In response, EASA issued EASA Emergency AD 2021–0274–E, dated December 9, 2021, to require inspection and replacement of the HPP driving gear on engines with an affected cylinder head and HPP driving gear combination before next flight.

Failure of the HPP driving gear can result in in-flight engine shut-down, forced landing, and damage to the airplane. The FAA considers failure of the HPP driving gear to be an urgent safety issue that requires immediate action to avoid damage to the airplane. For engines with an affected cylinder head, if the HPP driving gear does not pass the inspection required by this AD, this AD requires inspection and possible replacement of the HPP shaft, cylinder head, camshaft gear, and inlet/outlet camshaft bushing before further flight. In addition, for engines with an affected HPP driving gear with a certain number of flight hours accumulated on the HPP driving gear, this AD requires replacement of the HPP driving gear before further flight.

Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B). In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0013 and Project Identifier MCAI–2021–01371–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 418 engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect HPP driving gear	.5 work-hours × $85 per hour = $42.50	$0	$42.50	$17,765
Replace HPP driving gear	2 work-hours × $85 per hour = $170	145	315	131,670

The FAA estimates the following costs to do any necessary replacements that would be required based on the results of the inspection. The agency has no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspect and replace HPP shaft	5 work-hours × $85 per hour = $425	$2,385.80	$2,810.80
Inspect and replace cylinder head	16 work-hours × $85 per hour = $1,360	18,530.50	19,890.50
Inspect and replace camshaft gear	10 work-hours × $85 per hour = $850	2,371.20	3,221.20
Inspect and replace inlet/outlet camshaft bushing	10 work-hours × $85 per hour = $850	2,371.20	3,221.20

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2021–22–20, Amendment 39–21793 (86 FR 60159, November 1, 2021); and

■ b. Adding the following new airworthiness directive:

2022–03–03 Austro Engine GmbH: Amendment 39–21920; Docket No. FAA–2022–0013; Project Identifier MCAI–2021–01371–E.

(a) Effective Date

This airworthiness directive (AD) is effective February 14, 2022.

(b) Affected ADs

This AD replaces AD 2021–22–20, Amendment 39–21793 (86 FR 60159, November 1, 2021).

(c) Applicability

This AD applies to Austro Engine GmbH E4 and E4P model diesel piston engines equipped with either:

(1) A cylinder head having part number (P/N) E4A–12–500–000, installed in combination with high-pressure pump (HPP) driving gear P/N E4A–30–000–601 (any revision), P/N E4A–30–000–201 rev. AB.1, or P/N E4A–30–000–201 with a serial number (S/N) listed in Chapter 1.4, Table 1 of Austro Engine Mandatory Service Bulletin No. MSB–E4–036/1, Revision No. 1, dated December 14, 2021 (MSB–E4–036/1); or

(2) An HPP driving gear, having P/N E4A–30–000–201, with an S/N listed in Chapter 1.4, Table 1 of Austro Engine MSB–E4–036/1.

(d) Subject

Joint Aircraft System Component (JASC) Code 8520, Reciprocating Engine Power Section.

(e) Unsafe Condition

This AD was prompted by reports of failure of the HPP driving gear and a subsequent investigation by the manufacturer, which determined that a certain batch of HPP driving gears may have been damaged during assembly. The investigation also determined that the combination of a certain affected cylinder head installed on an engine with a certain affected HPP driving gear installed on the same engine may cause damage to the HPP driving gear. The FAA is issuing this AD to prevent the failure of the HPP driving gear. The unsafe condition, if not addressed, could result in in-flight engine shut-down, forced landing, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For engines equipped with a cylinder head and HPP driving gear combination identified in paragraph (c)(1) of this AD, before further flight after the effective date of

this AD, remove the HPP driving gear and replace it with an HPP driving gear eligible for installation using paragraphs 2.1.1 through 2.1.4., Removal and inspection of the HPP driving gear, of Austro Engine MSB–E4–036/1.

(2) Before further flight after performing the required actions in paragraph (g)(1) of this AD, visually inspect the removed HPP driving gear using the criteria in paragraph 7. Appendix II, Table 6, of Austro Engine MSB–E4–036/1.

(3) If, based on the visual inspection required by paragraph (g)(2) of this AD, the HPP driving gear does not meet the acceptable condition criteria in paragraph 7. Appendix II, Table 6, of Austro Engine MSB–E4–036/1, before further flight, visually inspect the HPP shaft, cylinder head, camshaft gear, and inlet/outlet camshaft bushing using the criteria in paragraph 7. Appendix II, Table 7, of Austro Engine MSB–E4–036/1.

(4) If, based on the visual inspection required by paragraph (g)(3) of this AD, the HPP shaft, cylinder head, camshaft gear, or inlet/outlet camshaft bushing do not meet the acceptable condition criteria in paragraph 7. Appendix II, Table 7, of Austro Engine MSB–E4–036/1, before further flight, remove any part not meeting the acceptable condition criteria and replace with a part eligible for installation.

(5) For engines equipped with an affected HPP driving gear identified in paragraph (c)(2) of this AD, within the compliance time specified in Table 1 to paragraph (g)(5) of this AD, as applicable, replace the HPP driving gear with an HPP driving gear eligible for installation.

Table 1 to Paragraph (g)(5) – HPP Driving Gear Replacement

Engine Group	Flight Hours (FHs) accumulated since first installation on the HPP	Compliance Time
1	40 FHs or more	Before next flight after the effective date of this AD
	Less than 40 FHs	Before exceeding 40 FHs since first installation on the HPP
2	80 FHs or more	Before next flight after the effective date of this AD
	Less than 80 FHs	Before exceeding 80 FHs since first installation on the HPP

(h) Definitions

(1) For the purpose of this AD, an HPP driving gear eligible for installation is:

(i) An HPP driving gear that is not identified in paragraph (c)(2) of this AD; or

(ii) An HPP driving gear that does not create a cylinder head and HPP driving gear combination identified in paragraph (c)(1) of this AD.

(2) For the purpose of this AD, an HPP shaft, cylinder head, camshaft gear, and inlet/outlet camshaft bushing eligible for installation is:

(i) An HPP shaft, cylinder head, camshaft gear, and inlet/outlet camshaft bushing that meets the acceptable condition criteria in paragraph 7. Appendix II, Table 7, of Austro Engine MSB–E4–036/1; or

(ii) An HPP shaft, cylinder head, camshaft gear, and inlet/outlet camshaft bushing that is a new (zero hour) part.

(3) For the purpose of this AD, Engine Group 1 is Austro Engine E4 model engines in configuration ''-A'' installed on single engine airplanes.

(4) For the purpose of this AD, Engine Group 2 is Austro Engine E4 model engines in configuration ''-B'' or ''-C'' and Austro Engine E4P model engines installed on twin-engine airplanes.

(i) No Reporting Requirement

The reporting instructions specified in paragraph 7. Appendix II, Tables 6 and 7, of Austro Engine MSB–E4–036/1 are not required by this AD.

(j) Special Flight Permit

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to permit a single ferry flight to a location where the actions required by this AD can be accomplished on a twin-engine airplane that has one or two Austro Engine E4 model engines in configuration ''-B'' or ''-C'', or Austro Engine E4P model engines, installed.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l)(1) of this AD. You may email your request to: *ANE-AD-AMOC@faa.gov.*

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

(l) Related Information

(1) For more information about this AD, contact Wego Wang, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7134; fax: (781) 238–7199; email: *wego.wang@faa.gov*.

(2) Refer to European Union Aviation Safety Agency (EASA) AD 2021–0274–E, dated December 9, 2021, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0013.

(m) Material Incorporated by Reference

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

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

(i) Austro Engine Mandatory Service Bulletin No. MSB–E4–036/1, Revision No. 1, dated December 14, 2021.

(ii) [Reserved]

(3) For Austro Engine service information identified in this AD, contact Austro Engine GmbH, Rudolf-Diesel-Strasse 11, 2700 Weiner Neustadt, Austria; phone: +43 2622 23000; website: *https://www.austroengine.at.*

(4) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to:

https://www.archives.gov/federal-register/cfr/ibr-locations.html.

Issued on January 19, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–01818 Filed 1–26–22; 11:15 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 342

[Docket No. RM20–14–001]

Five-Year Review of the Oil Pipeline Index

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) addresses arguments raised on rehearing of the December 17, 2020 Order Establishing Index Level concluding the Commission's five-year review of the index level used to determine annual changes to oil pipeline rate ceilings (December 2020 Order). The December 2020 Order established an index level of Producer Price Index for Finished Goods plus 0.78% (PPI–FG+0.78%) for the five-year period commencing July 1, 2021. In this order, the Commission grants rehearing of the December 2020 Order, in part, denies rehearing, in part, and establishes an index level of PPI–FG–0.21%.

DATES: This order is applicable beginning January 20, 2022.

FOR FURTHER INFORMATION CONTACT:

Evan Steiner (Legal Information), Office of the General Counsel, 888 First Street NE, Washington, DC 20426, (202) 502–8792

Monil Patel (Technical Information), Office of Energy Market Regulation, 888 First Street NE, Washington, DC 20426, (202) 502–8296

SUPPLEMENTARY INFORMATION:

Order on Rehearing

(Issued January 20, 2022)

1. On December 17, 2020, the Commission issued an order establishing an oil pipeline index level of Producer Price Index for Finished Goods plus 0.78% (PPI–FG+0.78%) for the five-year period beginning July 1, 2021.[1] On January 19, 2021, Joint Commenters,[2] Liquids Shippers Group (Liquids Shippers),[3] the Canadian Association of Petroleum Producers (CAPP) (together with Joint Commenters and Liquids Shippers, Shippers), the Association of Oil Pipe Lines (AOPL), and Designated Carriers[4] (together with AOPL, Pipelines) requested rehearing or clarification of the December 2020 Order.

2. As discussed below, we grant the requests for rehearing, in part, and deny the requests for rehearing, in part. As a result, we adopt an index level of PPI–FG–0.21%. This departure from the December 2020 Order results from: (a) Trimming the data set to the middle 50% of cost changes, as opposed to the middle 80%; (b) incorporating the effects of the Commission's 2018 policy change requiring Master Limited Partnership (MLP)-owned pipelines to eliminate the income tax allowance and previously accrued Accumulated Deferred Income Taxes (ADIT) balances from their page 700 summary costs of service (Income Tax Policy Change);[5] and (c) correcting the index calculation to rely upon updated page 700 cost data for 2014.

3. In addition, as discussed below, we direct oil pipelines to recompute their ceiling levels for July 1, 2021 through June 30, 2022, based upon an index level of PPI–FG–0.21%. Consistent with § 342.3(e) of the Commission's regulations,[6] any oil pipeline with a filed rate that exceeds its recomputed ceiling level for July 1, 2021 through June 30, 2022 must file to reduce that rate to bring it into compliance with the pipeline's recomputed ceiling level. We direct such pipelines to submit these filings to be effective March 1, 2022.

I. Background

A. The Kahn Methodology

4. The Commission reviews the oil pipeline index level[7] every five years.[8] Beginning in Order No. 561 and in each ensuing five-year review, the Commission has adjusted the index level using the Kahn Methodology, which calculates each pipeline's cost change on a per barrel-mile basis over the prior five-year period (*e.g.,* 2014–2019 in this proceeding) based upon FERC Form No. 6, page 700 summary cost-of-service data. In order to remove statistical outliers and spurious data, the Kahn Methodology trims the data set by removing an equal number of pipelines at the top and bottom of the data set.[9] The Kahn Methodology then averages three measures of the trimmed data sample's central tendency (the median, mean, and weighted mean) to determine a composite central tendency and compares this average to the changing value of PPI–FG over the same five-year period. The index level is set at PPI–FG plus (or minus) this differential. Historically, the index has ranged from PPI–FG–1% to PPI–FG+2.65%, and in 2015, the Commission set the index level at PPI–FG+1.23%.

B. Notice of Inquiry and Comments

5. On June 18, 2020, the Commission issued a Notice of Inquiry (NOI) proposing to adopt an index level of

[1] *Five-Year Rev. of the Oil Pipeline Index,* 86 FR 9448 (Feb. 16, 2021), 173 FERC ¶ 61,245 (2020) (December 2020 Order).

[2] Joint Commenters include: The Airlines for America; Chevron Products Company; the National Propane Gas Association; and Valero Marketing and Supply Company.

[3] Liquids Shippers include: Apache Corporation; Cenovus Energy Marketing Services Ltd.; ConocoPhillips Company; Devon Gas Services, L.P.; Equinor Marketing & Trading US Inc.; Fieldwood Energy LLC; Marathon Oil Company; Murphy Exploration and Production Company—USA; Ovintiv Marketing, Inc.; and Pioneer Natural Resources USA, Inc.

[4] Designated Carriers include: Buckeye Partners, L.P.; Colonial Pipeline Company; Energy Transfer LP; Enterprise Products Partners L.P.; and Plains All American Pipeline, L.P.

[5] *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs,* 162 FERC ¶ 61,227, at P 8 (2018 Income Tax Policy Statement), *reh'g denied,* 164 FERC ¶ 61,030, at P 13 (2018), *request for clarification dismissed,* 168 FERC ¶ 61,136 (2019), *petitions for review dismissed sub nom. Enable Miss. River Transmission, LLC* v. *FERC,* 820 F. App'x 8 (2020).

[6] 18 CFR 342.3(e).

[7] Pursuant to the indexing methodology, pipelines may increase their ceiling levels effective every July 1 by ''multiplying the previous index year's ceiling level by the most recent index published by the Commission.'' 18 CFR 342.3(d)(1). The Commission publishes an annual index figure every May in a notice issued in Docket No. RM93–11–000.

[8] *Revisions to Oil Pipeline Regulations Pursuant to Energy Policy Act of 1992,* Order No. 561, FERC Stats. & Regs. ¶ 30,985, at 30,941 (1993) (cross-referenced at 65 FERC ¶ 61,109), *order on reh'g,* Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 (1994) (cross-referenced at 68 FERC ¶ 61,138), *aff'd sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 83 F.3d 1424 (D.C. Cir. 1996) (*AOPL I*).

[9] In Order No. 561 and the 2015 and 2010 five-year reviews, the Commission relied solely upon the middle 50% of the data set. *Five-Year Rev. of the Oil Pipeline Index,* 153 FERC ¶ 61,312, at PP 42–44 (2015) (2015 Index Review), *aff'd sub nom. Ass'n of Oil Pipe Lines* v. *FERC,* 876 F.3d 336 (D.C. Cir. 2017) (*AOPL III*); *Five-Year Rev. of the Oil Pipeline Pricing Index,* 133 FERC ¶ 61,228, at P 60 (2010) (2010 Index Review), *reh'g denied,* 135 FERC ¶ 61,172 (2011) (2010 Index Rehearing Order); Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,096–097. In the 2005 and 2000 five-year reviews, the Commission averaged the middle 50% with the middle 80% but did not justify or address its consideration of the middle 80%. 2010 Index Review, 133 FERC ¶ 61,228 at P 60. In addition, in the 2000 review, considering the middle 80% did not alter the index calculation. *Id.*

PPI–FG+0.09%.[10] The NOI proposed to calculate the index level by (1) trimming the data set to the middle 50% and (2) incorporating the effects of the Income Tax Policy Change upon pipeline cost changes over the 2014–2019 period.[11] The Commission explained that commenters could address issues including, but not limited to, different data trimming methodologies and whether, and if so how, the Commission should reflect the effects of cost-of-service policy changes in the index calculation.[12]

6. Ten commenters filed comments in response to the NOI.[13] Pipelines urged the Commission to use the middle 80%, as opposed to the middle 50%, and proposed to adjust the reported page 700 data for 2014 to eliminate the effects of the Income Tax Policy Change. Shippers, by contrast, argued that the Commission should continue using the middle 50% and reject Pipelines' proposed adjustments to the data set. In addition, Liquids Shippers proposed to replace the weighted mean in the Kahn Methodology's calculation of central tendency with the weighted median and to replace the returns on equity (ROE) reported on page 700 for 2014 and 2019 with standardized, industry-wide ROEs for both years. CAPP argued that negotiated rate contracts have served to reduce pipelines' risks and urged the Commission to require pipelines to provide their page 700 workpapers to investigate whether the reported page 700 ROEs reflect these effects.

C. December 2020 Order and Requests for Rehearing

7. The December 2020 Order established an index level of PPI–FG+0.78%.[14] The Commission adopted Pipelines' proposed adjustments to remove the effects of the Income Tax Policy Change from the index calculation [15] and to use the middle 80%,[16] and declined to adopt Liquids Shippers' and CAPP's proposals.[17] On January 19, 2021, Shippers filed requests for rehearing challenging these determinations and Pipelines requested rehearing or clarification to correct minor errors in the workpapers underlying the December 2020 Order.

II. Discussion

A. 2018 MLP Income Tax Policy Change

1. December 2020 Order

8. Prior to the December 2020 Order, the Commission committed in the 2018 Income Tax Policy Statement to ''incorporate the effects of [the Income Tax Policy Change] on industry-wide oil pipeline costs in the 2020 five-year review . . . .'' [18] Through the Income Tax Policy Change, the Commission altered its policies so that natural gas and oil pipelines organized as MLPs could not recover the same tax costs twice in their rates.[19] Although the Commission acted immediately to address this double recovery in natural gas pipeline rates,[20] the Commission deferred action regarding oil pipeline rates and emphasized that oil pipeline rates ''will be addressed in due course'' during the 2020 five-year index review.[21] The Commission explained that by acting in the 2020 five-year review, the Commission would ''ensure that the industry-wide reduced costs are incorporated on an industry-wide basis. . . .'' [22]

9. However, when the 2020 five-year review arrived, the Commission reversed course. In the December 2020 Order, the Commission declined to incorporate the effects of the Income Tax Policy Change into the 2020 five-year review index calculation. Accordingly, the December 2020 Order adopted Designated Carriers' proposal to eliminate the effects of the Income Tax Policy Change from the index calculation by adjusting the reported page 700 data for all pipelines that were MLPs in 2014 to reduce the 2014 income tax allowance to zero and to revise the 2014 return on rate base to reflect the removal of ADIT.[23]

10. The Commission determined that although the index aims to reflect changes in recoverable costs, alterations to the Opinion No. 154–B methodology [24] are distinct from the annual changes to pipeline costs that are input into that methodology.[25] The Commission stated that the index is not a true-up designed to remedy over- or under-recoveries resulting from past cost-of-service policy changes, but instead simply allows for incremental rate adjustments to enable recovery of future cost changes.[26] The Commission also determined that it was not clear that the double recovery of MLP pipelines' income tax costs was ever incorporated into the index or that MLP

[10] *Five-Year Rev. of the Oil Pipeline Index,* 171 FERC ¶ 61,239 (2020) (NOI).

[11] *Id.* PP 9–10.

[12] *Id.*

[13] Comments were filed by AOPL, Designated Carriers, Kinder Morgan, Inc., Colonial, Joint Commenters, Liquids Shippers, CAPP, the Energy Infrastructure Council, the Pipeline Safety Trust, and the Pipeline and Hazardous Materials Safety Administration (PHMSA).

[14] December 2020 Order, 173 FERC ¶ 61,245 at P 2.

[15] *Id.* PP 16–20.

[16] *Id.* PP 25–32.

[17] *Id.* PP 36–40, 45–50, 52–53.

[18] Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 8.

[19] From 2005 to 2018, the Commission allowed MLP pipelines to claim a full income tax allowance in their costs of service. *Inquiry Regarding Income Tax Allowances,* 111 FERC ¶ 61,139, at P 32 (2005) (2005 Income Tax Policy Statement). In a series of orders beginning in 2016, the Commission and the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) found that allowing MLP pipelines to recover both an income tax allowance and an ROE determined using the Discounted Cash Flow (DCF) model results in an impermissible double recovery of tax costs. The Commission rectified the double recovery through the Income Tax Policy Change in 2018, finding that MLP pipelines could no longer recover an income tax allowance and could eliminate previously accumulated ADIT balances from their costs of service. The D.C. Circuit affirmed the Commission's decisions in 2020. *See United Airlines, Inc.* v. *FERC,* 827 F.3d 122 (D.C. Cir. 2016) (*United Airlines*), *order on remand, SFPP, L.P.,* Opinion No. 511–C, 162 FERC ¶ 61,228, at P 22 (2018), (remanding the Commission's application of the 2005 policy), *reh'g denied,* Opinion No. 511–D, 166 FERC ¶ 61,142, at PP 90–95 (2019), *aff'd, SFPP, L.P.* v. *FERC,* 967 F.3d 788, 793–97, 801–03 (D.C. Cir. 2020) (*SFPP*); *see also* Income Tax Policy Statement, 162 FERC ¶ 61,227, *reh'g denied,* 164 FERC ¶ 61,030, *request for clarification dismissed,* 168 FERC ¶ 61,136; *petitions review dismissed sub nom. Enable Miss. River Transmission, LLC* v. *FERC,* 820 F. App'x 8.

[20] *Interstate & Intrastate Nat. Gas Pipelines,* Order No. 849, 164 FERC ¶ 61,031, at P 30 (2018), *reh'g denied,* Order No. 849–A, 167 FERC ¶ 61,051 (2019).

[21] Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 46.

[22] *Id.* P 8.

[23] December 2020 Order, 173 FERC ¶ 61,245 at P 16. Because the 2014 page 700 data reflected the old policy whereas the 2019 data reflected the new policy, a straightforward application of the longstanding Kahn Methodology would have incorporated the cost reductions caused by the Income Tax Policy Change. AOPL's and Designated Carriers' proposals for eliminating the effects of the Income Tax Policy Change differed. AOPL proposed to (1) eliminate the 2014 income tax allowance for all pipelines that reduced their income tax allowance from a positive number to zero in response to the 2018 Income Tax Policy Statement and continued reporting zero income tax allowance for the remainder of the 2014–2019 period, and (2) adjust these pipelines' 2014 return on rate base to reflect the elimination of their ADIT balances. Designated Carriers supported AOPL's adjustments and proposed to extend them to all pipelines that were owned by MLPs in 2014, including those that later converted to business forms eligible to recover an income tax allowance. No entity challenges on rehearing the Commission's decision not to adopt AOPL's proposal.

[24] The Opinion No. 154–B methodology is the cost-of-service ratemaking methodology that the Commission uses for oil pipelines. *Williams Pipe Line Co.,* Opinion No. 154–B, 31 FERC ¶ 61,377, *order on reh'g,* Opinion No. 154–C, 33 FERC ¶ 61,327 (1985). The Opinion No. 154–B methodology is based upon trended original costs, whereby the inflationary component of the nominal return is placed in deferred earnings and recovered as a part of rate base in future years. *E.g., BP W. Coast Prods., LLC* v. *FERC,* 374 F.3d 1263, 1282–83 (D.C. Cir. 2004).

[25] December 2020 Order, 173 FERC ¶ 61,245 at P 17 (stating that ''the purpose of indexing is to allow the indexed rate to keep pace with industry-wide cost changes, not to reflect alterations to the Commission's Opinion No. 154–B cost-of-service methodology'').

[26] *Id.* P 18.

pipelines benefitted from the Commission's prior policy permitting them to recover an income tax allowance.[27]

2. Rehearing Requests

11. Shippers argue that the Commission's decision to adjust reported page 700 data to remove the effects of the Income Tax Policy Change contravenes established precedent and rests upon flawed reasoning. First, Shippers contend that both the D.C. Circuit and the Commission have found that the index aims to track changes in recoverable pipeline costs consistent with the Opinion No. 154–B methodology.[28] Shippers argue that the Income Tax Policy Change changed pipelines' recoverable costs by requiring MLP pipelines to remove the income tax allowance and ADIT balances from their costs of service. Thus, Shippers contend that the index should reflect this policy change.[29]

12. Second, Shippers state that the December 2020 Order contradicts the Commission's statement in the 2018 Income Tax Policy Statement that it would ''incorporate the effects'' of the Income Tax Policy Change in this five-year review.[30] Shippers assert that they relied upon this statement and, as a result, lost their ability to seek rehearing or judicial review of the 2018 Income Tax Policy Statement and forewent opportunities to challenge oil pipeline rates.[31] Shippers further claim that the Commission's continued inaction on eliminating the MLP income tax double recovery from oil pipeline rates, as contrasted with its actions to eliminate that double recovery from natural gas pipeline rates, raises due process concerns for oil pipeline shippers.[32] In addition, Shippers disagree with the December 2020 Order's conclusion that reflecting the Income Tax Policy Change would convert the index into a true-up designed to remedy a prior over-recovery.[33]

13. Third, Shippers maintain that adjusting reported page 700 data is unprecedented and departs from the Commission's consistent practice of calculating the index level using unadjusted data.[34] Shippers state that the Commission has previously rejected proposals to make targeted adjustments to the data set by removing pipelines with cost changes resulting from specific factors because such proposals failed to identify other factors that could render a pipeline's data non-comparable.[35] Shippers contend that the Commission should likewise reject Pipelines' adjustments because they fail to consider other factors or policy changes.[36]

14. Fourth, Shippers state that regardless of whether prior index calculations directly incorporated the Commission's prior policies allowing MLP pipelines to recover an income tax allowance, the MLP income tax allowance became integrated into the industry's recoverable costs and thus came to be reflected in the index.[37] Shippers also argue that MLP pipelines did, in fact, benefit from these policies because they allowed MLPs to report higher costs on their page 700s, which helped to insulate their annual index rate increase filings from challenge under the Commission's Percentage Comparison Test.[38]

15. Fifth, Liquids Shippers argue that the December 2020 Order further distorts the index calculation by adjusting the page 700 data of pipelines that were MLPs in 2014 and converted to C-Corporations after the 2018 Income Tax Policy Change. Liquids Shippers contend that because these pipelines were eligible as C-Corporations to report a positive income tax allowance on page 700 for 2019, reducing their 2014 income tax allowance to zero fabricates an erroneous cost increase between 2014 and 2019.[39]

3. Commission Determination

16. We grant rehearing of the December 2020 Order to calculate the index level using unadjusted page 700 data that reflects the effects of the Income Tax Policy Change upon recoverable pipeline costs.

a. The Income Tax Policy Change Should be Incorporated Into the Index Calculation

17. The index must reflect the Income Tax Policy Change in order to produce just and reasonable oil pipeline rates. Prior to the 2018 Income Tax Policy Change, MLP pipelines' rates could recover the same investor-level tax costs twice, once in an income tax allowance and again in an ROE.[40] The D.C. Circuit and the Commission both concluded that this led to an impermissible double recovery of investor-level tax costs and produced unjust and unreasonable rates.[41] The Income Tax Policy Change eliminated this double recovery by prohibiting MLP pipelines from recovering an income tax allowance. However, oil pipeline rates have yet to incorporate this policy change.[42] Thus, the impermissible double-recovery has not been eliminated from oil pipeline rates. Because indexing is the Commission's primary oil pipeline ratemaking methodology and because indexed oil pipeline rates must be just and reasonable, we conclude that the index calculation must now address the Income Tax Policy Change.

18. The index was always intended to reflect changes to Opinion No. 154–B costs such as the elimination of the double recovery via the Income Tax Policy Change. The Opinion No. 154–B methodology defines the costs that oil pipelines can recover in rates and the index is the primary means for recovering those costs.[43] Accordingly, the Commission and the D.C. Circuit have long recognized that the index should reflect changes in costs recoverable under the Opinion No. 154–

[27] *Id.* P 19 & n.37.

[28] Joint Commenters Request for Rehearing at 43–45 (quoting 2015 Index Review, 153 FERC ¶ 61,312 at P 13) (citing *AOPL III,* 876 F.3d at 345–46); Liquids Shippers Request for Rehearing at 17 (quoting *AOPL III,* 876 F.3d at 345; 2015 Index Review, 153 FERC ¶ 61,312 at P 13).

[29] Joint Commenters Request for Rehearing at 42–46; Liquids Shippers Request for Rehearing at 16–19.

[30] 2018 Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 46; Joint Commenters Request for Rehearing at 41–42, 56; Liquids Shippers Request for Rehearing at 15.

[31] Joint Commenters Request for Rehearing at 57; CAPP Request for Rehearing at 11–13; *see also* Liquids Shippers Request for Rehearing at 15–16.

[32] Joint Commenters Request for Rehearing at 59–60.

[33] *Id.* at 46–47.

[34] *Id.* at 46.

[35] *Id.* at 51 (quoting 2015 Index Review, 153 FERC ¶ 61,312 at P 34).

[36] *Id.*

[37] *Id.* at 53.

[38] *Id.* at 53–55. Under the Percentage Comparison Test, the Commission will investigate a protested index rate increase filing if the pipeline's page 700 revenues exceed its costs and there is a more than a 10 percentage-point differential between the index rate increase and the change in the prior two years' total cost-of-service data reported on page 700, line 9. *E.g., HollyFrontier Refin. & Mktg. LLC* v. *SFPP, L.P.,* 170 FERC ¶ 61,133, at P 5 (2020).

[39] Liquids Shippers Request for Rehearing at 18–19.

[40] 2005 Income Tax Policy Statement, 111 FERC ¶ 61,139 at P 32.

[41] *SFPP,* 967 F.3d at 795–97; *United Airlines,* 827 F.3d at 136; Income Tax Policy Statement, 162 FERC ¶ 61,227 at PP 8, 45. MLP pipelines do not incur income taxes at the entity level, but the Commission justified permitting them to recover an income tax allowance on the basis that their investors pay taxes on their allocated share of the MLP's taxable income. Because the D.C. Circuit and the Commission concluded that the MLP pipeline's DCF ROE already included investor-level income tax costs, a double recovery resulted from permitting an income tax allowance that recovered those same tax costs. Opinion No. 511–C, 162 FERC ¶ 61,228 at P 22.

[42] Pipelines identify only one MLP oil pipeline, SFPP, L.P. (the pipeline whose rates were the subject of *United Airlines*), that has adjusted its rates in response to the Income Tax Policy Change. AOPL Initial Comments at 27–28; Designated Carriers Initial Comments at 11, 14.

[43] As explained above, the Opinion 154–B methodology is the Commission's cost-of-service ratemaking methodology for oil pipelines. *See supra* note 24.

B methodology,[44] and the Commission uses the Opinion No. 154–B methodology cost data reported on page 700 to calculate the index level.[45] Here, the adoption of the Income Tax Policy Change altered those costs by barring MLP pipelines from recovering in 2019 income tax costs that they were permitted to recover in 2014. By comparing the 2014 data reported on page 700 under the Commission's previous policy with the 2019 data reported under its revised policy, this index calculation will accurately capture the effects of the Income Tax Policy Change on costs recoverable under Opinion No. 154–B.[46]

19. We also find that adjusting page 700 data to remove the Income Tax Policy Change's effects conflicts with the Commission's historical practice. The Commission has not previously adjusted the reported data used to derive the index level. Order Nos. 561 and 561–A ''opted for a purely historical analysis'' [47] for measuring pipeline cost changes based upon documented cost experience, and in each subsequent index review the Commission has calculated the index level using reported Form No. 6 data without adjustment.[48] Thus, modifying MLP pipelines' reported income tax allowances and returns on rate base would depart from the purely historical analysis on which the Commission has consistently relied since establishing the indexing regime.

20. In addition, incorporating the Income Tax Policy Change into the index complies with the Energy Policy Act of 1992's (EPAct 1992) dual mandate for just and reasonable rates and for simplified and streamlined ratemaking.[49] As stated above, the D.C. Circuit and the Commission have previously held that an impermissible double recovery results from granting MLP pipelines an income tax allowance.[50] Thus, as the Commission's Opinion No. 154–B methodology evolves, oil pipeline rates adjusted via indexing must reflect those changes in order to remain just and reasonable. If the Commission omits the effects of the Income Tax Policy Change from the index calculation, the only alternative method of reflecting the elimination of the MLP income tax double recovery in rates would be through cost-of-service rate litigation.[51] We find that implementing cost-of-service policy changes in this fashion would hinder the statutory goals of efficient and simplified ratemaking embodied in EPAct 1992.[52]

21. Finally, our holding on rehearing honors the Commission's assurances in the 2018 Income Tax Policy Statement. There, the Commission committed to ''incorporate the effects of [the Income Tax Policy Change] . . . in the 2020 five-year review'' so that oil pipeline rates would reflect these reduced costs.[53] Whereas the Commission acted immediately to eliminate the MLP income tax double recovery from natural gas pipeline rates,[54] the Commission deferred adjusting oil pipeline rates until the 2020 five-year index review. Failure to act here would leave oil pipeline rates unaddressed indefinitely. While Pipelines urge the Commission to disregard our assurances from the 2018 Income Tax Policy Statement, they offer no alternative remedy.[55] Moreover, we recognize that

[44] *AOPL III,* 876 F.3d at 345 (finding that the Commission ''has consistently treated the index as a measure of normal industry-wide cost-of-service changes''); 2015 Index Review, 153 FERC ¶ 61,312 at P 13, *aff'd, AOPL III,* 876 F.3d at 345–46 (''[T]he index is meant to reflect changes to recoverable pipeline costs, and, thus, the calculation of the index should use data that is consistent with the Commission's [Opinion No. 154–B] cost-of-service methodology.''); *see also* Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,096 (lamenting that the then-existing Form No. 6 provided a ''highly unsatisfactory'' measure of capital cost changes because it did ''not contain the information necessary to compute a trended original cost (TOC) rate base or a starting rate base'' under the Opinion No. 154–B methodology).

[45] 2015 Index Review, 153 FERC ¶ 61,312 at PP 12–13 (adopting use of page 700 data to measure oil pipeline cost changes because, among other reasons, page 700 data is consistent with the Opinion No. 154–B methodology).

[46] In contrast, adjusting the data set to remove the effects of this policy change would maintain a divergence between indexed rates and Opinion No. 154–B recoverable costs.

[47] *Ass'n of Oil Pipe Lines* v. *FERC,* 281 F.3d 239, 247 (D.C. Cir. 2002) (*AOPL II*) (citing *Five-Year Rev. of Oil Pipeline Pricing Index,* 93 FERC ¶ 61,266, at 61,855 (2000) (2000 Index Review), *aff'd in part and remanded, AOPL II,* 281 F.3d 239, *order on remand,* 102 FERC ¶ 61,195 (2003); Order No. 561, FERC Stats. & Regs. ¶ 30,985 at 30,951).

[48] Although the Commission has curtailed the *amount* of data it considers in calculating the index level via statistical data trimming to the middle 50%, it has never modified the specific *inputs* that pipelines have recorded in their Form No. 6 filings. Similarly, while the Commission adjusts the data set to account for pipeline mergers and divestitures that occurred during the five-year review period, these steps are distinguishable from the adjustments to omit the effects of the Income Tax Policy Change adopted in the December 2020 Order based upon Pipelines' proposals. Where pipelines filed separate page 700 data for the first year of the review period (*e.g.,* 2014) and merged later in the review period, the Commission adds the separate costs that the pipelines reported for the first year and compares this sum to the newly combined company's page 700 costs reported for the last year of the data set (*e.g.,* 2019). 2015 Index Review, 153 FERC ¶ 61,312 at P 38. Conversely, in the case of divestitures, the Commission adds the separate costs the pipelines reported for the last year of the data set and compares this sum to the formerly combined company's page 700 costs reported for the first year. Unlike Pipelines' proposed adjustments, which alter a specific cost item that pipelines reported on page 700, this step simply combines the total costs that the pipelines reported as separate entities at one endpoint of the review period to mirror their status as a combined entity at the other endpoint.

[49] Public Law 102–486, 1801(a), 106 Stat. 2776, 3010 (1992) (codified at 42 U.S.C. 712 note).

[50] *See supra* note 19.

[51] Importantly, this proceeding presents the sole opportunity for addressing the MLP income tax double recovery in indexed rates via the simplified and streamlined five-year review process. As discussed above, the Kahn Methodology calculates the index level based upon the change in industry-wide page 700 costs from the first year of the review period to the last year. Accordingly, it is only possible to reflect the Income Tax Policy Change in the instant index calculation, which measures cost changes from 2014 (when MLP pipelines reported a positive income tax allowance) to 2019 (when MLP pipelines reported zero income tax allowance). Capturing this decrease in recoverable income tax costs from 2014 to 2019 will reduce the index level to incorporate the elimination of the MLP income tax double recovery. In contrast, the 2025 five-year review will reflect no change in MLP income tax costs because MLP pipelines will report zero income tax allowance for both the first and last years of the 2019–2024 period.

[52] *See AOPL II,* 281 F.3d at 244 (holding that an oil pipeline ratemaking regime based in large part upon cost-of-service rate proceedings ''would be inconsistent with Congress's mandate under the EPAct for FERC to establish 'a simplified and generally applicable ratemaking methodology.' '' (quoting EPAct 1992, at 1801(a))).

[53] Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 8; *see also Inquiry Regarding the Effect of the Tax Cuts and Jobs Act on Commission-Jurisdictional Rates,* 162 FERC ¶ 61,223, at P 4 (2018) (''The Commission must ensure that the rates, terms, and conditions of jurisdictional services under the Federal Power Act (FPA), the Natural Gas Act (NGA), and the Interstate Commerce Act are just, reasonable, and not unduly discriminatory or preferential.''); *id.* P 8 (directing oil pipelines to report on page 700 an income tax allowance consistent with the Income Tax Policy Change and the Tax Cuts and Jobs Act. As opposed to initiating cost-of-service complaints against oil pipelines, deferring action until the 2020 five-year index review best fulfilled EPAct 1992's dual mandate for simplified oil pipeline ratemaking and just and reasonable rates. *See supra* P 20 & note 51.

[54] Specifically, the Commission required natural gas pipelines to submit a one-time filing for the purpose of evaluating the impact of the Income Tax Policy Change and the Tax Cuts and Jobs Act upon the pipeline's revenue requirement. Order No. 849, 164 FERC ¶ 61,031 at P 30. This process allowed for MLP natural gas pipelines to voluntarily reduce their rates in response to the Income Tax Policy Change and for the Commission to initiate rate investigations pursuant to section 5 of the Natural Gas Act where the pipeline appeared to be over-recovering its cost of service as a result of the policy change. *E.g., Stagecoach Pipeline & Storage Co.,* 166 FERC ¶ 61,199 (2019); *N. Nat. Gas Co.,* 166 FERC ¶ 61,033 (2019). In contrast to MLP natural gas pipelines, Pipelines identify only one MLP oil pipeline, SFPP, L.P. (the pipeline whose rates were the subject of *United Airlines*), that has adjusted its rates in response to the Income Tax Policy Change. *See supra* note 42.

[55] We recognize that the 2018 Income Tax Policy Statement provided non-binding guidance regarding the Commission's future intentions. Accordingly, in the NOI initiating this proceeding, the Commission invited the commenters to address this issue. NOI, 171 FERC ¶ 61,239 at P 10. Our determination here is based upon the full consideration of the extensive record developed in this proceeding.

shippers relied upon our assurances in considering whether to bring challenges to oil pipeline rates following the Income Tax Policy Change.[56]

b. Reconsidering the December 2020 Order

22. As discussed below, we reject the reasons provided by the December 2020 Order for excluding the Income Tax Policy Change from the index calculation.

23. First, there is no meaningful distinction between changes to the Opinion No. 154–B methodology and changes to the costs that pipelines input into that methodology.[57] Rather, changes to the Opinion No. 154–B methodology produce corresponding changes to the costs that pipelines can recover. Thus, for purposes of determining the index, any meaningful measure of changes to recoverable costs between 2014 and 2019 must reflect the Income Tax Policy Change. The December 2020 Order's adjustments to the page 700 data omit the effects of the Income Tax Policy Change—as though MLP pipelines did not receive an income tax allowance in 2014.[58] Given the purpose of the indexing regime to adjust rates for changes to Opinion No. 154–B recoverable costs, a true ''apples-to-apples'' comparison involves comparing the recoverable costs in 2014 with the recoverable costs in 2019—if companies received an income tax allowance in 2014 but did not in 2019, the index must reflect that reality.

24. Second, contrary to the statements in the December 2020 Order, we find that reflecting the Income Tax Policy Change does not effectuate a true-up for prior-period over-recoveries.[59] Consistent with the purposes of the five-year review, incorporating the effects of the Income Tax Policy Change in the index calculation will align pipelines' *future* rates with their *future* costs recoverable under Opinion No. 154–B. By failing to reflect the Income Tax Policy Change in the calculation of the prospective index, the approach adopted in the December 2020 Order would cause future indexed rates to become estranged from future recoverable costs.

25. Third, we disagree with the December 2020 Order's reasoning that ''[b]ecause no prior index calculation incorporated the [2005 policy] allowing MLP pipelines to recover an income tax allowance, it is not necessary to reflect the policy change denying those pipelines an income tax allowance in the calculation here.'' [60] This statement disregards indexing's purpose and oversimplifies the Commission's historical practice. Indexed rates have always served as a means for recovering pipeline income tax costs. Accordingly, the five-year review index calculation was always intended to incorporate changes in pipeline income tax costs, even if the Commission previously measured those costs using an imperfect estimate.[61] Now, the Commission uses page 700 data that directly measures income tax costs. The Commission should not disregard this data when calculating the index level.

26. Moreover, the facts here undercut Pipelines' claim that MLP income taxes have not been incorporated into pipeline rates.[62] Prior to the 2005 income tax policy change, MLP pipelines were eligible to include at least a partial income tax allowance in their costs of service.[63] To the extent that prior index calculations did not incorporate the 2005 income tax policy directly, pipeline rates did substantially come to reflect that policy over time.[64] To explain further, as the number of pipelines in the Commission's data set expanded,[65] all initial rates and non-indexing rate changes would have reflected MLPs pipelines' ability to recover a full income tax allowance under the previous 2005 policy. Although we recognize that prior index reviews imperfectly captured the 2005 income tax policy change, we know that the 2005 policy change plainly affected oil pipeline rates over the last 15 years.[66] Furthermore, Pipelines' argument ignores how MLP pipelines' ability to claim an income tax allowance under the previous 2005 policy shielded those pipelines' rates from challenge.[67] Therefore, we are not persuaded by arguments based upon the 2005 policy change that the Commission must remove the 2018 Income Tax Policy Change from this index calculation.

27. Fourth, the adjustments adopted in the December 2020 Order lead to incongruous and unreasonable results because they enable pipelines, including those with an existing double recovery, to increase their rates above the levels that would have resulted absent the D.C. Circuit's and the Commission's double-recovery findings. The Commission adopted the Income Tax Policy Change in response to findings by the D.C. Circuit and the Commission that MLP pipeline rates

[56] Joint Commenters Request for Rehearing at 57; CAPP Request for Rehearing at 11–13; *see also* Liquids Shippers Request for Rehearing at 15–16.

[57] December 2020 Order, 173 FERC ¶ 61,245 at P 17 (stating that ''the purpose of indexing is to allow the indexed rate to keep pace with industry-wide cost changes, not to reflect alterations to the Commission's Opinion No. 154–B cost-of-service methodology'').

[58] In the December 2020 Order, the Commission stated that ''[j]ust as a business must account for changes to its accounting policies when comparing costs over two different periods, we must make a similar adjustment to the reported page 700 data here to derive an 'apples-to-apples' comparison of pipeline cost changes.'' *Id.* This analogy to accounting methods is misplaced. Whereas an accounting methodology simply involves the method of recording costs, as explained above, the Income Tax Policy Change directly affected the costs that MLP pipelines can recover under the Opinion No. 154–B methodology.

[59] *Id.* P 18.

[60] *Id.* P 19.

[61] Before the 2015 Index Review when the Commission began using page 700 data, the Commission estimated pipeline cost changes using a rough proxy based upon Form No. 6 accounting data. This accounting data did not directly measure changes in the income tax costs recoverable under Opinion No. 154–B. December 2020 Order, 173 FERC ¶ 61,245 at P 19; *see also* 2015 Index Review, 153 FERC ¶ 61,312 at PP 14–15 (describing this proxy and its deficiencies). The Commission relied upon this proxy because direct measures of capital costs and income tax costs were not available when the index was first established. 2015 Index Review, 153 FERC ¶ 61,312 at P 14. Before page 700 was created, the Commission lamented that ''the measure of the capital cost component of the cost of service is highly unsatisfactory'' because Form No. 6 did ''not contain the information necessary to compute a trended original cost . . . rate base or a starting rate base as allowed for in Order No. 154–B.'' Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,096.

[62] Designated Carriers Initial Comments at 17–20; *see also* December Order, 173 FERC ¶ 61,245 at P 19.

[63] *Lakehead Pipe Line Co., L.P.,* Opinion No. 397, 71 FERC ¶ 61,338, at 62,314–15 (1995), *reh'g denied,* Opinion No. 397–A, 75 FERC ¶ 61,181 (1996) (permitting partnership entities like MLP pipelines to recover an income tax allowance for income attributable for corporate partners, but not for income attributable to individuals or other non-corporate partners); *see also Riverside Pipeline Co., L.P.,* 48 FERC ¶ 61,309, at 62,018 (1989) (applying pre-*Lakehead* policy permitting partnership pipelines to recover a full income tax allowance as if they were corporations).

[64] Consistent with EPAct 1992's mandate for a simplified and streamlined ratemaking regime, the Commission does not scrutinize the costs underlying each individual pipeline's rates when developing the industry-wide index. Rather, the Commission reaches its determinations based upon what is appropriate on balance for the industry as a whole.

[65] Notably, 164 of the 277 total oil pipelines in the Commission's data set, or 59%, have been added since the 2005 five-year review.

[66] In urging the Commission to adopt the adjustment to the reported page 700 data to eliminate the effects of the Income Tax Policy Change, neither AOPL nor Designated Carriers account for the extent to which the Commission's prior income tax policies permitting MLPs to recover an income tax allowance were incorporated into pipelines' existing rates.

[67] Specifically, the Commission evaluates cost-of-service complaints and challenges to annual index rate increases based upon the differential between costs and revenues on page 700. To the extent that an MLP pipeline's page 700 revenues exceeded its costs, the ability to report an income tax allowance as a cost on page 700 would have reduced the gap between revenues and costs. This lower cost-revenue differential would have reduced the pipeline's exposure to cost-of-service rate complaints and challenges to index rate changes.

were double recovering those pipelines' income tax costs.[68] Absent the D.C. Circuit's and the Commission's holdings prohibiting MLP pipelines from recovering an income tax allowance in their costs of service, MLP pipelines, like corporate pipelines, would have reported a reduction in their income tax allowances as a result of the Tax Cuts and Jobs Act. However, by treating MLP pipelines' income tax liability as zero for both 2014 and 2019, Pipelines' adjustments eliminate the downward effect the Tax Cuts and Jobs Act would have exerted upon MLP pipelines' recoverable income tax costs during the 2014–2019 period.[69] Thus, not only do Pipelines' adjustments eliminate the reduction in industry-wide recoverable costs resulting from the Income Tax Policy Change, but they also diminish the separate reduction in MLP pipelines' recoverable costs that would have resulted from the Tax Cuts and Jobs Act had that policy change not occurred. As a result, incorporating Pipelines' adjustments in the cost-change analysis would produce a *higher* index level than what would have resulted absent the Income Tax Policy Change eliminating the MLP income tax double recovery. Therefore, we decline to adopt Pipelines' adjustments given this incongruous and unreasonable result and instead calculate the index level using unadjusted page 700 data.

c. Pipelines' Remaining Arguments Are Unpersuasive

28. We are unpersuaded by Pipelines' remaining arguments for removing the effects of the Income Tax Policy Change from the index calculation. Regarding their claim that the policy change should be excluded because it did not affect pipelines' actual income tax costs,[70] we find that this argument misconstrues the cost changes that the index is designed to measure. As discussed above, ''the index is meant to reflect changes to recoverable pipeline costs'' measured under the Opinion No. 154–B methodology.[71] Thus, the index is designed to track changes in the income tax costs that pipelines can recover under the Commission's cost-of-service ratemaking methodology. In arguing that the Income Tax Policy Change only modified the ratemaking treatment of MLP income tax costs without affecting actual costs,[72] Pipelines overlook that changes in ratemaking treatment produce the very Opinion No. 154–B cost-of-service changes that the index calculation seeks to measure.[73]

29. Moreover, the income tax costs that pipelines can recover under Opinion No. 154–B are distinct from the actual tax costs that pipelines have paid to the taxing authority. Instead, as the D.C. Circuit has recognized, income tax costs recoverable under the Commission's cost-of-service methodology are not equivalent to ''actual taxes paid.'' [74] Accordingly, because recoverable income tax costs do not correspond to taxes paid, we reject Pipelines' claim that the index should only reflect changes in actual income tax costs.

30. We also reject AOPL's assertion that the Income Tax Policy Change should be excluded because it represents an extraordinary, one-time event that is not representative of likely future cost experience.[75] As discussed above, the Kahn Methodology calculates the index level based upon historical cost changes, and does not address speculative assertions about future developments.[76] Consistent with this approach, the Commission has previously rejected similar requests to adjust the data set for one-time cost changes resulting from events that were unlikely to reoccur in the future. For example, in the 2000 Index Review, the Commission rejected a proposed adjustment to address one-time cost savings resulting from the establishment of the indexing methodology and its associated cost efficiency incentives.[77] The D.C. Circuit affirmed this decision, finding that the Commission reasonably adhered to its purely historical analysis and ''declined to embroil itself in the complexity and iffiness of'' a forward-looking methodology.[78] Similarly, in the 2010 Index Review, the Commission rejected shipper proposals to manually trim the data set to remove pipelines that reported one-time cost increases attributable to expansions or major rate base changes.[79] Just as the Commission declined to adjust the data sets in those proceedings to eliminate the effects of one-time events, we likewise decline to adjust the data set here to eliminate the effects of the Income Tax Policy Change.[80]

31. We disagree with AOPL's contention that the Income Tax Policy Change renders the page 700 data not ''consistent enough,'' and, therefore, that the page 700 data must be adjusted to remove the effects of the Income Tax Policy Change.[81] This argument relies upon a passage in *AOPL III* stating that the Commission, in adopting the use of page 700 data to measure pipeline cost changes, determined in the 2015 Index Review that ''the assumptions [required by page 700] should reflect established ratemaking practices and

thus should be consistent enough to accurately calculate the index.'' [82] The D.C. Circuit's use of ''consistent'' refers to pipelines' consistent compliance with

[68] 2018 Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 8.

[69] All commenters agree that the index should reflect the decrease resulting from the Tax Cuts and Jobs Act to the income tax allowance recoverable by pipelines organized as corporations. December 2020 Order, 173 FERC ¶ 61,245 at P 10 n.20.

[70] *E.g.,* AOPL Initial Comments at 29–31; AOPL Reply Comments at 11; Designated Carriers Initial Comments at 7, 9–12; *see also* Kinder Morgan Initial Comments at 3–4.

[71] 2015 Index Review, 153 FERC ¶ 61,312 at P 13 (citing Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,096). In fact, the Commission updated its calculation of the index level to rely upon page 700 because it includes actual total cost-of-service data consistent with Opinion No. 154–B. *Id.* PP 13–14.

[72] AOPL Initial Comments at 30 (quoting Shehadeh Initial Decl. at 14); Designated Carriers Initial Comments at 3, 7–8, 10–11.

[73] *AOPL III,* 876 F.3d at 345 (''[N]either Order No. 561 nor the subsequent index review orders indicate that the index was intended to measure something distinct from the costs measured under its cost-of-service methodology. Rather, the Commission has consistently treated the index as a measure of normal industry-wide cost-of-service changes . . . .'').

[74] *City of Charlottesville* v. *FERC,* 774 F.2d 1205, 1213–15 (D.C. Cir. 1985) (Scalia, J.). As then-Judge Scalia explained:

[T]he imprecision of the ''actual taxes paid'' formulation is exceeded only by the name of the Holy Roman Empire: two out of the three words are wrong. Taxes, yes. But not necessarily *actual* taxes, since inexact estimations are often allowed, *e.g.,* a nationwide tax allowance applied to all individual utilities . . . . And not necessarily taxes *paid,* since tax liability incurred by current activities but in fact not paid currently can be charged to present ratepayers, *e.g.,* taxes deferred by reason of accelerated depreciation but passed on to current ratepayers through normalization. So the principle should be expressed 'actual or estimated taxes paid or incurred'—whereupon it ceases to constrain the Commission with regard to taxes any more than the Commission is constrained with regard to its treatment of other expenses. Which is as it should be.

Id. at 1215 (emphasis in original) (citing *Pub. Sys.* v. *FERC,* 709 F.2d 73, 81–82 (D.C. Cir. 1983); *Tenneco Oil Co.* v. *FERC,* 571 F.2d 834, 844 (5th Cir. 1978)).

[75] AOPL Reply Comments at 13–14.

[76] *See* 2000 Index Review, 93 FERC at 61,855 (''The purpose of our indexing methodology is to permit adjustment to ceiling rates based on historical not anticipated cost changes over some future period.'').

[77] *Id.; see also id.* (rejecting proposed adjustment based upon anticipated future cost increases due to increased environmental and safety regulations).

[78] *AOPL II,* 281 F.3d at 247.

[79] 2010 Index Review, 133 FERC ¶ 61,228 at PP 48–55.

[80] Furthermore, we find that AOPL's arguments are internally inconsistent. AOPL's reasoning for excluding the Income Tax Policy Change because it is an extraordinary, one-time policy change would apply equally to the Tax Cuts and Jobs Act, yet AOPL does not oppose reflecting the Tax Cuts and Jobs Act's effects in the index calculation. AOPL Initial Comments at 25–26; AOPL Reply Comments at 10.

[81] AOPL Reply Comments at 13–14.

[82] *AOPL III,* 876 F.3d at 345 (citing 2015 Index Review, 153 FERC ¶ 61,312 at P 18).

the Commission's prevailing policies in their page 700 filings, not, as AOPL argues, that the index level cannot reflect policy changes that occur during the five-year review period.[83] Moreover, as discussed above, the index should reflect industry-wide changes to recoverable costs such as those caused by the Income Tax Policy Change—thus, it is appropriate for the 2014 page 700 data to include income tax allowances for MLPs while the 2019 page 700 data does not.

32. Finally, we reject Designated Carriers' remaining claims as irrelevant, unsupported, or without merit. Designated Carriers incorrectly claim that income tax allowance costs should be removed from the 2014 page 700 data for MLP pipelines because the Commission has previously found that partnership investors' income tax costs are not properly considered costs in a partnership pipeline's regulated cost of service.[84] To the contrary, the Commission and the D.C. Circuit have concluded that MLP pipelines incur investor-level income tax costs that are already reflected in the pipeline's DCF ROE, such that including an income tax allowance in the pipeline's cost of service alongside the ROE results in an impermissible double recovery.[85] Accordingly, the issue in this proceeding is whether the index level and the resulting pipeline rates should reflect the elimination of that double recovery. As discussed above, we find that by adjusting the data set to eliminate MLP pipelines' 2014 income tax allowances, Designated Carriers' proposal would allow the income tax double recovery to persist in pipeline rates.

33. Designated Carriers misconstrue Commission precedent in arguing that Pipelines' proposed adjustments accord with the Commission's actions applying the Income Tax Policy Change retroactively in the 2018 Income Tax Policy Statement and in Docket Nos. IS08–390 and IS09–437.[86] In the 2018 Income Tax Policy Statement, issued on March 15, 2018, the Commission applied the policy change *prospectively* by directing pipelines to report their income tax costs in accordance with its revised policy in their upcoming Form No. 6 filings due for submission on April 18, 2018, which would include cost-of-service data for 2017 and 2016.[87] The Commission did not apply the new policy retroactively to periods before the years encompassed by those impending filings. In Docket Nos. IS08–390 and IS09–437, the Commission applied its revised income tax allowance policy in pending cost-of-service rate proceedings to the time periods at issue,[88] which predated the 2018 Income Tax Policy Change.[89] Contrary to Designated Carriers' claim, applying the Commission's new policy to a pipeline whose rates were the subject of pending proceedings involving earlier time periods does not support applying that policy retroactively to revise the reported cost-of-service data of pipelines whose rates were not the subject of ongoing litigation.

34. Designated Carriers' claim that reflecting the Income Tax Policy Change in the index calculation would constitute retroactive ratemaking likewise lacks merit.[90] The rule against retroactive ratemaking ''prohibits the Commission from adjusting current rates to make up for a utility's over- or under-collection in prior periods.'' [91] By contrast, the five-year review uses past cost changes to calculate the index adjustment that pipelines can use to adjust their *future* rates. Accounting for reduced recoverable costs in calculating the prospective index adjustment does not modify current rates to account for prior period over- or under-recoveries and therefore does not contravene the bar against retroactive ratemaking.

35. Designated Carriers also do not provide support for their contention that incorporating the Income Tax Policy Change in the index would negatively impact MLP pipelines twice, such as SFPP, whose cost-of-service rates have already been revised to remove the income tax allowance and ADIT balances.[92] As discussed above, Designated Carriers have only identified one pipeline (out of 240 pipelines filing page 700 with the Commission) whose rates have been lowered to reflect the Income Tax Policy Change and thus have not shown that this alleged harm would affect any pipeline besides SFPP.[93] More generally, the Commission calculates the index level based upon normal industry-wide cost changes, without regard to the particular experiences of individual pipelines. To do otherwise would produce nonsensical results, as indexing would cease to function as a generally applicable ratemaking methodology if the index was adjusted to account for

[83] *AOPL III,* 876 F.3d 345; *see also* 2015 Index Review, 153 FERC ¶ 61,312 at P 18 (''The allocation methodologies used by pipelines on page 700 should reflect established ratemaking practices, and thus these allocation methodologies should be sufficiently robust to calculate the index. . . . [T]o the extent a pipeline's page 700 ratemaking assumptions change over a period of time, pipelines are obligated to note them on their page 700.''). Pipelines that were MLPs consistently claimed an income tax allowance in 2014 and consistently did not claim an income tax allowance in 2019.

[84] Designated Carriers Initial Comments at 10–11 (citing Opinion No. 511–C, 162 FERC ¶ 61,228 at P 28; Webb Initial Aff. P 8).

[85] Opinion No. 511–C, 162 FERC ¶ 61,228 at P 22, *aff'd, SFPP,* 967 F.3d at 795–97; *see also United Airlines,* 827 F.3d at 136. Moreover, Designated Carriers misconstrue the applicable law. Neither the D.C. Circuit nor the Commission have held that these costs are not properly included in a partnership pipeline's cost of service. Rather, both *United Airlines* and the 2018 Income Tax Policy Statement concluded that partnership investors' income tax costs are already recovered by the ROE and that allowing partnership pipelines to recover an income tax allowance in addition to that ROE would impermissibly double recover those costs. *United Airlines,* 827 F.3d at 135–37; 2018 Income Tax Policy Statement, 162 FERC ¶ 61,227 at PP 8–9, 45.

[86] Designated Carriers Initial Comments at 9, 11–12, 14–15 (citing *SFPP, L.P.,* 162 FERC ¶ 61,229, at P 8 (2018); Opinion No. 511–C, 162 FERC ¶ 61,228 at PP 28, 54–57; 2018 Income Tax Policy Statement, 162 FERC ¶ 61,227 at PP 8, 46, n.83; Webb Initial Aff. PP 9, 11). AOPL echoes this argument in its reply comments. AOPL Reply Comments at 18–19.

[87] 2018 Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 46 n.83.

[88] *See SFPP, L.P.,* Opinion No. 435, 86 FERC ¶ 61,022, at 61,093–94 (1999) (''Commission practice is to base its decision on the policy in effect in the year a regulatory decision is made, and then apply that decision to the time frame to which the case applies.''); *see also Consol. Edison Co. of N.Y.* v. *FERC,* 315 F.3d 316, 323–24 (D.C. Cir. 2003) (explaining that an agency may apply a new substantive rule to decide a pending proceeding).

[89] The Docket No. IS08–390 proceeding addressed SFPP's West Line rates to be effective August 1, 2008. Opinion No. 511–C, 162 FERC ¶ 61,228 at P 4. The Docket No. IS09–437 proceeding addressed SFPP's East Line rates to be effective January 1, 2010. *SFPP, L.P.,* Opinion No. 522–B, 162 FERC ¶ 61,229 at P 8.

[90] Designated Carriers Initial Comments at 16.

[91] *SFPP,* 967 F.3d at 801 (quoting *Old Dominion Elec. Coop.* v. *FERC,* 892 F.3d 1223, 1227 (D.C. Cir. 2018)).

[92] Designated Carriers Initial Comments at 15 (citing Webb. Aff. P 14).

[93] Moreover, even as to SFPP, it is unclear that incorporating the Income Tax Policy Change in the index calculation would produce the adverse effects that Designated Carriers describe. First, after the Commission adopted the Income Tax Policy Change, SFPP converted to a Schedule-C Corporation eligible to recover an income tax allowance and defended their rates on that basis in their East Line rate case in Docket No. OR16–6–000. Second, SFPP's implementation of the Income Tax Policy Change (before its conversion to a C-Corporation) actually produced an *increase* to its rates on its West Line system. In response to Opinion No. 511–C, SFPP removed the income tax allowance and previously accumulated ADIT balances from its West Line cost-of-service rates. Opinion No. 511–D, 166 FERC ¶ 61,142 at P 59. As a result, SFPP's West Line rates increased to levels above the rates established following Opinion No. 511–B, which included an income tax allowance and ADIT balances. *Compare* SFPP, Compliance Filing, Docket No. IS08–390–011, Tab A, COS Summary at 2 (filed May 14, 2018) (rates filed in response to Opinion No. 511–C), *with* SFPP, Compliance Filing, Docket No. IS08–390–008, Tab A, COS Summary at 2 (filed Apr. 6, 2015) (rates filed in response to Opinion No. 511–B). Because reflecting the Income Tax Policy Change in SFPP's West Line rates resulted in a rate increase, we are unconvinced that incorporating this policy change in the index calculation would somehow adversely impact SFPP for a second time as Designated Carriers allege.

the particular cost changes of each individual pipeline.

36. Finally, to the extent that Designated Carriers argue that the Commission should have ''trued up'' prior index levels in the 2015 Index Review to account for the impact of the 2005 income tax policy change upon recoverable costs, this argument is unsupported.[94] Designated Carriers do not specify the type of analysis they believe the Commission should have performed in the 2015 Index Review [95] and fail to quantify the impact of this analysis upon pipelines' recoverable costs. Furthermore, any arguments concerning the Commission's actions in previous index reviews are outside the scope of this proceeding.

B. Statistical Data Trimming

1. December 2020 Order

37. In the December 2020 Order, the Commission departed from its prior practice established in the 2010 and 2015 Index Reviews of using the middle 50%.[96] Instead, for the first time, the Commission relied solely upon the middle 80%. The Commission decided that it would consider more data in measuring industry-wide cost changes because using a broader sample should enhance the Commission's calculation of the central tendency of industry cost experience.[97] The Commission further stated that ''normal'' cost changes are best defined by using the inclusive data sample embodied in the middle 80% in order to accurately identify the central tendency of industry-wide cost changes.[98]

38. Additionally, the Commission held that ''mere generalized concerns'' about outlying data do not justify excluding the experiences of pipelines included in the middle 80% but not the middle 50% (*i.e.,* the incremental 30%) from the Commission's review of industry cost changes.[99] The Commission stated that unlike in prior index reviews, the record here does not contain ''detailed analyses'' showing that pipelines in the incremental 30% experienced anomalous cost changes that would skew the index.[100]

2. Rehearing Requests

39. Shippers argue that the December 2020 Order conflicts with precedent and fails to justify departing from the Commission's established practice of trimming the data set to the middle 50%. They first contend that using the middle 80% contravenes the Commission's findings in the 2015 and 2010 Index Reviews that the index aims to reflect normal cost changes and that the middle 50% more effectively excludes anomalous cost data than the middle 80%, which includes pipelines further removed from the median whose cost changes may result from idiosyncratic circumstances rather than ordinary pipeline operations.[101] According to Shippers, the December 2020 Order fails to distinguish those findings and instead attempts to redefine ''normal'' cost changes to encompass the widest possible range of data, regardless of whether that data reflects typical experience. Shippers argue that the middle 80% in this proceeding includes pipelines with anomalous cost changes and that the central tendency of a data sample that includes such unrepresentative data fails to reflect normal industry-wide cost changes.[102] In addition, Shippers dispute the December 2020 Order's conclusion that the presence of anomalous data in the middle 50% in prior reviews supports using the middle 80% in this proceeding. Shippers argue that the December 2020 Order does not demonstrate that the middle 50% includes unrepresentative data and, even if it did, this would not justify using a larger sample that likely includes more idiosyncratic data.[103]

40. Similarly, Shippers state that the December 2020 Order ignores the Commission's findings in 2015 and 2010 that trimming to the middle 50% provides a simplified and objective method for removing unrepresentative data that minimizes the need to scrutinize individual pipeline data or engage in manual data trimming.[104] Shippers assert that expanding the data sample to the middle 80% discards this simplified and effective tool for removing outliers without an adequate replacement.[105]

41. Shippers next argue that the record in this proceeding does not support this departure from established practice and in fact provides a stronger basis for using the middle 50% than in prior index reviews. In particular, Shippers state that the middle 50% represents a greater percentage of barrel-miles subject to the index (82.2% in the NOI data set) than in 2015 (56%) or 2010 (76%),[106] whereas the middle 80% is more widely dispersed than in 2015 or 2010 and includes outlying cost increases that are not offset by comparable cost decreases.[107] Moreover, Shippers assert that the December 2020 Order acknowledged that ''the record contains no evidence addressing whether the more dispersed cost changes in the incremental 30% resulted from pipeline-specific factors rather than from broadly shared circumstances representative of ordinary pipeline operations.'' [108] Given the Commission's previous findings that the middle 80% more likely includes pipelines with idiosyncratic and outlying data, Shippers argue that this lack of evidence supports continued use of the middle 50%.[109]

42. Shippers further contend that the December 2020 Order erroneously places the burden upon shipper commenters to justify continued use of the middle 50% by faulting them for

[94] Designated Carriers Initial Comments at 17–20 (citing Webb Aff. PP 19–22).

[95] To the extent that Designated Carriers argue the Commission should have retroactively revised previously established index levels to allow pipelines to recover for prior under collections in excess of their then-effective rates, this would conflict with both indexing's purpose and the filed rate doctrine. *E.g., Ark. La. Gas Co.* v. *Hall,* 453 U.S. 571, 577 (1981) (explaining that the filed rate doctrine ''forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority'' (citation omitted)). Alternatively, if they argue that the Commission should adjust the going-forward index level upward because prior index calculations did not incorporate the 2005 policy change, they have not demonstrated that the multiple income tax policy changes the Commission has adopted since it established the indexing regime, including *Lakehead* and the 2005 policy change, caused pipelines to under-recover their costs on a systematic basis.

[96] *See supra* note 9.

[97] December Order, 173 FERC ¶ 61,245 at P 26.

[98] *Id.* P 27.

[99] *Id.* P 28.

[100] *Id.*

[101] Joint Commenters Request for Rehearing at 23–26 (citing 2015 Index Review, 153 FERC ¶ 61,312 at PP 23, 42–44; 2010 Index Review, 133 FERC ¶ 61,228 at P 61); Liquids Shippers Request for Rehearing at 37–38 (citing 2015 Index Review, 153 FERC ¶ 61,312 at PP 42–44; 2010 Index Review, 133 FERC ¶ 61,228 at PP 60–63 & n.36).

[102] Joint Commenters Request for Rehearing at 26–27; Liquids Shippers Request for Rehearing at 44–45.

[103] Joint Commenters Request for Rehearing at 32.

[104] *Id.* at 34 (citing 2015 Index Review, 153 FERC ¶ 61,312 at P 42). In both the 2015 and 2010 Index Reviews, shipper commenters proposed manual data trimming methodologies in which they carefully reviewed the costs for each of the 150–200 pipelines in the data set to remove those pipelines with cost changes resulting from specific factors not broadly shared across the industry, such as large rate base expansions. *See* 2015 Index Review, 153 FERC ¶ 61,312 at PP 19–21 (describing manual data trimming proposals); 2010 Index Review, 133 FERC ¶ 61,228 at PP 34–47 (same).

[105] Joint Commenters Request for Rehearing at 33 (citing *AOPL II,* 281 F.3d at 245 (vacating and remanding the Commission's determination in the 2000 Index Review to decline to engage in statistical data trimming as unjustified departure from prior practice of trimming to the middle 50%)).

[106] *Id.* at 30; Liquids Shippers Request for Rehearing at 41–42.

[107] Joint Commenters Request for Rehearing at 30; Liquids Shippers Request for Rehearing at 43, 46–47.

[108] Joint Commenters Request for Rehearing at 38 (quoting December 2020 Order, 173 FERC ¶ 61,245 at P 29).

[109] *Id.* at 38–39.

failing to present detailed analyses of the incremental 30%.[110] Shippers state that the Commission discouraged commenters from submitting such evidence by declining to consider similar analyses in the 2015 and 2010 Index Reviews.[111] Moreover, Shippers assert that it is not incumbent upon commenters to justify continued application of the Commission's existing policy. Rather, they argue that the agency attempting to depart from a well-established practice bears the burden of explaining why the reasoning underlying that practice should no longer control.[112] Similarly, Shippers claim that it was incumbent upon Pipelines, as the proponents of a change in Commission policy, to justify the change by demonstrating that the incremental 30% does not contain outlying data. Shippers argue that Pipelines failed to make this showing and that the limited evidence in the record analyzing the incremental 30% indicates that it contains anomalous data that skews the index calculation.[113] According to Shippers, this evidence was sufficient to justify using the middle 50% consistent with established practice.[114]

3. Commission Determination

43. We are persuaded by Shippers' arguments on rehearing and grant rehearing of the December 2020 Order to calculate the index level based upon the middle 50%, consistent with the Commission's practice in the 2015 and 2010 Index Reviews.[115] We conclude that the record in this proceeding does not justify departing from the Commission's established practice of calculating the index level based solely upon the middle 50%.

a. The Record in This Proceeding Supports Using the Middle 50% To Calculate the Index Level

44. As an initial matter, the objective of the index is to reflect the cost experience of a typical pipeline during ordinary pipeline operations.[116] The index is not designed to recover extraordinary cost changes, including those resulting from atypical or idiosyncratic circumstances.[117] These extraordinary cost changes are recovered using the Commission's alternate ratemaking methodologies rather than through indexing.[118] In addition, the presence of such extraordinary cost changes in the data set can inflate the index level.[119]

45. To avoid inflating the index, the Commission excludes pipelines with extraordinary or idiosyncratic cost changes from the analysis. Along these lines, in the 2010 and 2015 Index Reviews, the Commission found that the middle 50% more appropriately adjusts the index level for normal cost changes than the middle 80%, which, by definition, includes pipelines relatively far removed from the median.[120] The Commission also concluded that pipelines in the incremental 30% are more likely to have cost changes resulting from idiosyncratic factors, such as a rate base expansion, plant retirement, or localized changes in supply and demand, that do not reflect normal industry-wide experience.[121] Thus, the Commission found that the middle 50%, more effectively than the middle 80%, trims pipelines with anomalous cost changes from the data set while avoiding the complexities and distorting effects of laborious and subjective manual data trimming methodologies.[122] Following the 2015 Index Review, the D.C. Circuit affirmed the Commission's decision to trim the data set to the middle 50% instead of the middle 80%.[123]

46. Upon reconsideration of the December 2020 Order, we find that the record in the instant proceeding does not justify a different result. The scatter plot below [124] demonstrates that the middle 80% in this data set includes several pipelines near its upper bound that are considerably removed from the other pipelines in the sample.

[110] *Id.* at 35–39; Liquids Shippers Request for Rehearing at 51–52.

[111] Joint Commenters Request for Rehearing at 35, 37. Liquids Shippers observe, moreover, that the Commission did not rely upon such analyses when it declined to use the middle 80% in the 2015 and 2010 Index Reviews. Liquids Shippers Request for Rehearing at 51 (citing 2015 Index Review, 153 FERC ¶ 61,312 at P 43; 2010 Index Review, 133 FERC ¶ 61,228 at P 61).

[112] Joint Commenters Request for Rehearing at 35–36 (citing *Encino Motorcars, LLC* v. *Navarro,* 136 S. Ct. 2117, 2126 (2016); *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009); *Balt. Gas & Elec. Co.* v. *FERC,* 954 F.3d 279, 286 (D.C. Cir. 2020); *Air All. Houston* v. *EPA,* 906 F.3d 1049, 1066 (D.C. Cir. 2018)); Liquids Shippers Request for Rehearing at 52 (citing *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. at 515–16).

[113] Joint Commenters Request for Rehearing at 38; Liquids Shippers Request for Rehearing at 45–51.

[114] Joint Commenters Request for Rehearing at 38; Liquids Shippers Request for Rehearing at 52–53.

[115] 2015 Index Review, 153 FERC ¶ 61,312 at PP 42–44, *aff'd, AOPL III,* 876 F.3d at 342–44; 2010 Index Review, 133 FERC ¶ 61,228 at PP 60–63. Although the Commission averaged the middle 50% with the middle 80% in the 2000 and 2005 five-year reviews, it did not justify or address its consideration of the middle 80%. 2010 Index Review, 133 FERC ¶ 61,228 at P 60. Moreover, the Commission has never relied upon the middle 80% alone and provided a detailed explanation in the 2015 and 2010 Index Reviews why it would not consider the middle 80%. As the D.C. Circuit explained, ''[n]othing in any of the Commission's past index review orders bound the agency to use the middle 80% of pipelines' cost-change data in any later proceeding.'' *AOPL III,* 876 F.3d at 353.

[116] *E.g.,* 2010 Index Review, 133 FERC ¶ 61,228 at P 61; Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097 (''The role of an index is to accommodate normal cost changes.'').

[117] The Commission has held, and the D.C. Circuit has affirmed, that use of an index sufficiently high to encompass extraordinary costs ''would provide windfalls to many oil pipelines by allowing rate changes substantially above cost changes'' and ''effectively abdicate [the Commission's] responsibilities for rate regulation under the ICA.'' Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097, *aff'd, AOPL I,* 83 F.3d at 1434; *see also* 2010 Index Review, 133 FERC ¶ 61,228 at P 54 (interpreting the use of ''extraordinary'' in Order Nos. 561 and 561–A as referring to ''pipelines experiencing changed per barrel-mile costs that were greater than the changing costs experienced by other pipelines regardless of the causes underlying any particular pipeline's cost changes.'').

[118] Order No. 561–A, FERC Stats. & Regs. ¶ 31,000 at 31,097 (''Extraordinary costs can be recovered through either of the alternate rate change means—cost of service or settlement rates—as provided in [Order No. 561].'').

[119] Such cost changes would impact the composite central tendency of the data sample through the weighted mean and unweighted mean, which, unlike the median, reflect the cost experiences of all pipelines in the sample, including those at the upper and lower bounds.

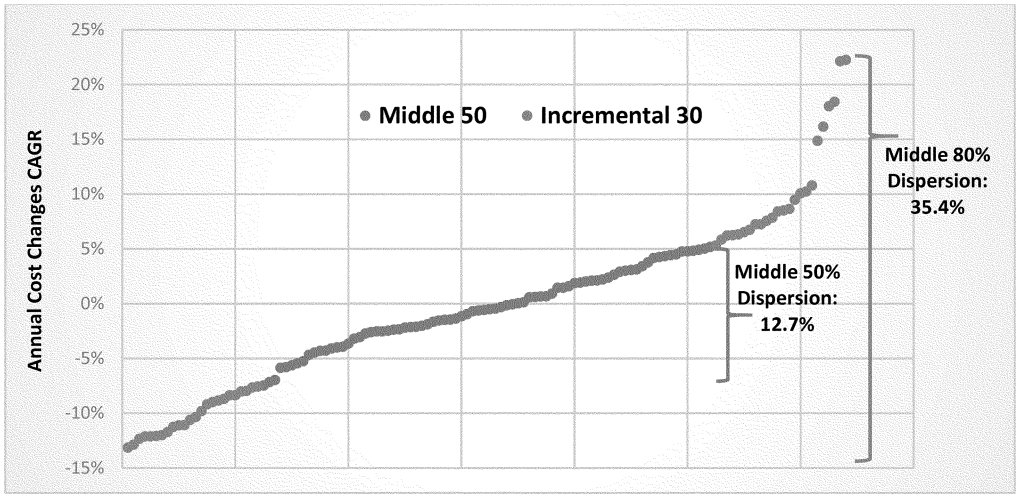
[120] 2010 Index Review, 133 FERC ¶ 61,228 at P 61; 2015 Index Review, 153 FERC ¶ 61,312 at P 43 (''[B]y definition, costs at the top (or bottom) of the middle 80 percent deviate significantly from the cost experience of other pipelines''); *id.* P 44 (''Pipelines in the middle 80 percent, as opposed to the middle 50 percent, are more likely to have outlying cost changes which could result from idiosyncratic factors particular to that pipeline.'').

[121] 2010 Index Review, 133 FERC ¶ 61,228 at P 61.

[122] 2015 Index Review, 153 FERC ¶ 61,312 at P 42 (citing 2010 Index Review, 133 FERC ¶ 61,228 at PP 60–63).

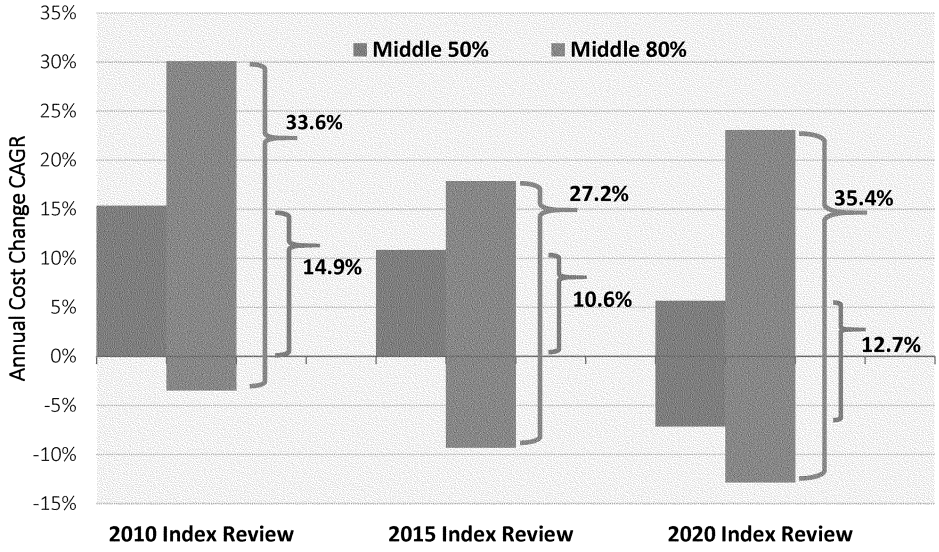
[123] *AOPL III,* 876 F.3d at 342 (explaining that the court had ''little difficulty in finding that the Commission adequately and reasonably justified its decision not to consider the middle 80 percent of pipelines' cost-change data'' in that proceeding).

[124] This scatter plot modifies a similar chart submitted by Joint Commenters. Joint Commenters Reply Comments, Brattle Group Report at 19, Figure 3 (scatter plot illustrating dispersion of the middle 50% and middle 80% in the unadjusted 2020 data set). The modifications reflect the adjustments adopted herein to the page 700 data set.



47. Furthermore, the pipelines at the upper bound of the middle 80% exert an outsized influence that inflates the index calculation.[125] The difference between the middle 50% and the middle 80% results primarily from 8 pipelines at the upper bound of the middle 80%. Namely, expanding the data sample from the middle 50% to the middle 70%, which omits the top and bottom 8 pipelines in the middle 80%, only increases the composite central tendency by 3 basis points, from −0.21% to −0.18%.[126] By contrast, expanding the sample to include these 16 pipelines increases the composite central tendency by an additional 29 basis points, from −0.18% to 0.11%.[127] In contrast to their outsized effect on the index, the 8 pipelines at the upper bound of the middle 80% account for only 2.10% of total barrel-miles.

Not only does the middle 80% include pipelines at its upper bound that diverge considerably from the other pipelines in the sample, but the record further establishes that the middle 80% as a whole is even more dispersed than in 2015 or 2010,[128] as illustrated in the bar chart below.[129]



[125] AOPL's calculations demonstrate that using the middle 80% would increase the cost change calculation by 41 basis points while only expanding the number of barrel-miles in the analysis by approximately 14%. Shehadeh Initial Decl., Exhibit A11 (calculating that the composite central tendency of the cost change data, when incorporating AOPL's proposed adjustments to remove the effects of the Income Tax Policy Change, increases from 0.90% to 1.31% when expanding from the middle 50% to the middle 80%); Shehadeh Initial Decl., Exhibit A12 (stating that the middle 50% and middle 80% contain 81.9% and 95.8%, respectively, of total barrel-miles in 2014 subject to the index).

[126] As discussed above, the Kahn Methodology calculates a composite central tendency by averaging the data sample's median, weighted mean, and unweighted mean. *See supra* P 4.

[127] Attach. A, Exhibit 14. The outsized impact these pipelines exert upon the index calculation undermines the conclusion in the December 2020 Order that the dispersion of the middle 80% is not relevant because it results from ''just a few pipelines at the top of the middle 80%.'' December 2020 Order, 173 FERC ¶ 61,245 at P 29. Furthermore, this analysis rebuts the statement in the December 2020 Order that the record did not contain a ''detailed showing'' that using the additional data in the middle 80% would distort the index calculation. *Id.*

[128] When the data sample is highly dispersed, data at the outer bounds of the middle 80% are further removed from the remaining data and thus can have an outsized and distorting effect if used to measure the central tendency.

[129] The bar chart modifies a similar chart submitted by Joint Commenters. Joint Commenters Reply Comments, Brattle Group Report at 18, Figure 2 (bar chart illustrating dispersion of middle 50% and middle 80% in 2010, 2015, and the unadjusted 2020 data sets). The modifications reflect the adjustments adopted herein to the page 700 data set.

48. Additionally, AOPL has presented no evidence that the middle 80% in this proceeding lacks the type of atypical and idiosyncratic cost changes observed in the middle 80% in the 2015 and 2010 Index Reviews.[130] To the contrary, the record demonstrates that the additional data included in the incremental 30% contains pipelines with idiosyncratic cost changes resulting from circumstances that are not broadly shared across the industry. For example, Joint Commenters identify 7 pipelines in the incremental 30% whose reported cost changes resulted from irregular circumstances or specific factors not broadly shared across the industry, such as temporary shutdowns or pipeline ruptures.[131]

49. In sum, the record demonstrates that the middle 80% in this proceeding includes pipelines with extraordinary cost changes that are not reflective of ordinary pipeline operations. Accordingly, we find that for purposes of calculating the index level in this proceeding, using the more tailored data sample embodied by the middle 50% produces a more accurate measure of ''normal'' cost changes and minimizes the risk that the index will be distorted by pipelines with unrepresentative cost experiences. Pipelines have not demonstrated why the instant record is distinguishable from the 2015 and 2010 Index Reviews such that the Commission should depart from the data trimming methodology it employed in those proceedings.

b. Reconsidering the December 2020 Order

50. We believe the reasons given in the December 2020 Order for using the middle 80% in this proceeding to be in error.

51. First, the mere fact that the middle 80% includes additional data does not support departing from the middle 50%.[132] The middle 50% already includes 81% of industry-wide oil pipeline barrel-miles,[133] which is significantly more than the barrel-miles used in prior index reviews.[134] Moreover, the middle 80% only incorporates an additional 15% more of the industry's barrel-miles. Thus, although using the middle 50% excludes 48 pipelines from the cost-change analysis,[135] omitting these pipelines does not deprive the Commission of a robust data sample. Moreover, any benefits of considering the larger data sample do not outweigh the risk, discussed above, that this additional data will distort the measurement of normal cost changes.

52. Second, we disagree with the December 2020 Order and find that for purposes of this proceeding, ''normal'' cost changes are best measured using a more tailored data sample that excludes the anomalous and idiosyncratic data in the middle 80%.[136] For the reasons discussed above,[137] this record demonstrates that ''including data from the middle 80% distorts our measurement of the industry-wide central tendency [used to calculate the index level].'' [138] Rather, using the middle 50% is more consistent with the index's purpose of allowing recovery for normal cost changes, not extraordinary costs.

53. Third, in the December 2020 Order, the Commission sought to distinguish the 2010 and 2015 Index Reviews on the basis that, unlike in the instant review, commenters in those proceedings ''presented detailed analyses demonstrating that the incremental 30% contained anomalous cost changes . . . .'' [139] However, we no longer find this reasoning persuasive because, as in prior reviews, the present record demonstrates the middle 80% includes outlying cost increases, reflects significant dispersion, and includes pipelines with idiosyncratic cost changes. Although shippers submitted more detailed analyses in 2010 and 2015, they presented this evidence to support manual data trimming proposals that required a labor-intensive pipeline-by-pipeline analysis of page 700 data. Finding manual data trimming to be highly subjective, the Commission rejected this approach because ''[a]ny potential improvement from manual data trimming is outweighed by the increase in the potential for error or manipulation.'' [140] Rather, the Commission concluded that, instead of manual data trimming, using the middle 50% more effectively addressed those same issues in a manner that was more consistent with simplified and streamlined ratemaking.[141] We conclude that it would be incongruous to reject such manual data trimming while at the same time requiring commenters to present similar analyses to justify continued use of the middle 50%.[142]

c. AOPL's Remaining Arguments Are Not Persuasive

54. We reject AOPL's remaining arguments in support of using the

[130] AOPL, the proponent of changing the Commission's policy to use the middle 80% instead of the middle 50%, had the opportunity to provide such evidence in its initial comments and reply comments. *See* 5 U.S.C. 556(d) (''Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof.''); *P.R.* v. *Fed. Mar. Comm'n,* 468 F.2d 872, 881 (D.C. Cir. 1972) (''Ultimately, the rule requiring the proponent of an order to sustain the burden of its justification rests on the policy of requiring a person seeking a change from the status quo to take on the burden of justifying the change.''); *see also S. Ga. Nat. Gas Co.,* 73 FERC ¶ 61,354, at 62,106 (1995) (''[W]here there is a 'settled practice,' the proponent of a change to that practice has the burden of proof.'').

[131] Joint Commenters Reply Comments, Brattle Group Report at 13–17. For example, PMI Services North America, Inc., reported an inflated 2019 cost of service per barrel-mile due to a temporary shutdown of one of its pipeline segments and Mobil Pipe Line Company experienced a pipeline rupture in 2013 that distorted its 2014 cost-of-service data. *Id.* at 15–17.

[132] *See AOPL III,* 876 F.3d at 343 (noting the Commission has ''rejected the precise principle'' that the middle 80% is preferable because it includes a larger number of pipelines) (citing 2010 Index Review, 133 FERC ¶ 61,228 at PP 57, 61); 2015 Index Review, 153 FERC ¶ 61,312 at P 44 (rejecting argument that ''the middle 80 percent should be used merely because it contains more barrel-miles'').

[133] Attach. A, Exhibit 1.

[134] In the 2015 and 2010 Index Reviews, the Commission concluded that it was ''unnecessary to include the middle 80 percent to obtain a representative sample of the data'' where the middle 50% included 56% and 76%, respectively, of total barrel-miles subject to the index. 2010 Index Review, 133 FERC ¶ 61,228 at P 63; *see also* 2015 Index Review, 153 FERC ¶ 61,312 at P 44 n.85 (concluding that the fact that the middle 50% included a lower percentage of barrel-miles than in 2010 ''is not a sufficient basis to risk including more outlying data''), *aff'd, AOPL III,* 876 F.3d at 344.

[135] December Order, 173 FERC ¶ 61,245 at P 26.

[136] We disagree with the statement in the December 2020 Order that using the middle 80% is appropriate because the index average will be significantly below the relatively high cost changes at the upper bound. *Id.* PP 27, 32. Even if the index average is not set at the upper bound of the data sample, including the upper bound of the middle 80% nonetheless produces an index average inflated by anomalous cost experience. *See* 2010 Index Review, 133 FERC ¶ 61,228 at P 61 (''Using the middle 50[%] ensures that pipelines with relatively large cost increases or decreases do not distort the index.'').

[137] *See supra* PP 46–50.

[138] December 2020 Order, 173 FERC ¶ 61,245 at P 27. The December 2020 Order erroneously implied that entities supporting continued use of the middle 50% must provide a ''compelling showing'' that using the middle 80% would distort the calculation of the index level. *Id.* Although the record here provides such a compelling showing, we clarify that entities advocating for a departure from the Commission's practice of using the middle 50% bear the burden of justifying that change. *See supra* note 129.

[139] December 2020 Order, 173 FERC ¶ 61,245 at P 28.

[140] 2015 Index Review, 153 FERC ¶ 61,312 at P 34; *see also id.* PP 36, 42; 2010 Index Review, 133 FERC ¶ 61,228 at P 62.

[141] 2015 Index Review, 153 FERC ¶ 61,312 at PP 36, 42; 2010 Index Review, 133 FERC ¶ 61,228 at P 62.

[142] In any case, the December 2020 Order overstates the absence of evidence regarding anomalous data among the 48 pipelines in the incremental 30%. Acknowledging that Shippers identified 7 pipelines, the December 2020 Order stated that for the remaining 41 there is no evidence of anomalous data. December 2020 Order, 173 FERC ¶ 61,245 at P 28. However, this ignores the chart above that examined the entire middle 80% and showed how those pipelines at the top of the middle 80% were inflating the index level.

middle 80% as unpersuasive. First, AOPL erroneously claims that the Commission should use the middle 80% based upon its previous recognition that ''it is preferable to apply the larger data set when the additional data is available using the Kahn Methodology.'' [143] However, the D.C. Circuit rejected this exact argument following the 2015 Index Review, finding that the quoted language ''addressed FERC's approach to selecting the pool of pipelines whose costs should be measured at all—not the portion of the resulting data to trim before calculating the normal industry change in costs.'' [144] Further, the court explained that the Commission had in fact rejected the argument that it is preferable to use a larger data sample merely because additional data is available. Instead, the Commission concluded that the middle 50% more appropriately adjusts the index level for normal cost changes, notwithstanding the fact that it contains less data than the middle 80%.[145] We reject AOPL's argument for the same reasons here.

55. Second, we dismiss AOPL's claim that the middle 80% provides a more accurate measure of industry cost changes merely because it resembles a lognormal distribution.[146] As the Commission found in the 2015 Index Review and as the D.C. Circuit affirmed, to the extent that the middle 80% data conforms to a lognormal distribution, outlying cost increases per barrel-mile will not be offset by similarly outlying cost decreases.[147] This concern is illustrated in the instant record, where the middle 80% includes multiple pipelines with cost increases above 100% and no pipelines with cost decreases of negative 100%.[148] Thus, using the middle 80% would skew the index upward based upon these outlying cost increases, which is contrary to the index's objective of reflecting normal cost changes.[149]

56. Third, AOPL misconstrues Commission precedent in claiming that reliance on the middle 50% is only appropriate where there are concerns of erroneous data.[150] Although use of the middle 50% in Order No. 561 was based in part upon concerns about erroneous data, the Commission has relied upon the middle 50% to exclude not only inaccurate data, but also extraordinary data that is unrepresentative of normal cost experience.[151] As the D.C. Circuit explained when upholding the Commission's continued use of the middle 50% in the 2015 Index Review, the Commission provided extensive justification for its ongoing reliance on the middle 50% in both the 2010 and 2015 Index Reviews.[152] Thus, even where the reported page 700 data is accurate, it remains necessary to use the middle 50% to avoid including outlying data that exerts a disproportionate impact on the index calculation.

57. In sum, we conclude that the evidence does not support departing from the Commission's established practice of trimming the data set to the middle 50%. Pipelines have presented the same arguments that the Commission rejected in the 2010 Index Review and that the Commission and the D.C. Circuit rejected in the 2015 Index Review. Pipelines also presented no evidence demonstrating that the middle 80% contains fewer pipelines with idiosyncratic cost changes than in 2010 and 2015. Moreover, as articulated above, the record in this proceeding provides less support for using the middle 80% than in 2015 or 2010 because the middle 50% includes a considerably higher percentage of industry-wide barrel-miles (81% in 2020 versus 76% in 2010 and 56% in 2015) and the middle 80% of this data set is more dispersed. We therefore grant Shippers' requests for rehearing to calculate the index level using the middle 50%.[153]

C. Liquids Shippers' Proposal To Calculate the Composite Measure of Central Tendency Using the Weighted Median

58. Liquids Shippers argued in their comments that the weighted mean of the data set in this proceeding accords undue weight to two pipelines, Colonial and Enbridge Energy, L.P. (Enbridge). Liquids Shippers asserted that these pipelines are substantial outliers in terms of barrel-miles and cost changes [154] and that both reported inaccurate page 700 data for 2014 and 2019.[155] Because the weighted mean affords these pipelines significant weight, Liquids Shippers argued that using it to calculate the composite measure of central tendency will skew the index upwards and fail to track normal industry-wide cost changes.[156] To remedy this issue, Liquids Shippers proposed to replace the weighted mean in the index calculation with the median of the barrel-mile weighted cost changes in the middle 50% (weighted median), as calculated by their witness Elizabeth H. Crowe. Alternatively, if the Commission decides not to replace the weighted mean with the weighted median, Liquids Shippers proposed reducing the weighting afforded to the weighted mean in the Kahn Methodology from 33.3% to 20% or 10%.[157]

1. December 2020 Order

59. The December 2020 Order declined to adopt Liquids Shippers' proposals. First, the Commission found that removing the weighted mean from the index calculation would conflict with longstanding Commission precedent relying upon the weighted mean and with Dr. Kahn's testimony in the Order No. 561 rulemaking proceeding endorsing its use.[158] Second, the Commission explained that the index aims to track cost changes among

[143] AOPL Initial Comments at 19–20 (quoting 2010 Index Rehearing Order, 135 FERC ¶ 61,172 at P 41).

[144] *AOPL III,* 876 F.3d at 343 (citing 2010 Index Rehearing Order, 135 FERC ¶ 61,172 at P 41 & n.38).

[145] *Id.* (citing 2010 Index Review, 133 FERC ¶ 61,228 at PP 57, 61).

[146] AOPL Initial Comments at 20–21; AOPL Reply Comments at 8–9 (citing Shehadeh Initial Decl. at 24). A lognormal distribution is a continuous probability distribution of a random variable whose logarithm is normally distributed.

[147] 2015 Index Review, 153 FERC ¶ 61,312 at P 43 (''using the middle 80 percent would skew the index upward based upon these outlying cost increases, which is contrary to the objective of the index to reflect normal industry-wide cost changes''), *aff'd, AOPL III,* 876 F.3d at 344.

[148] *See* Liquids Shippers Reply Comments at 24 (citing Crowe Reply Aff. at 4–5).

[149] We also question the mathematical reasoning underlying AOPL's argument. Specifically, a lognormal distribution occurs when performing a natural logarithm transformation of a data set produces a normal distribution. However, it is not possible to take the natural logarithm of negative numbers. *Id.* at 24–25. Because the data set here contains negative numbers, it cannot be lognormally distributed.

[150] AOPL Initial Comments at 21–22 (citing Shehadeh Initial Decl. at 21–22).

[151] *See* 2010 Index Review, 133 FERC ¶ 61,228 at P 61 (''Even when accurate data is reported, pipelines in the middle 80, as opposed to the middle 50, are more likely to have cost changes resulting from factors particular to that pipeline, such as a rate base expansion, plant retirement, or localized changes in supply and demand.'').

[152] *See AOPL III,* 876 F.3d at 343 (rejecting AOPL's argument that the Commission was precluded from excluding the middle 80% when ''that data is available and accurate''); *id.* at 339 (''[C]ontrary to AOPL's assertion, nothing in any of FERC's past index review orders bound the agency to use the middle 80 percent of pipelines' cost-change data.'').

[153] Consistent with the Commission's historical practice, nothing in this order precludes commenters from proposing modifications to the Kahn Methodology, including different data trimming methodologies, in future five-year reviews based upon the records in those proceedings. *See* NOI, 171 FERC ¶ 61,239 at P 8 (''We invite interested persons to submit comments regarding . . . any alternative methodologies for calculating the index level for the five-year period commencing July 1, 2021. Commenters may address issues that include, but are not limited to, different data trimming methodologies . . . .'').

[154] Liquids Shippers Initial Comments at 13–15.

[155] *Id.* at 17–19.

[156] *Id.* at 16–19.

[157] *Id.* at 20 n.45; Crowe Initial Aff. at 8–9.

[158] December 2020 Order, 173 FERC ¶ 61,245 at P 36.

pipelines of all sizes and that discarding the weighted mean or reducing the weighting it receives in the analysis would upset the balance between large and small pipelines that the Kahn Methodology achieves.[159] Third, the Commission determined that Liquids Shippers' calculation of the weighted median was methodologically flawed and did not provide a useful measure of central tendency for purposes of calculating the index.[160] Fourth, the Commission concluded that Liquids Shippers' challenges to Colonial's and Enbridge's page 700 data are misplaced and unavailing on the merits.[161]

2. Rehearing Request

60. Liquids Shippers renew their arguments that Colonial and Enbridge are outliers in terms of cost changes [162] and barrel-miles [163] and that these pipelines reported inaccurate page 700 data for 2014 and 2019.[164] As a result, Liquids Shippers argue that using the weighted mean in this proceeding skews the index level upwards, fails to reflect industry-wide cost changes, and increases the likelihood that inaccurate or erroneous page 700 data will distort the index calculation.[165] Liquids Shippers argue that the December 2020 Order failed to address their evidence that Colonial and Enbridge are outliers in terms of barrel-miles or acknowledge the errors in those pipelines' page 700 data. Although the Commission has previously declined to consider challenges to individual pipelines' page 700 inputs, Liquids Shippers state that this proceeding is distinct because of the substantial weight the weighted mean accords to Colonial and Enbridge.[166]

61. Liquids Shippers further argue that the December 2020 Order erred in relying upon earlier index proceedings to justify using the weighted mean in this case. Liquids Shippers contend that this proceeding is distinguishable from prior five-year reviews because the weighted mean is heavily influenced by just two pipelines and a commenter has demonstrated that two outlying pipelines skew the weighted mean.[167] Furthermore, Liquids Shippers state that there is limited judicial and Commission precedent addressing use of the weighted mean and that existing precedent supports only the use of some weighted measure of central tendency.[168] Liquids Shippers maintain that they do not object to the Commission taking pipeline size into account or according additional weight to larger pipelines when calculating the index level, so long as two pipelines like Colonial and Enbridge are not permitted to skew the result.[169]

62. In addition, Liquids Shippers object to the December 2020 Order's suggestion that shippers should challenge the inputs in a particular pipeline's page 700 by filing a complaint.[170] Liquids Shippers state that a cost-of-service complaint against a pipeline's base rates is unlikely to result in changes to its page 700 and that there would be no commercial benefit for a shipper to file a complaint for the sole purpose of challenging the pipeline's page 700 inputs.[171] Liquids Shippers argue that by requiring shippers to challenge page 700 inputs in a complaint or litigated rate proceeding, the Commission is insulating pipelines' page 700 data from meaningful review.[172]

3. Commission Determination

63. We are unpersuaded by Liquids Shippers' arguments and deny rehearing. As the December 2020 Order explains, replacing the weighted mean in the calculation of the composite central tendency would contravene longstanding Commission practice dating to the rulemaking proceeding that established the indexing regime.[173] As discussed below, although no commenter has previously challenged the use of the weighted mean in the Kahn Methodology, we find that Liquids Shippers have not justified departing from the Commission's well-established policy.[174]

64. As an initial matter, Liquids Shippers acknowledge that the Kahn Methodology appropriately relies upon a weighted measure of central tendency [175] but fail to propose a credible alternative to the weighted mean. As discussed above, the December 2020 Order rejected Liquids Shippers' proposed weighted median calculation as methodologically flawed. The Commission explained that the established statistically appropriate method for calculating the weighted median, as applied to pipeline cost changes, is to order the pipelines by cost-change percentage, compute each pipeline's share of total barrel-miles, and identify the pipeline whose share of total barrel-miles causes the cumulative share to reach 50%.[176] However, rather than identify the pipeline that causes the cumulative share of total barrel-miles represented in the sample to reach 50%, Ms. Crowe derives the median value of the weighted cost-change percentages for 2019 without regard to the barrel-miles represented above and below that cost change.[177] Unlike the correct calculation of the weighted median, Ms. Crowe does not order pipelines by cost changes, and instead orders them by cost change times barrel-miles.[178] The Commission found that under this approach, it is unclear whether the median pipeline of a given sample reported (a) relatively high cost changes and low barrel-miles or (b) relatively low cost changes and high barrel-miles.[179] The Commission also observed that a small shift in the data sample's median would produce significant and multidirectional changes in the calculation's result.[180] Thus, the

[159] *Id.* P 37.

[160] *Id.* PP 38–39.

[161] *Id.* P 40.

[162] Liquids Shippers Request for Rehearing at 56–57. Liquids Shippers assert that Enbridge and Colonial reported annual cost changes of 3.1% and 4.3%, respectively, both of which exceed the median of the data set (0.05%), the unweighted mean of the middle 80% (1.45%), and the unweighted mean of the middle 50% (0.29%). *Id.* (citing December 2020 Order, 173 FERC ¶ 61,245 at Workpapers, Exhibit 5 Tab, Column P, Lines 21 and 35; *id.* at Workpapers, Exhibit 1 Tab, Column F, Lines 11–12; *id.* at Workpapers, Exhibit 5 Tab, Column Q, Line 184).

[163] Specifically, Liquids Shippers state that Colonial and Enbridge represent 40% of the total barrel-miles in the untrimmed data set of 160 pipelines and 48% of the total barrel-miles in the middle 50% sample used in the NOI. Liquids Shippers Request for Rehearing at 54–55.

[164] *Id.* at 65–66.

[165] *Id.* at 58, 65–67. Liquids Shippers state that removing Enbridge and Colonial from the data set would cause the index level proposed in the NOI to decrease from PPI–FG+0.09% to PPI–FG–0.34%. *Id.* at 57 (citing Liquids Shippers Initial Comments at 15–16; Crowe Initial Aff. at 6–7). Given this effect, Liquids Shippers argue that affording these pipelines significant weight will skew the index upward. *Id.* at 58.

[166] *Id.* at 67.

[167] *Id.* at 64, 67.

[168] *Id.* at 62–63 (quoting *AOPL II,* 281 F.3d at 241).

[169] *Id.* at 63.

[170] *Id.* at 68 (citing December 2020 Order, 173 FERC ¶ 61,245 at P 40 n.87).

[171] *Id.* at 68–69.

[172] *Id.* at 69.

[173] December 2020 Order, 173 FERC ¶ 61,245 at P 36.

[174] *See supra* note 129.

[175] Liquids Shippers Request for Rehearing at 63.

[176] December 2020 Order, 173 FERC ¶ 61,245 at P 38 (citing Shehadeh Reply Decl. at 11 & App. B, Ex. 1). In fact, as explained in the December 2020 Order, the pipeline reflecting the weighted median using such a calculation would be Enbridge (which as discussed below, Liquids Shippers allege should be removed as an outlier from the data set). *Id.* P 40.

[177] *Id.* P 39.

[178] *Id.*

[179] *Id.* n.84.

[180] For example, a median reflecting the pipeline with the next lowest weighted percentage change (Wildcat Liquids Caddo LLC) would reduce Ms. Crowe's result from 0.57% to −1.74% (a decrease of over 200%), whereas a median reflecting the next highest weighted percentage change (reported by Wesco Pipeline, LLC) would reduce the result by an even greater amount, from −0.57% to −2.28% (a decrease of 400%). *Id.* n.85.

Commission determined that this calculation produces ''haphazard results'' that ''do not reflect a convergence towards a central tendency of industry-wide cost changes.'' [181] The Commission further explained that Ms. Crowe's methodology would ''nullify the influence of larger pipelines upon the index calculation and thereby defeat the purpose of relying upon a weighted measure of central tendency.'' [182] On rehearing, Liquids Shippers do not address these findings or attempt to rectify the identified flaws in Ms. Crowe's weighted median calculation. Thus, even if we were inclined to replace the weighted mean with a different weighted measure of central tendency, Liquids Shippers present no credible alternative.

65. In addition, we remain unpersuaded by Liquids Shippers' claims that the weighted mean needs to be modified or replaced because two large pipelines, Colonial and Enbridge, allegedly skew the index calculation. First, the December 2020 Order found that the record indicates that neither Colonial nor Enbridge reported outlying cost changes,[183] and Liquids Shippers do not refute these findings on rehearing.[184] Although both Colonial and Enbridge reported barrel-mile cost changes above the median in the middle 50%, this does not make them outliers in terms of cost changes.[185] Second, the fact that the weighted mean in this proceeding ascribes additional weight to two pipelines with high barrel-miles does not support removing this measure of central tendency or reducing its weighting in the Kahn Methodology. Rather, the Kahn Methodology includes the weighted mean in the calculation of central tendency specifically to provide appropriate weight to large pipelines like Colonial and Enbridge whose cost changes are highly reflective of industry cost experience.[186] This additional weighting is necessary to ensure that ''minor firms do not skew the result.'' [187] Because unweighted measures of central tendency weight all cost changes equally without regard to pipeline size, failing to incorporate a weighted measure would allow the cost experiences of small pipelines to obscure the experiences of pipelines that represent a much larger share of the industry's barrel-miles. In this proceeding, for instance, three small pipelines representing 0.00073% of the barrel-miles in the middle 50% influence the sample's unweighted mean by the same degree as Colonial and Enbridge, which represent 50.04% of the barrel-miles in the middle 50%.[188] Thus, the fact that the weighted mean accords significant weight to Colonial and Enbridge is fully consistent with its role in the index calculation and does not skew the index calculation as Liquids Shippers allege.[189] To the extent that Liquids Shippers oppose use of the weighted mean in this proceeding because it provides significant weighting to the two largest pipelines,[190] we find that this concern does not justify eliminating the weighted mean from the index calculation in the absence of a credible alternative.[191]

66. Moreover, we continue to find that Liquids Shippers' challenges to the reported page 700 data of Colonial and Enbridge are outside the scope of this proceeding. As the December 2020 Order explains, indexing proceedings are not an appropriate forum for challenging specific pipelines' page 700 inputs.[192] In the five-year review, the Commission must review pipeline cost changes on an industry-wide basis to establish the generic index that pipelines may use to adjust their rates going forward. Allowing commenters to litigate individual pipelines' page 700 inputs would risk expanding this review into a wide-ranging rate proceeding involving complex cost-of-service issues that would require significant time to resolve. Given that the Commission must consider industry-wide cost changes based upon data for over 160 pipelines and must complete each five-year review in order to establish the index level for use in index filings to be effective on July 1 of the following year,[193] it would be unworkable to permit challenges to individual pipeline page 700 inputs in this proceeding.

67. Furthermore, we are not persuaded by Liquids Shippers' claim that reporting errors by Colonial and Enbridge are skewing the index level upwards by 43 basis points.[194] Regarding Enbridge, this argument is particularly unpersuasive. First, removing Enbridge from the middle 50%, while retaining Colonial in that sample, actually *increases* the index level rather than decreasing it as Liquids Shippers imply.[195] Second, correcting Enbridge's alleged reporting errors only marginally influences the index calculation. Liquids Shippers claim that the 12.71% ROE that Enbridge reported on page 700 for 2019 exceeds both the 9.84% ROE that it reported for 2014 and the 10.85% ROE that many pipelines reported on page 700 for 2019. However, adjusting Enbridge's 2019 page 700 ROE from 12.71% to 9.84% or 10.85% would only impact the index level by 2 basis points.[196]

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[181] *Id.*

[182] *Id.* n.86 (citing *AOPL II,* 281 F.3d at 241). Specifically, the Commission explained that because Ms. Crowe orders the pipelines by barrel-mile cost change times barrel-miles, a pipeline with high barrel-miles would likely only lie near the median of the data sample if it reported extremely low cost changes. *Id.*

[183] The Commission observed that both Colonial and Enbridge are included in the middle 50% of cost changes, which indicates that their cost experiences did not diverge significantly from industry norms. December 2020 Order, 173 FERC ¶ 61,245 at P 40.

[184] *See* Liquids Shippers Request for Rehearing at 65–66 (acknowledging the Commission's findings but arguing that they do ''not respond to [Liquids Shippers'] evidence or [their] concerns that Enbridge Energy and Colonial skew the index due to being extreme outliers in terms of barrel-miles . . . .'').

[185] The 2014–2019 cost changes in the middle 50% ranged from −32.23% to 28.97%. Colonial's cost change of 23.72% lies well within the middle 50%'s upper bound, while Enbridge's cost change of 3.43% lies close to the median of the sample.

[186] December 2020 Order, 173 FERC ¶ 61,245 at P 37.

[187] *AOPL II,* 281 F.3d at 241.

[188] Whereas removing the cost changes of Colonial and Enbridge would reduce the unweighted mean by 7 basis points (from −0.20% to −0.27%), removing the cost changes of Wesco Pipeline LLC, Hilcorp Pipeline Company, LLC, and Black Bear Liquids LLC increases the unweighted mean by the same magnitude of 7 basis points (from −0.20% to −0.13%). Attach. A, Exhibit 13.

[189] December 2020 Order, 173 FERC ¶ 61,245 at P 37.

[190] Liquids Shippers Request for Rehearing at 63, 65–66.

[191] As discussed above, although Liquids Shippers contend that another approach to weighting pipeline cost changes may achieve a better balance between large and small pipelines, they have not justified an alternative to the weighted mean.

[192] December 2020 Order, 173 FERC ¶ 61,245 at P 40; *see also AOPL I,* 83 F.3d at 1437 (holding that the Commission did not err in Order No. 561 by declining to periodically review individual pipeline costs and instead requiring shippers to challenge individual pipeline rates via protests or complaints); *Calnev Pipe Line L.L.C.,* 127 FERC ¶ 61,304, at P 5 (2009) (''[T]he Commission has made quite clear that it will not review allegations regarding the appropriateness of a pipeline's cost of service or the accuracy of its accounting in an index proceeding. Such allegations must be included in a complaint once the index-based filing becomes effective.'' (citing *SFPP, L.P.,* 123 FERC ¶ 61,317 (2008); *BP W. Coast Prods. LLC* v. *SFPP, L.P.,* 121 FERC ¶ 61,243 (2007))).

[193] NOI, 171 FERC ¶ 61,239 at P 11.

[194] Liquids Shippers allege that when using the data set underlying the NOI proposal, removing Enbridge and Colonial from the middle 50% reduces the index level by 43 basis points (from PPI–FG+0.09% to PPI–FG–0.34%). Liquids Shippers Request for Rehearing at 57 (citing Liquids Shippers Initial Comments; Crowe Initial Aff. at 6–7). Similarly, removing those pipelines from the middle 50% of the data set adopted in the instant order would reduce the index level by 44 basis points, from PPI–FG–0.21% to PPI–FG–0.65%. Attach. A, Exhibit 8.

[195] Removing Enbridge from the middle 50% but not Colonial, increases the index level from PPI–FG–0.21% to PPI–FG–0.14%. Attach. A, Exhibit 9.

[196] Lowering Enbridge's page 700 ROE from 12.71% to either 9.84% or 10.85% would reduce

Continued

68. Similarly, although Colonial accounts for most of the 44 basis-point shift in the index calculation that results from removing Colonial and Enbridge from the middle 50%, correcting Colonial's alleged reporting errors produces only a *de minimis* change in the index level. Liquids Shippers argue that Colonial reported in its 2014 and 2019 page 700 filings that it is 92% financed by equity, but reported on its balance sheet and in an ongoing rate proceeding that it is 100% financed by debt.[197] However, adjusting Colonial's capital structure to 50% equity and 50% debt produces a mere one-basis-point change to the index level.[198] Accordingly, given these relatively minor effects, we are unpersuaded by Liquids Shippers' claim that using the weighted mean in this proceeding increases the likelihood that page 700 reporting errors will skew the index calculation.

69. Furthermore, we find that requiring shippers to challenge page 700 inputs outside of the five-year review process does not present an infeasible approach. First, Liquids Shippers' argument that a cost-of-service complaint is unlikely to result in a change to the pipeline's page 700 reporting is without merit. For example, if the Commission determines in a cost-of-service rate proceeding that a pipeline set its rates based upon an inaccurate capital structure, the pipeline would be required to implement this determination in its subsequent page 700 reporting.[199] Second, we are unpersuaded by Liquids Shippers' claim that a complaint challenging a pipeline's page 700 inputs would bring shippers ''no commercial benefits.'' [200] Where a shipper believes that a pipeline may have reported inaccurate or erroneous information on its page 700, initiating a complaint proceeding provides the parties and the Commission with a full opportunity to develop an evidentiary record that would allow for a meaningful review of the challenged page 700 inputs. If the complaint is successful, the Commission would direct the pipeline to revise its page 700 to correct any errors or inaccuracies. These revisions, in turn, could alter the cost and revenue data on which shippers and the Commission rely in evaluating cost-of-service complaints against the pipeline's rates and challenges to the pipeline's annual index rate changes. Thus, although we recognize the burden and expense associated with filing a complaint, we disagree with Liquids Shippers' claim that there would be no commercial benefits to filing a complaint against a pipeline's page 700 inputs.

D. Liquids Shippers' Proposal To Adopt Standardized ROEs for 2014 and 2019

70. Liquids Shippers argued in their comments that the reported page 700 ROEs conflict with the Commission's cost-of-service ratemaking methodology because they are self-reported and vary substantially.[201] In addition, Liquids Shippers maintained that uncertainty surrounding the Commission's oil pipeline ROE policy at the time pipelines submitted their page 700 filings for 2019 undermined the reliability of the reported ROEs for 2019.[202] Thus, Liquids Shippers urged the Commission to replace pipelines' reported page 700 ROEs for 2014 and 2019 with standardized ROEs for purposes of calculating the index level. For 2014, Liquids Shippers proposed a standardized ROE of 10.29%, which 54 pipelines reported in their 2014 page 700 filings.[203] For 2019, Liquids Shippers proposed to use the 10.02% ROE that Trial Staff proposed in an ongoing Colonial rate proceeding based upon data for the six-month period ending in November 2019.[204]

1. December 2020 Order

71. The December 2020 Order declined to adopt standardized ROEs for 2014 and 2019 and concluded that Liquids Shippers have not demonstrated that the reported page 700 ROEs are unreliable or inconsistent with Commission policy.[205] First, the Commission rejected Liquids Shippers' argument that page 700 ROEs are unreliable simply because they are self-reported, reasoning that the instructions on page 700 required pipelines to determine ROE consistent with the Commission's then-applicable policy of relying solely upon the DCF model.[206] Second, the Commission found that variation among page 700 ROEs does not indicate that this data is unreliable and that such variation may result from differences in proxy group composition and relative risk.[207] Third, the Commission rejected Liquids Shippers' contention that pipelines were uncertain as to the Commission's oil pipeline ROE policy when they submitted their 2019 Form No. 6 filings. The Commission found that pipelines had adequate notice of the prevailing policy through the page 700 instruction requiring pipelines to determine ROE consistent with the then-current Opinion No. 154–B methodology.[208] Fourth, the Commission found that Liquids Shippers have not supported their proposed standardized ROEs.[209] Finally, the Commission concluded that determining standardized ROEs would complicate the five-year review process and undermine indexing's purpose as a simplified and streamlined ratemaking regime.[210]

2. Rehearing Request

72. Liquids Shippers contend that the December 2020 Order erred by failing to replace the reported 2014 and 2019 page 700 ROEs with Liquids Shippers' proposed standardized ROEs. They repeat their argument that the reported page 700 ROEs cannot be consistent with the Commission's cost-of-service methodology because they vary substantially.[211] Liquids Shippers

the index level from PPI–FG–0.21% to PPI–FG–0.23%. Attach. A, Exhibit 10.

[197] Liquids Shippers Request for Rehearing at 59–60 (citing Crowe Initial Aff. at 5–6).

[198] Using the data set adopted in this proceeding, adjusting Colonial's capital structure to 50% equity and 50% debt while preserving the composition of the middle 50% increases the index level by one basis point, from PPI–FG–0.21% to PPI–FG–0.20%. Attach. A, Exhibit 11.

[199] The instructions on page 700 require pipelines to determine their page 700 inputs consistent with the Opinion No. 154–B cost-of-service methodology. To comply with this instruction, a pipeline must adhere to the Commission's application of the Opinion No. 154–B methodology in proceedings involving the pipeline's rates.

[200] Liquids Shippers Request for Rehearing at 84.

[201] Liquids Shippers Initial Comments at 21–23.

[202] *Id.* at 25–28. In support of this argument, Liquids Shippers contend that two pipelines submitted updated Form No. 6 filings in July 2020 indicating that the page 700 ROEs they reported in April 2020 did not comply with the Commission's then-applicable policy relying solely upon the DCF model. Liquids Shippers Request for Rehearing at 76–77 (citing Liquids Shippers Initial Comments at 25–28) (referring to updated Form No. 6 filings of Plains Pipeline, LP, and Rocky Mountain Pipeline System LLC).

[203] Ms. Crowe stated that 45 pipelines reported a 10.29% ROE on their page 700s for 2014. Crowe Initial Aff. at 11–12. However, based upon a review of Form No. 6 filings submitted in 2016, the Commission found in the December 2020 Order that 54 pipelines reported this ROE for 2014 in the column on page 700 for previous year data. December 2020 Order, 173 FERC ¶ 61,245 at P 43 n.97.

[204] Liquids Shippers Initial Comments at 30–31; Crowe Initial Aff. at 11 (citing Trial Staff, Exhibit S–00057 (Direct and Answering Cost-Based Rate Testimony of Commission Trial Staff Witness Robert J. Keyton), Docket Nos. OR18–7–002 et al. (filed Jan. 14, 2020)).

[205] December 2020 Order, 173 FERC ¶ 61,245 at P 45.

[206] *Id.* P 46.

[207] *Id.* P 47.

[208] *Id.* P 48.

[209] *Id.* P 49.

[210] *Id.* P 50.

[211] Liquids Shippers Request for Rehearing at 70–72 (citing *El Paso Nat. Gas Co.*, Opinion No. 528, 145 FERC ¶ 61,040, at P 592 (2013)). For instance, Liquids Shippers state that among the 160 pipelines in the untrimmed data set, the reported page 700 ROEs for 2019 range from 0.9% to 22.3%. Among the pipelines in the middle 50%, Liquids Shippers state that the 2019 page 700 ROEs range from 7.2% to 18.8%. *Id.*

emphasize that these ROEs were selected by the pipelines themselves. Furthermore, Liquids Shippers contend that the page 700 ROEs fail to accurately capture changing market conditions between 2014 and 2019 because some pipelines reported a 2019 page 700 ROE that was significantly higher than their 2014 page 700 ROE, while other pipelines reported a 2019 ROE that was significantly lower than their 2014 ROE.[212] Liquids Shippers state that to the extent there is limited evidence addressing whether the page 700 ROEs conflict with the Commission's policy, the absence of more concrete evidence ''does not give rise to a negative inference that such evidence does not exist.'' [213]

73. Liquids Shippers also challenge the Commission's finding that variations in the reported page 700 ROEs could result from differences in proxy group composition and relative risk. Liquids Shippers claim that the December 2020 Order cites no evidence for this conclusion, despite the fact that the Commission has access to the workpapers underlying pipelines' page 700 ROE calculations.[214] In addition, Liquids Shippers contend that the Commission overstates the degree of variation that can result from these factors. Regarding proxy group composition, Liquids Shippers state that there is a small number of eligible oil pipeline proxy group members, such that there is limited, if any, potential for variation in the proxy group that may be used from pipeline to pipeline.[215] Regarding differences in risk, Liquids Shippers contend that the Commission has recognized that most pipelines fall within the same broad range of average risk, such that the median of the proxy group results is sufficient to compensate most pipelines for their investments.[216]

74. Furthermore, Liquids Shippers reiterate their earlier argument that uncertainty surrounding the Commission's oil pipeline ROE methodology in April 2020 undermines the reliability of the reported page 700 ROEs for 2019.[217] Liquids Shippers dispute the Commission's finding that pipelines received adequate notice of the Commission's prevailing ROE policy through the page 700 instruction requiring pipelines to determine ROE consistent with the then-current Opinion No. 154–B methodology.[218] They argue that the ''mere existence of a rule does not guarantee compliance with that rule'' and that the Commission had an affirmative obligation to investigate whether ambiguities in its prevailing ROE policy affected the 2019 page 700 ROEs.[219]

75. In addition, Liquids Shippers contend that the Commission applied an unreasonably strict standard in rejecting their proposed standardized ROEs. Liquids Shippers state that in order to determine an ROE that ''accurately measures the investor-required cost of equity for all pipelines in the data set,'' [220] Liquids Shippers would need to provide evidence establishing the financial and business risks for more than 100 pipelines.[221]

76. Liquids Shippers also disagree with the Commission's conclusion that replacing reported page 700 ROEs with standardized ROEs would improperly complicate the five-year review. Liquids Shippers state that because standardized ROEs would only serve as benchmarks for measuring pipeline cost changes,[222] ''establishing a standardized ROE may not require the same rigor as, *e.g.,* determining an allowable ROE to be included in an oil pipeline's just and reasonable rates.'' [223] Liquids Shippers contend, moreover, that determining standardized ROEs in each five-year review would not be a prohibitive undertaking. Because most pipeline ROEs would fall at the median of the oil proxy group, Liquids Shippers state that the Commission would not have to perform an individualized analysis of every oil pipeline to determine a standardized ROE.[224] Additionally, Liquids Shippers observe that Commission Trial Staff regularly develops proposed ROEs in cost-of-service rate proceedings. Finally, Liquids Shippers contend that it is inconsistent for the Commission to reject their proposal to adopt standardized ROEs as incompatible with simplified and streamlined ratemaking while also adopting Pipelines' proposals to adjust the reported page 700 data to remove the effects of the Income Tax Policy Change.[225]

3. Commission Determination

77. We deny rehearing and sustain the Commission's determination in the December 2020 Order. We continue to find that Liquids Shippers have not adequately demonstrated that the reported page 700 ROEs for 2014 and 2019 are unreliable or inconsistent with Commission policy such that the Commission should revise the Kahn Methodology to replace those figures with standardized ROEs.[226]

78. As an initial matter, Liquids Shippers fail to present usable alternatives to the ROEs that pipelines reported on page 700. As the Commission concluded in the December 2020 Order, we find that Liquids Shippers have not supported their proposed standardized ROEs.[227] Regarding their proposed industry-wide 2014 ROE, Liquids Shippers' arguments on rehearing do not explain why an ROE figure that only 29% of pipelines reported for that year accurately measures the investor-required cost of equity for all pipelines in the data set.[228] Likewise, for the 2019 ROE, we reject Liquids Shippers' proposal to use an ROE that one participant proposed in an ongoing hearing for use in Colonial's rates. Neither the Presiding Judge nor the Commission have opined on this

[212] *Id.* at 73 (citing Liquids Shippers Initial Comments at 23–24; Crowe Initial Aff. at 9–10).

[213] *Id.* at 78.

[214] *Id.* at 81 (citing December 2020 Order, 173 FERC ¶ 61,245 at PP 46–47; *Revisions to & Electronic Filing of the FERC Form No. 6 & Related Uniform Sys. of Accounts,* Order No. 620, FERC Stats. & Regs. ¶ 31,115, at 31,959–60 (2000) (cross-referenced at 93 FERC ¶ 61,262), *reh'g denied,* Order No. 620–A, 94 FERC ¶ 61,130 (2001)).

[215] *Id.* at 82–83 (citing Opinion No. 528, 145 FERC ¶ 61,040 at P 595; AOPL, Comments, Docket No. PL19–4–000, at 15 (filed June 26, 2019)).

[216] *Id.* at 83 (citing Opinion No. 528, 145 FERC ¶ 61,040 at P 592; *Composition of Proxy Groups for Determining Gas and Oil Pipeline Return on Equity,* 123 FERC ¶ 61,048 (2008) (Proxy Group Policy Statement)).

[217] As discussed in the December 2020 Order, Liquids Shippers assert that the Commission initiated a review of its ROE policy in Docket No. PL19–4–000 on March 21, 2019, but did not clarify its policy until it issued a policy statement revising its ROE methodology for natural gas and oil pipelines on May 21, 2020. *Id.* at 74–75 (citing *Inquiry Regarding the Commission's Policy for Determining Return on Equity,* 171 FERC ¶ 61,155 (2020) (ROE Policy Statement); *Inquiry Regarding the Commission's Policy for Determining Return on Equity,* 166 FERC ¶ 61,207 (2019)). Because oil pipelines were required to submit page 700 cost-of-service data for 2019 in April 2020, Liquids Shippers allege that pipelines were not certain of the Commission's prevailing policy when pipelines reported their 2019 ROEs. *Id.* at 75–76.

[218] *Id.* at 85–86 (citing December 2020 Order, 173 FERC ¶ 61,245 at P 48).

[219] *Id.* at 86.

[220] December 2020 Order, 173 FERC ¶ 61,245 at P 49.

[221] Liquids Shippers Request for Rehearing at 87.

[222] *Id.* at 88–89.

[223] *Id.* at 89.

[224] *Id.* at 89–90.

[225] *Id.* at 90–91.

[226] As discussed, Liquids Shippers, as the proponent of a change to the Kahn Methodology, bears the burden of justifying that change. *See supra* note 129.

[227] Not only do Liquids Shippers fail to justify their proposed standardized ROEs, but they also fail to correctly incorporate those ROEs into pipelines' page 700 cost-of-service calculations. Because ROE forms part of the return on rate base for which non-MLP pipelines may recover an income tax allowance, any adjustment to the page 700 ROEs should include corresponding changes to the pipeline's page 700 income taxes. However, in adjusting the reported page 700 ROEs, Ms. Crowe fails to reflect the resulting income tax changes in pipelines' page 700 cost-of-service calculations. *See* Crowe Initial Aff. at App. 4.

[228] December 2020 Order, 173 FERC ¶ 61,245 at P 49.

ROE proposal.[229] Moreover, this proposal was challenged by the other litigants in that proceeding and Liquids Shippers have presented no evidence that this particular ROE was more appropriate than the other litigants' proposed ROEs.[230] In addition, even if the Commission had adopted a proposed ROE for Colonial in that rate case, the December 2020 Order explains that given the diversity of the oil pipeline industry, we cannot simply assume that any single ROE could reflect the investor-required return for all pipelines in the data set.[231]

79. We conclude, moreover, that Ms. Crowe determines her proposed standardized ROEs using an inconsistent approach that deflates the index level. Ms. Crowe asserts that the Commission should adopt 10.29% as the standardized ROE for 2014 because 54 of 184 filing pipelines reported that figure on page 700. Liquids Shippers also acknowledge that an even greater percentage of filing pipelines reported a 10.85% ROE on page 700 for 2019.[232] However, rather than adopt this widely reported figure as the standardized ROE for 2019, Ms. Crowe instead proposes to use an untested 10.02% ROE that remains subject to Commission evaluation in the ongoing Colonial rate proceeding. This unexplained inconsistency materially affects the index level: Whereas using a 10.85% ROE for 2019 with the proposed 10.29% ROE for 2014 would reduce the index level by 11 basis points, using a 10.02% ROE for 2019 as Ms. Crowe proposes with the same ROE for 2014 would reduce the index level by 55 basis points.[233] Liquids Shippers neither acknowledge these effects nor justify their proposal to use a widely reported ROE as the standardized ROE for 2014 but not for 2019.[234]

80. In addition, we reject Liquids Shippers' claim that the Commission applied an unreasonably strict standard in requiring them to demonstrate that their proposed standardized ROEs ''accurately measure[ ] the investor-required cost of equity for all pipelines in the data set.'' [235] As Liquids Shippers acknowledge,[236] ROE is a major component of the page 700 summary cost of service and therefore significantly affects the Commission's measurement of industry-wide cost changes in the five-year review. Thus, where a commenter proposes to replace the reported page 700 ROEs of every pipeline in the data set with standardized, industry-wide figures, it is not unreasonable to require commenters to demonstrate that those standardized figures accurately measure the cost of equity for all pipelines in the data set. Otherwise, a standardized ROE that does not accurately reflect the costs of equity of pipelines in the data set could skew the index calculation by distorting the measurement of those pipelines' per barrel-mile equity cost changes during the review period. To the extent that satisfying this standard would impose significant evidentiary burdens, this supports maintaining the Commission's simplified approach of measuring equity cost changes using reported page 700 ROEs.

81. Liquids Shippers' remaining arguments for replacing the reported page 700 ROEs with standardized ROEs are unavailing. Contrary to Liquids Shippers' argument, we again conclude that the fact that page 700 ROEs are self-reported (like all other page 700 data used in this proceeding) does not demonstrate that this data is unreliable or fails to capture the returns that investors demand in the market. As the December 2020 Order explains, the instructions on page 700 required pipelines to determine their ROE for each year during the 2014–2019 period using the DCF model. Pipelines submitted page 700 under oath and subject to sanction if there were purposeful errors in their reported data.[237] Moreover, the Commission's five-year review process reduces the incentive or ability for pipelines to report inaccurate data in an effort to skew the index calculation. The Commission calculates the index level based upon changes in cost over the applicable review period, rather than total costs in a given year. Because the last year of any particular review period (*e.g.,* 2014–2019) is the first year of the next review period (*e.g.,* 2019–2024), an attempt by pipelines to distort the index calculation by reporting inflated cost data in the last year of one period would harm their interests by establishing a higher cost baseline in the first year of the next period.[238] Given these facts, we continue to find that Liquids Shippers have not demonstrated that the reported page 700 ROE data is unreliable merely because pipelines self-reported.[239]

82. We also remain unpersuaded that variation among page 700 ROEs indicates that the reported ROE data is unreliable. As an initial matter, it is not clear from the record that the level of a pipeline's page 700 ROE correlates with that pipeline's annualized cost changes such that variations in ROE would materially affect the index calculation.[240] In any event, however, the D.C. Circuit has recognized that ''the zone of reasonableness creates a broad range of potentially lawful ROEs rather than a single just and reasonable ROE.'' [241] Thus, mere variation in the page 700 ROEs does not establish that those ROEs are not just and reasonable. Rather, as the Commission found in the December 2020 Order, multiple factors can cause the DCF model to yield different results for different

[229] *Id.* The initial decision addressing Colonial's cost-based rates, including its just and reasonable ROE, is scheduled to issue by April 29, 2022. *Epsilon Trading, LLC* v. *Colonial Pipeline Co.,* Docket No. OR18–7–002 (Dec. 2, 2021).

[230] Although this figure was proposed in the ongoing hearing by Commission Trial Staff, Trial Staff are non-decisional employees for purposes of that proceeding. 18 CFR 385.2201(c)(3) (2021) (defining ''decisional employee'' to exclude ''an employee designated as part of the Commission's trial staff in a proceeding''); *Separation of Functions,* 101 FERC ¶ 61,340, at P 7 (2002) (''A 'non-decisional employee' is a member of the Commission's trial staff in a proceeding . . . .'').

[231] December 2020 Order, 173 FERC ¶ 61,245 at P 49.

[232] Whereas approximately 29% of filing pipelines reported a 10.29% ROE for 2014 (54/184 = 0.293), Liquids Shippers state that 69 of 160, or approximately 43%, of filing pipelines reported a 10.85% ROE for 2019. Liquids Shippers Request for Rehearing at 80 (citing Liquids Shippers Initial Comments at 29–32; Crowe Initial Aff. at 10–11)).

[233] Using the 10.85% ROE for 2019 with the 10.29% ROE for 2014 reduces the index from PPI–FG–0.21% to PPI–FG–0.32%, whereas using the 10.02% ROE for 2019 with the same ROE for 2014 reduces the index level from PPI–FG–0.21% to PPI–FG–0.76%. Attach. A, Exhibit 12.

[234] Ms. Crowe states that the widely reported 10.85% ROE should not be used as the standardized ROE for 2019 because it ''is unsupported by any explanation or derivation, and there is no evidence this ROE was derived in a manner consistent with Commission policy.'' Crowe Initial Aff. at 11. It is unclear, however, why this critique would not apply with equal force to the 10.29% ROE that she proposes to use for 2014. To the extent that Ms. Crowe proposes to use a widely reported ROE for 2014 on the understanding that Trial Staff had not proposed an ROE based upon 2014 data in an oil pipeline rate proceeding, this understanding is incorrect. To the contrary, in a rate proceeding involving SFPP, L.P., in Docket No. OR16–6–000, Trial Staff proposed an ROE of 10.24% based upon 2014 data. Trial Staff, Exhibit S–24 (Direct and Answering Testimony of Commission Trial Staff Witness Robert J. Keyton), Docket No. OR16–6–000, at 61:15–17 (filed Sept. 14, 2016).

[235] December 2020 Order, 173 FERC ¶ 61,245 at P 49.

[236] Liquids Shippers Initial Comments at 24.

[237] December 2020 Order, 173 FERC ¶ 61,245 at P 46 (citing *BP W. Coast Prods. LLC* v. *SFPP, L.P.,* 121 FERC ¶ 61,243, at P 9 (2007)).

[238] *Id.* n.103. Along similar lines, reporting overly low cost data in the last year of one review period in an effort to skew the index calculation downward would similarly harm pipelines' interests by establishing a lower cost baseline in the first year of the next period.

[239] *Id.* P 46.

[240] *See* Shehadeh Reply Decl. at 18–19 (comparing annualized cost changes of pipelines in middle 80% that reported 10.85% ROE for 2019 and pipelines that reported ROEs other than 10.85% and concluding that ''cost change and ROE are not positively correlated'').

[241] *Emera Maine* v. *FERC,* 854 F.3d 9, 26 (D.C. Cir. 2017).

pipelines.[242] Contrary to Liquids Shippers' claim, we disagree that the December 2020 Order overstates the degree to which pipeline ROEs may vary as a result of differences in proxy group composition. In forming proxy groups, the Commission applies specific criteria to ensure that the proxy group members are risk-appropriate and comparable to the pipeline whose rate is being determined.[243] Although the number of companies satisfying the Commission's historical proxy group criteria in pipeline proceedings has declined in recent years,[244] this does not support the conclusion that a single proxy group would be appropriate for every oil pipeline. Rather, the Commission has explained that it will apply its proxy group criteria flexibly depending upon the particular record in each proceeding when necessary to form a proxy group of sufficient size.[245] Thus, even under current market conditions, the appropriate proxy group can vary from pipeline to pipeline based upon the specific facts in the proceeding. Any difference in proxy group composition can cause the DCF model to produce different results for different pipelines.[246]

83. Similarly, we continue to find that variation among page 700 ROEs may result from differences in relative risk. The December 2020 Order explains that although the Commission typically sets an oil pipeline's real ROE at the median of the DCF results, it may set the ROE above or below the median where the record demonstrates that the pipeline faces anomalously high or low risks.[247] Thus, even when using an identical proxy group, the appropriate placement of a pipeline's ROE within the proxy group results turns upon an individualized, fact-specific analysis of its business and financial risks relative to the risk profiles of the proxy group members. Because oil pipelines' risk levels may differ based upon factors such as location, size, and business model, it is unsurprising that ROEs would vary to some degree across the oil pipeline industry.[248] Contrary to Liquids Shippers' argument, this variation does not demonstrate that the page 700 ROEs are inaccurate or inconsistent with Commission policy. In addition, to the extent a particular pipeline's per barrel-mile equity cost changes departed substantially from industry norms, that pipeline would not be among the middle 50% used to calculate the index level.[249]

84. We conclude, moreover, that Liquids Shippers' have not supported their argument that the Commission should have audited pipelines' page 700 workpapers to review their ROE calculations. As the December 2020 Order explains, the Commission does not scrutinize the inputs underlying individual pipelines' page 700 data.[250] Thus, analyzing individual pipeline page 700 workpapers would depart from the Commission's established practice.

85. Furthermore, we reject Liquids Shippers' claim that the page 700 ROEs fail to capture changing market conditions because some pipelines reported ROE increases from 2014 to 2019 while other pipelines reported ROE decreases. As discussed above, oil pipelines have diverse business models and risk levels that can cause page 700 ROEs to vary from pipeline to pipeline. Merely because two entities are part of the same industry does not dictate that they will experience market changes in similar ways such that their ROEs will shift in the same direction over a given five-year period. Accordingly, we are not persuaded that the page 700 ROEs fail to adequately track changing market conditions over the review period simply because some pipelines' ROEs increased from 2014 to 2019 while other pipelines' ROEs decreased.

86. In addition, we remain unpersuaded by Liquids Shippers' assertion that pipelines were uncertain as to the Commission's prevailing oil pipeline ROE methodology when they submitted their 2019 Form No. 6 filings in April 2020. Because the Commission had not yet revised its longstanding policy of determining ROE using only the DCF model at the time of those filings, the Form No. 6 instructions requiring pipelines to complete page 700 in accordance with the then-applicable Opinion No. 154–B methodology provided pipelines with adequate notice of the requirement to determine their 2019 ROEs using only the DCF model.[251] We again conclude that the fact that two pipelines (out of 254 pipelines that submitted Form No. 6 filings in 2020) later indicated that they did not adhere to the page 700 instructions in developing their ROEs does not present sufficient evidence of widespread uncertainty regarding the Commission's applicable policy that would undermine our confidence in the reliability of the data set.[252]

87. Finally, Liquids Shippers' arguments on rehearing do not refute the Commission's finding that replacing reported page 700 ROEs with standardized ROEs would improperly complicate and prolong the five-year review process in violation of EPAct 1992's mandate for simplified and streamlined ratemaking.[253] We are

[242] *Id.* P 47. For instance, in a recent oil pipeline cost-of-service rate proceeding, the potential proxy group member companies included three pipelines with DCF returns near 10%, one pipeline with a DCF return of 21.17%, and one pipeline with a DCF return of 51.14%. *Chevron Prods. Co.* v. *SFPP, L.P.,* Opinion No. 571, 172 FERC ¶ 61,207, at P 152 (2020).

[243] Historically, the Commission has required that each proxy group company satisfy the following criteria. First, the company's stock must be publicly traded. Second, the company must be recognized as an oil pipeline company and its stock must be recognized and tracked by an investment information service such as *Value Line.* Third, pipeline operations must constitute at least 50% of the company's assets or operating income over the most recent three-year period (50% standard). *E.g.,* ROE Policy Statement, 171 FERC ¶ 61,155 at P 58 (citing Proxy Group Policy Statement, 123 FERC ¶ 61,048 at P 8). In addition to these criteria, the Commission has historically declined to include Canadian companies in pipeline proxy groups. *Id.* (citing Opinion No. 528, 145 FERC ¶ 61,040 at P 626; *Kern River Gas Transmission Co.,* Opinion No. 486–B, 126 FERC ¶ 61,034 at P 60, *order on reh'g and compliance,* Opinion No. 486–C, 129 FERC ¶ 61,240 (2009)).

[244] *Id.* PP 60, 65.

[245] The Commission maintains a flexible approach to forming natural gas and oil pipeline proxy groups. For example, the Commission retains the discretion to enforce or relax the 50% standard based upon the record in each proceeding. *Id.* PP 64–65. Similarly, the Commission has explained that it will consider proposals to include Canadian companies in pipeline proxy groups on a case-by-case basis. *Id.* P 66. Furthermore, given the ongoing difficulties in forming pipeline proxy groups of sufficient size, the Commission has stated that it ''will consider adjustments to [its] ROE policies where necessary.'' *Id.* P 64.

[246] For example, in Opinion No. 571, the Commission adopted a proxy group of Buckeye Partners LP, Magellan Midstream Partners LP, Enterprise Products Partners, LP, and Enbridge Energy Partners, LP, which produced a median DCF result of 10.54%. Opinion No. 571, 172 FERC ¶ 61,207 at P 52. However, substituting Kinder Morgan Inc. in the place of Enbridge would have reduced the median DCF result to 10.195%, a difference of over 30 basis points. *See id.*

[247] December 2020 Order, 173 FERC ¶ 61,245 at P 47 (citing *BP Pipelines (Alaska) Inc.,* Opinion No. 502, 123 FERC ¶ 61,287 at P 195, *order on reh'g and compliance,* 125 FERC ¶ 61,215 (2008), *reh'g denied,* 127 FERC ¶ 61,317 (2009), *aff'd sub nom. Flint Hills Res. Alaska, LLC* v. *FERC,* 726 F.3d 881 (D.C. Cir. 2010)).

[248] This is particularly true where, due to the declining number of proxy group companies, it may become necessary for the Commission to include Canadian companies or companies that do not satisfy the 50% standard to form a proxy group of sufficient size. Including these more diverse companies in the proxy group could necessitate setting the subject pipeline's ROE above or below the median due to differences in risk.

[249] December 2020 Order, 173 FERC ¶ 61,245 at P 47 (citing 2015 Index Review, 153 FERC ¶ 61,312 at P 17).

[250] *Id.* P 53.

[251] December 2020 Order, 173 FERC ¶ 61,245 at P 48. As discussed above, we find that the Commission's five-year review process reduces the incentive or ability for pipelines to report inaccurate data in an effort to skew the index calculation. *See supra* P 82.

[252] December 2020 Order, 173 FERC ¶ 61,245 at P 48.

[253] *Id.* P 50 (citing NOI, 171 FERC ¶ 61,239 at P 11).

unpersuaded by Liquids Shippers' claim that determining a standardized ROE may not require the ''same rigor'' as determining an ROE in a litigated cost-of-service rate proceeding. Liquids Shippers do not describe what this less rigorous determination would resemble or how it would differ from the ROE analysis the Commission performs using the Opinion No. 154–B methodology. In addition, the fact that Trial Staff regularly performs ROE analyses in litigated rate proceedings has no bearing on whether it would be appropriate or feasible for the Commission to do so for every pipeline whose page 700 data is examined in the five-year review. Accordingly, Liquids Shippers do not persuasively rebut the Commission's finding that determining a just and reasonable ROE on an industry-wide basis would be a complex and fact-intensive inquiry that could require considerable time and resources to resolve.[254] Moreover, we reject as irrelevant Liquids Shippers' comparison of their standardized ROE proposal to Pipelines' proposal to adjust the data set to remove the effects of the Income Tax Policy Change, as we decline on rehearing to adopt Pipelines' proposed adjustments.

E. CAPP's Argument Regarding Negotiated Rate Contracts

88. CAPP argued in its comments that the Commission should quantify the effects of negotiated rate contracts upon oil pipelines' reported costs of equity. CAPP stated that these contracts typically contain provisions such as shipper volume commitments that serve to transfer risk from the pipeline to its shippers and that failing to reflect pipelines' reduced risks in the page 700 data could improperly inflate the index calculation. CAPP recognized that the Commission found in the 2015 Index Review that the page 700 total cost of service would reflect any reduction in the pipeline's risk. However, CAPP argued that the page 700 data in this proceeding does not indicate whether this occurred over the 2014–2019 period. To provide increased transparency, CAPP requested that the Commission require pipelines to provide shippers with the workpapers underlying their page 700 calculations.[255]

1. December 2020 Order

89. The December 2020 Order rejected CAPP's arguments as unpersuasive. First, the Commission reiterated its conclusion in the 2015 Index Review that ''[t]o the extent that volume commitments in [negotiated rate] agreements have reduced the pipeline's risk, the page 700 total costs of service would reflect this reduction in the embedded costs of equity and costs of debt.'' [256] The Commission explained that these effects would tend to reduce pipeline costs and thereby produce a lower index level, rendering CAPP's concerns unfounded. The Commission further determined that CAPP provided no basis for the Commission to conclude that the reported page 700 data fails to adequately account for pipelines' risks in measuring changes in cost of equity and cost of debt.[257] Second, the Commission found that CAPP had not supported its request for the Commission to review individual pipeline data to evaluate the effects of contract rates on the pipeline's risk.[258] In addition, the Commission found that such a review would exceed the scope of the five-year review and conflict with streamlined and simplified ratemaking.[259]

2. Rehearing Request

90. CAPP challenges the Commission's determination in the December 2020 Order in several respects. First, CAPP asserts that the Commission cited no evidence to support its conclusion that reduced pipeline risks resulting from negotiated rate contracts are embedded in the reported page 700 data.[260] CAPP argues that the December 2020 Order acknowledged that differences in risk can produce variations in ROE but nonetheless declined to investigate whether pipelines' reported page 700 ROEs appropriately reflect their risks.[261] CAPP further states that without reviewing the page 700 workpapers, the Commission cannot evaluate pipelines' reported capital structures, identify the proxy group companies used to determine each pipeline's page 700 ROE, or evaluate the placement of the pipeline's ROE within the DCF results.[262] CAPP claims that it would not be complicated for the Commission to verify whether the reported ROEs accurately reflect reduced pipeline risks. Thus, CAPP states that its request to require pipelines to provide their page 700 workpapers is modest.[263]

91. Second, CAPP asserts that the range of the reported page 700 ROEs during the 2014–2019 period exceeds the range of a reasonable DCF analysis. CAPP maintains that this disparity in reported ROEs provides a sufficient basis for the Commission to investigate how pipelines determined these figures.[264] In addition, CAPP argues that the fact that ROEs may vary due to differences in proxy group composition and relative risk supports its proposal.[265] Regarding proxy group composition, CAPP argues that if a pipeline charges contract rates, its page 700 ROE would only reflect the pipeline's reduced risk if the proxy group it uses to perform the DCF analysis includes pipelines that also charge contract rates.[266] Because page 700 does not disclose the proxy group that the pipeline used to determine its reported ROE, CAPP argues that the Commission should examine the page 700 workpapers to determine whether pipelines construed their DCF proxy groups in accordance with Commission policy. Along similar lines, CAPP states that if the Commission believes that variation in reported ROEs results from differences in relative risk, the Commission should investigate how pipelines' risk levels are affecting their page 700 data.[267] CAPP states, moreover, that credit ratings of oil pipelines do not reflect a wide divergence of risks.[268]

92. Third, CAPP objects to the Commission's finding that CAPP provided no basis for determining that the reported page 700 data fails to adequately account for pipelines' risks. CAPP states that because page 700 does not include information necessary to evaluate the pipeline's ROE analysis, CAPP cannot make this showing without access to pipelines' page 700 workpapers.[269] CAPP states that to the extent the December 2020 Order suggests that shippers should attempt to

[254] *Id.*

[255] CAPP Initial Comments at 2–5.

[256] December 2020 Order, 173 FERC ¶ 61,245 at P 52 (quoting 2015 Index Review, 153 FERC ¶ 61,312 at P 28).

[257] *Id.*

[258] *Id.* P 53.

[259] *Id.*

[260] CAPP Request for Rehearing at 24–25.

[261] *Id.* at 21. CAPP argues that the Commission has recognized in other proceedings that negotiated rate contracts with shipper volume commitments have become more prevalent in the oil pipeline industry and serve to transfer risk from the pipeline to its shippers and reduce the pipeline's cost of equity. *Id.* at 23–24 (quoting *Enbridge Pipelines (S. Lights) LLC,* 144 FERC ¶ 61,044, at P 71 n.209 (2013) (''[T]here is no disagreement that most of the business and financial risks of the Southern Lights Pipeline have been transferred to the Committed Shippers through the TSAs during their term.'')). Thus, CAPP argues that the impacts of negotiated rate contracts upon pipeline risks are a documented reality and warrant investigation in the five-year review. *Id.* at 26.

[262] *Id.* at 22–23.

[263] *Id.* at 24–25.

[264] *Id.* at 28.

[265] *Id.* at 31.

[266] *Id.* at 31–32.

[267] *Id.*

[268] *Id.* at 32.

[269] *Id.* at 21–22.

perform DCF analyses of pipelines known to charge contract rates and compare the results with those pipelines' reported ROEs, it would be more efficient for the Commission to investigate the reported ROEs as part of the five-year review.[270]

93. Finally, CAPP challenges the Commission's conclusion that investigating pipelines' page 700 ROEs would conflict with Commission precedent declining to scrutinize the inputs underlying individual pipelines' page 700 data.[271] CAPP contends that this argument is inconsistent with the Commission's decision to adjust MLP pipelines' reported page 700 data to remove the effects of the Income Tax Policy Change.[272]

3. Commission Determination

94. We deny rehearing. First, CAPP provides no basis for altering the Commission's conclusion that ''[t]o the extent that volume commitments in [negotiated rate] agreements have reduced the pipeline's risk, the page 700 total cost of service would reflect this reduction in the embedded costs of equity and costs of debt.'' [273] Although CAPP emphasizes that variation in the page 700 ROEs indicates that ''something may be amiss'' with this data,[274] we again conclude that such variation may result from legitimate factors such as differences in proxy group composition and relative risk and does not demonstrate that the reported data is inaccurate or inconsistent with Commission policy.[275] Accordingly, we continue to find that CAPP has not substantiated its claim that the reported ROEs fail to adequately account for pipelines' risks in measuring changes in costs of equity and costs of debt.[276]

95. Second, in any case, CAPP has not rebutted the Commission's conclusion that reviewing individual pipeline data would exceed the scope of the five-year review and conflict with EPAct 1992's mandates for simplified and streamlined ratemaking. The Kahn Methodology measures cost changes on a generic, industry-wide basis. Thus, in calculating the index level, the Commission does not scrutinize the inputs underlying individual pipelines' page 700 data.[277]

96. Third, we continue to find that CAPP's request to review individual pipeline data to evaluate the effects of contract rates upon the pipeline's risk is unsupported. As CAPP acknowledges,[278] the Commission has declined to require pipelines to provide workpapers to shippers [279] and explained that the dissemination of this data would impose considerable industry-wide costs upon pipelines [280] and raise potential confidentiality concerns.[281] CAPP's arguments do not address these issues. Accordingly, we continue to find that CAPP has not provided a basis for the Commission to depart from existing policy to require pipelines to provide page 700 workpapers in the five-year review.[282]

97. Fourth, we are not persuaded that an intensive review of individual pipeline page 700 data would be appropriate even if the reported ROEs for 2014 and 2019 do not fully reflect reductions in risk resulting from contract rates. As an initial matter, the Commission calculates the index level based upon pipeline cost changes over the prior five-year period, rather than pipeline costs at a particular time. Thus, to the extent that a pipeline reported an ROE that does not reflect the risks it faces charging contract rates in both 2014 and 2019, those errors would tend to cancel out without distorting the measurement of industry-wide cost changes. More broadly, CAPP has not demonstrated why the index should reflect the lower risks associated with contract rates. The five-year review calculates the index level used to adjust non-contract rates,[283] and under CAPP's own argument, pipelines with non-contract rates face higher risks than pipelines with contract rates. Thus, we are unpersuaded that the page 700 data used to calculate the index level should reflect the lower risks associated with contract rates.[284]

F. Appropriate Source of 2014 Page 700 Data

1. Background

98. Page 700 includes columns for reporting both current-year and previous-year summary cost-of-service data. Thus, for example, pipelines reported cost-of-service data for 2014 in their page 700s submitted in April 2015 (in the current-year column) and in April 2016 (in the previous-year column). The more recently filed data reported in the previous-year column often updates the data that was filed in the prior year. Accordingly, for the first year of the index review period in the five-year review, the Commission uses updated page 700 data filed in the following year's Form No. 6, where available.[285]

2. Requests for Rehearing and Clarification

99. Pipelines assert that the December 2020 Order errs by relying upon outdated page 700 data for 2014.[286] Pipelines state that although 38 pipelines filed updated 2014 page 700 data in April 2016, the December 2020 Order erroneously relied upon those pipelines' originally filed 2014 data as reported in April 2015.[287] Pipelines state that because the December 2020 Order did not discuss this departure from past practice, the use of these pipelines' originally filed data appears

[270] *Id.* at 28.

[271] *Id.* at 33 (citing December 2020 Order, 173 FERC ¶ 61,245 at P 50).

[272] *Id.* at 30, 33.

[273] December 2020 Order, 173 FERC ¶ 61,245 at P 52 (quoting 2015 Index Review, 153 FERC ¶ 61,312 at P 28). Reflecting these reduced risks would tend to reduce pipeline costs and thereby produce a lower index level, rendering CAPP's concerns unfounded. *Id.*

[274] CAPP Request for Rehearing at 28.

[275] As discussed above, to the extent a particular pipeline's per barrel-mile equity cost changes departed substantially from industry norms, that pipeline would not be among the middle 50% used to calculate the index level. Moreover, even if a pipeline with outlying equity cost changes is included in the middle 50%, that pipeline's cost changes would likely not significantly affect the central tendency of that 80-pipeline sample. Finally, as discussed above, it is not clear from the record that the level of a pipeline's page 700 ROE correlates with that pipeline's annualized cost changes such that variations in ROE would materially affect the index calculation. *See* Shehadeh Reply Decl. at 18–19.

[276] December 2020 Order, 173 FERC ¶ 61,245 at P 52.

[277] *Id.* P 53.

[278] CAPP Initial Comments at 5.

[279] *Revisions to Indexing Policies and Page 700 of FERC Form No. 6,* 170 FERC ¶ 61,134, at P 6 (2020).

[280] *Id.*

[281] These potential confidentiality concerns relate to shipper information protected by section 15(13) of the Interstate Commerce Act and the pipeline's competitive business information. *Revisions to Indexing Policies and Page 700 of FERC Form No. 6,* 157 FERC ¶ 61,047, at P 49 (2016).

[282] As discussed above, the proponent of a change in Commission policy bears the burden of justifying that change. *See supra* note 129.

[283] Negotiated committed shipper contracts only incorporate indexing when both the pipeline and the committed shippers accept such terms. 2015 Index Review, 153 FERC ¶ 61,312 at P 49 n.94.

[284] To the extent that the index should be adjusted in light of the reduced risks associated with contract rates, CAPP's argument would support adopting an adder to increase the ROE of pipelines that charge contract rates to reflect the higher risks faced by pipelines with non-contract rates.

[285] *See Five-Year Review of Oil Pipeline Pricing Index,* 114 FERC ¶ 61,293, at P 40 (2006) (2005 Index Review) (finding that a witness was ''correct to use the data contained in [a] resubmitted FERC Form No. 6'').

[286] AOPL Request for Rehearing at 2–3; Designated Carriers Request for Rehearing at 7–8, 11.

[287] AOPL Request for Rehearing at 2–3; Designated Carriers Request for Rehearing at 4, 7; *see also* AOPL Request for Rehearing, Shehadeh Aff. at attach. A (listing 38 pipelines that filed updated page 700 data for 2014).

to have been inadvertent.[288] Thus, Pipelines request rehearing and/or clarification to correct this apparent departure from past practice.[289]

3. Commission Determination

100. We agree with Pipelines' arguments and grant rehearing to rely upon updated page 700 data for 2014, as reported in the previous-year column of page 700 filings submitted in April 2016. This adjustment ensures that the index calculation reflects the most current page 700 data for 2014 and accords with the Commission's prior practice of relying upon updated data reported in the previous-year column of the following year's Form No. 6, where available.[290] Accordingly, we grant Pipelines' requests for rehearing and clarify that where a pipeline updates its page 700 data for the first year of the index review period in the previous-year column of the following year's Form No. 6, it is the Commission's policy to calculate the index level using that updated data.

G. Application of Adjustments to 2014 Page 700 Data

1. Request for Clarification or Rehearing

101. Designated Carriers assert that in adopting their proposal to eliminate the effects of the Income Tax Policy Change from the index calculation, the December 2020 Order failed to adjust the 2014 page 700 data for two MLP pipelines, MPLX Ozark Pipe Line LLC and Lambda Energy Gathering, LLC.[291] Designated Carriers state that neither of these pipelines filed Form No. 6 in 2014 because they formed as a result of mergers or acquisitions of MLP predecessor entities that occurred during the 2014–2019 period.[292] However, because these pipelines' MLP predecessor entities filed page 700 data for 2014, Designated Carriers assert that the Commission should have adjusted the predecessor entities' 2014 page 700 data to remove the effects of the Income Tax Policy Change.[293] Designated Carriers state that the December 2020 Order does not explain why the Commission did not adjust the 2014 page 700 data for the predecessor entities as it did for all other pipelines that were MLPs in 2014.[294]

102. Thus, Designated Carriers request that the Commission clarify that it intended to adjust the 2014 page 700 data of the predecessor entities of MPLX Ozark Pipe Line LLC and Lambda Energy Gathering, LLC, to eliminate the 2014 income tax allowance and adjust the 2014 return on rate base to reflect the removal of ADIT.[295] If the Commission denies this request for clarification, Designated Carriers request rehearing of the December 2020 Order to the extent that it fails to adopt the foregoing adjustments.[296]

2. Commission Determination

103. We deny Designated Carriers' request for clarification or rehearing. As discussed above, we grant rehearing of the December 2020 Order to incorporate the effects of the Income Tax Policy Change in the index calculation using unadjusted page 700 data. Given that we do not adopt Pipelines' proposed adjustments to the data set to remove the effects of the Income Tax Policy Change, we deny Designated Carriers' request to apply those adjustments to the predecessor entities of MPLX Ozark Pipe Line LLC and Lambda Energy Gathering, LLC.

III. 2021–2026 Oil Pipeline Index

104. Based upon the foregoing, we grant rehearing of the December 2020 Order, in part, deny rehearing, in part, and establish an index level of PPI–FG–0.21% for the five-year period beginning July 1, 2021.

IV. Interim Rate Change Filings

105. Consistent with the Commission's action in this order, oil pipelines must recompute their ceiling levels and rates to be effective March 1, 2022. Specifically, pipelines must revise the ceiling levels that became effective July 1, 2021, to reflect an index level of PPI–FG–0.21% instead of the index level adopted in the December 2020 Order.[297] Any oil pipeline with a filed rate that exceeds its recomputed ceiling level must file to reduce that rate to bring it into compliance with the pipeline's recomputed ceiling level as required by § 342.3(e) of the Commission's regulations.[298] We direct such pipelines to submit these filings to be effective March 1, 2022.[299] To the extent that pipelines are unable to submit these filings 30 days in advance of the March 1, 2022 effective date, pipelines may seek waiver of the 30-day notice requirement.[300]

The Commission Orders

(A) The requests for clarification or rehearing of the December 2020 Order are granted in part and denied in part, as discussed in the body of this order.

(B) Oil pipelines are directed to recompute their ceiling levels for July 1, 2021 through June 30, 2022 based upon an index level of PPI–FG–0.21%, as discussed in the body of this order.

(C) Oil pipelines with filed rates that exceed their recomputed ceiling levels must file to reduce the rate to bring it into compliance with the recomputed ceiling level to be effective March 1, 2022, as discussed in the body of this order.

By the Commission. Commissioner Danly is concurring in part and dissenting in part with a separate statement attached.

Commissioner Christie is concurring in part and dissenting in part with a separate statement attached.

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[288] AOPL Request for Rehearing at 3; Designated Carriers Request for Rehearing at 7–9.

[289] AOPL Request for Rehearing at 1–3. Designated Carriers request that the Commission clarify that it intended to calculate the index level using updated page 700 data for 2014 as reported in the previous-year column in page 700 filings submitted in April 2016. Designated Carriers Request for Rehearing at 1–2, 4–5. If the Commission denies this request for clarification, Designated Carriers request rehearing of the December 2020 Order to the extent that it does not rely upon this updated data. *Id.*

[290] *E.g.,* NOI, 171 FERC ¶ 61,239 at Workpapers, COSsort Tab, Column C; 2015 Index Review, 153 FERC ¶ 61,312 at Workpapers, COSdata Tab (noting that ''[w]here available, data for given year is taken from the 'Previous Year Amount' column of the following year's Form 6 (*e.g.,* 2009 data is from column (c) of the 2010 Form 6''); 2005 Index Review, 114 FERC ¶ 61,293 at P 40.

[291] Designated Carriers Request for Rehearing at 18–19.

[292] *Id.* at 19.

[293] *Id.*

[294] *Id.* at 20–21.

[295] *Id.* at 4–5.

[296] *Id.* at 12–14, 18–21.

[297] Concurrently with this order, the Commission is issuing a Notice of Annual Change in the Producer Price Index for Finished Goods in Docket No. RM93–11–000. *Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992,* 178 FERC ¶ 61,046 (2022) (Notice). As described in the Notice, oil pipelines must recompute their ceiling levels for July 1, 2021 through June 30, 2022 by multiplying their ceiling levels for July 1, 2020 through June 30, 2021 by 0.984288. *Id.*

[298] 18 CFR 342.3(e). The filing requirements of 18 CFR 342.3(e) are included in the FERC–550 information collection and approved by the Office of Management and Budget (under OMB Control No. 1902–0089).

[299] Oil pipelines that filed to revise their rates effective on or after July 1, 2021 using one of the Commission's alternative ratemaking methodologies are not required to recompute their ceiling levels or make an interim rate change filing. *See id.* 342.3(d)(5) (''When an initial rate, or rate changed by a method other than indexing, takes effect during the index year, such rate will constitute the applicable ceiling level for that index year.'').

[300] *Id.* 341.14.

Issued: January 20, 2022.

Kimberly D. Bose,

Secretary.

Department of Energy

Federal Energy Regulatory Commission

Five-Year Review of the Oil Pipeline Index

Docket No. RM20–14–001

(Issued January 20, 2022)

DANLY, Commissioner, Concurring in Part and Dissenting in Part

1. Today's order grants rehearing of the December 2020 Order,[1] in part, denies rehearing, in part, and establishes an index level of PPI–FG–0.21%. My separate statement focuses only on the aspects of today's order that depart from the Commission's December 2020 Order.[2] I dissent from the Commission's decision [3] to grant rehearing and depart from the December 2020 Order by (1) trimming the data set to the middle 50% of cost changes, as opposed to the middle 80%; and (2) incorporating the effects of the Commission's 2018 policy change requiring Master Limited Partnership (MLP)-owned pipelines to eliminate the income tax allowance and previously accrued Accumulated Deferred Income Taxes balances from their page 700 summary costs of service (Income Tax Policy Change).[4] I concur in the Commission's decision to grant rehearing for the purpose of correcting the index calculation based upon updated page 700 cost data for 2014.[5]

2. We must ask a threshold question every time we make a decision: Does the Commission have the legal authority to do what it is doing? In some cases, the Commission, acting within its authority, may take any of a number of approaches so long as it adequately explains its decision under the Administrative Procedure Act. In such instances, a robust record may provide substantial evidence for several legitimate approaches and the Commission's ultimate decision then turns on a collective judgment call. This is such a case.

3. As an initial matter, I agree that the Commission is obligated to ensure that the pipelines charge just and reasonable rates and I remain convinced that the December 2020 Order's decisions to trim the data set to the middle 80% and not to incorporate the effects of the Income Tax Policy Change would have resulted in just and reasonable indexed rates. In my view, based on the ample record before us, the Commission could have sustained that decision in both respects. Nothing in parties' arguments on rehearing, or in the record *compel* the Commission to find otherwise.

4. *First,* I dissent from the Commission's decision to trim the data set to the middle 50% of cost changes [6] and disagree with the Commission's conclusion that ''the record in this proceeding does not justify departing from the Commission's established practice of calculating the index level based solely upon the middle 50%.'' [7] I would have sustained the Commission's decision to trim the data set to the middle 80% for the reasons articulated in the December 2020 Order: It is consistent with the purpose of the statute, when possible, to use a ''broader sample of data [in order to] enhance the Commission's calculation of the central tendency of industry cost experience.'' [8] I simply do not agree with the Commission's assertion that, in order to ensure just and reasonable rates, ''it remains *necessary* to use the middle 50% to avoid including outlying data.'' [9]

5. *Second,* I dissent from the Commission's decision to incorporate the effects of the Income Tax Policy Change. I would have sustained the Commission's decision in the December 2020 Order to adopt Designated Carriers' proposed adjustment to remove the effects of the Income Tax Policy Change from the page 700 data used to calculate the index. I acknowledge that the Commission previously stated that it ''will incorporate the effects of this Revised Policy on industry-wide oil pipeline costs in the 2020 five-year review of the oil pipeline index level.'' [10] A prior Commission, however, cannot bind a future Commission's decisions.[11] Further, I disagree with the Commission's repeated statements in today's order that the Commission's decision to incorporate the effects of the Income Tax Policy Change in the index is required to ensure just and reasonable rates.[12] In my view, the reasons provided in the Commission's December 2020 Order remain persuasive, including the following: (1) ''The purpose of indexing is to allow the indexed rate to keep pace with industry-wide cost changes, not to reflect alterations to the Commission's Opinion No. 154–B cost-of-service methodology;'' [13] (2) ''[t]he index allows for incremental rate adjustments to enable pipelines to recover normal cost changes in future years;'' [14] (3) the index ''is not a true-up designed to remedy prior over-or under-recoveries in pre-existing rates resulting from cost-of-service policy changes during the prior five-year period;'' [15] and (4) it remains unclear ''that the double recovery of MLP pipelines' income tax costs was ever incorporated into the index.'' [16]

6. *Third,* I concur with the Commission's decision to grant rehearing to correct the index calculation such that it relies on updated page 700 cost data for 2014 and with the Commission's clarification that ''where a pipeline updates its page 700 data for the first year of the index review period in the previous-year column of the following year's Form No. 6, it is the Commission's policy to calculate the index level using that updated data.'' [17]

7. While it would have been better for the Commission to reaffirm the December 2020 Order as discussed above, it is necessary for me to acknowledge that the Commission is acting in accordance with the law and the majority's decision to reverse parts

[1] *Five-Year Rev. of the Oil Pipeline Index,* 173 FERC ¶ 61,245 (2020) (December 2020 Order).

[2] This does not mean that I agree with all of the reasoning provided for the aspects of rehearing that are denied. Therefore, I concur in the result for the parts of the Commission's decision that deny rehearing.

[3] *Five-Year Rev. of the Oil Pipeline Index,* 178 FERC ¶ 61,023, at P 2 (2022) (Oil Index Rehearing Order).

[4] *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs,* 162 FERC ¶ 61,227, at P 8 (2018 Income Tax Policy Statement), *reh'g denied,* 164 FERC ¶ 61,030, at P 13 (2018), *request for clarification dismissed,* 168 FERC ¶ 61,136 (2019); *petitions for review dismissed sub nom. Enable Miss. River Transmission, LLC* v. *FERC,* 820 F. App'x 8 (2020).

[5] Oil Index Rehearing Order, 178 FERC ¶ 61,023 at P 2.

[6] *See id.* PP 43–58.

[7] *See id.* P 43.

[8] December 2020 Order, 173 FERC ¶ 61,245 at P 26 (explaining that the Commission's use of ''the middle 50% would exclude 48 pipelines from the Commission's review of industry-wide cost changes over the 2014–2019 period'') (citation omitted).

[9] Oil Index Rehearing Order, 178 FERC ¶ 61,023 at P 57 (emphasis added).

[10] 2018 Income Tax Policy Statement, 162 FERC ¶ 61,227 at P 8.

[11] My colleagues acknowledge that the ''2018 Income Tax Policy Statement provided non-binding guidance regarding the Commission's future intentions.'' Order Index Rehearing Order, 178 FERC ¶ 61,023 at P 21 n.55.

[12] *See id.* P 17 (''The index must reflect the Income Tax Policy Change in order to produce just and reasonable oil pipeline rates.''); *id.* (''Because indexing is the Commission's primary oil pipeline ratemaking methodology and because indexed oil pipeline rates must be just and reasonable, we conclude that the index calculation must now address the Income Tax Policy Change.''); *id.* P 20 (''Thus, as the Commission's Opinion No. 154–B methodology evolves, oil pipeline rates adjusted via indexing must reflect those changes in order to remain just and reasonable.'').

[13] December 2020 Order, 173 FERC ¶ 61,245 at P 17 (footnotes omitted).

[14] *Id.* P 18.

[15] *Id.*

[16] *Id.* P 19.

[17] *See* Oil Index Rehearing Order, 178 FERC ¶ 61,023 at P 101.

of the December 2020 Order will likely withstand judicial review. I am surprised, however, to see the majority's seeming vitriol over what amounts to a judgment call.

For these reasons, I respectfully concur in part and dissent in part.

James P. Danly,
Commissioner.

Department of Energy

Federal Energy Regulatory Commission

Five-Year Review of the Oil Pipeline Index

Docket No. RM20–14–001

(Issued January 20, 2022)

CHRISTIE, Commissioner, Concurring in Part and Dissenting in Part

1. I concur with most of today's order,[1] most significantly the restoration of the use of the middle 50% of the data set for determining the index. As today's order notes, the December 2020 Order's move to the middle 80% was an unjustified departure from the Commission's settled practice of relying on the middle 50%.[2] Because the 50% range represents the established practice over the past decade, restoring it is more consistent with the principle of regulatory certainty than the December 2020 Order's reliance on the 80% range without sufficient justification.

2. Consistent with this principle of regulatory certainty, however, I dissent from the portion of today's order that reverses the determination in the December 2020 order declining to incorporate the effects of the Income Tax Policy Change into the 2020 index calculation. In what it described as ''an issue of first impression,'' the Commission, in that order, adopted a proposal submitted by Designated Carriers in response to a previously issued NOPR.[3] The December 2020 Order explained the Commission's reasoning.[4]

3. The Income Tax Policy Change presented a unique factual circumstance that had yet to be considered by the Commission's indexing policies. It thus constitutes a ''one-off.'' It fell to a differently constituted Commission to determine whether, and if so how, the index calculation must be adjusted to address the Income Tax Policy Change. That Commission made its decision. I was not on the Commission in December 2020. If I had been, I may have voted for a different treatment of the tax issue, but unlike the change of the data set range—which disturbed without adequate justification an established practice—this unique tax issue was one in which there were valid arguments on both sides. What I or other members of this Commission *might* have done, however, if we had been given the opportunity in 2020, matters much less than what the Commission sitting in December 2020 actually *did* do: Namely, consider the pros and cons of an issue and make a decision based on the arguments and evidence in the record. Accordingly, I believe that the principle of regulatory certainty argues for leaving that ''one-off'' decision on the tax issue alone.

For these reasons, I respectfully concur in part and dissent in part.

Mark C. Christie,
Commissioner.

[FR Doc. 2022–01544 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

[1] *Five-Year Review of the Oil Pipeline Index,* 178 FERC ¶ 61,023 (2022) (Order).

[2] *Id.* P 37 & n.9.

[3] December 2020 Order, 173 FERC ¶ 61,245 at P 16.

[4] *Id.* PP 16–20.

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

[SATS No. MO–048–FOR; Docket ID: OSM–2019–0001; S1D1S SS08011000 SX064A000 212S180110; S2D2S SS08011000 SX064A000 21XS501520]

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are approving an amendment to the Missouri regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). As a result of Missouri's Red Tape Reduction Initiative (Executive Order 17–03), Missouri proposes amendments and rescissions to its Missouri Coal Mining Regulations in order to reduce the volume of these regulations without reducing the program's requirements. Missouri proposed amendments to multiple sections of its regulations to incorporate by reference the corresponding Federal regulations. Missouri also proposed to rescind multiple sections of its regulations that will be incorporated by reference in the aforementioned proposed amended sections. Missouri intends these revisions to its program to remain as effective as the Federal regulations.

DATES: The effective date is February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Bill Joseph, Chief, Alton Field Division, Office of Surface Mining Reclamation and Enforcement, 501 Belle Street, Suite 216, Alton, Illinois 62002. Telephone: (618) 463–6463 extension 5109. Email: *bjoseph@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

Subject to OSMRE's oversight, Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. *See* 30 U.S.C. 1253(a)(1) and (7).

Based on these criteria, the Secretary of the Interior conditionally approved the Missouri program effective November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Missouri program in the November 21, 1980, **Federal Register** (45 FR 77027). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15 and 925.16.

II. Submission of the Amendment

By letter dated February 8, 2019 (Administrative Record No. MO–684), Missouri sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative.

We announced the receipt of the proposed amendment in the May 1, 2019, **Federal Register** (84 FR 18433). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. We did not hold a public hearing or meeting because no one requested one. We did not receive any public comments on the proposed

amendment. The public comment period ended on May 31, 2019.

III. OSMRE's Findings

We are approving the amendment as described below. The following are findings we made concerning Missouri's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. Any revisions that we do not specifically discuss below concerning non-substantive wording or editorial changes can be found in the full text of the program amendment available at *www.regulations.gov.*

Missouri proposes to amend the following sections of the Missouri Coal Mining Regulations to incorporate by reference to corresponding Federal regulations:

10 CSR 40–3.060—Requirements for the Disposal of Excess Soil

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR 780.35.

10 CSR 40–3.170—Signs and Markers for Underground Operations

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR part 817, with the exception of 30 CFR 817.10, Information Collection, and a modification to section 817.61(c)(1). As required by 30 CFR 817.61(c)(1) after approval of a state blasting certification program, Missouri will require all blasting operations to be conducted under the direction of a certified blaster. This modification does not make the Missouri regulation less effective than the corresponding federal regulation.

10 CSR 40–4.020—Auger Mining Requirements

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR 785.20.

10 CSR 40–4.040—Operations on Steep Slopes

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR 785.15.

10 CSR 40–4.060—Concurrent Surface and Underground Mining

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR 785.18.

10 CSR 40–4.070—In Situ Processing

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR 785.22.

10 CSR 40–6.100—Underground Mining Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information

Missouri proposes to incorporate by reference the Federal regulations found in 30 CFR parts 783 and 784.

We find that Missouri's proposed amendments to these sections do not make its rules or regulations less effective than the corresponding Federal regulations, as the Federal regulations are being incorporated by reference. The proposed modifications were found not to compromise the effectiveness of the incorporated Federal regulations; therefore, we are approving Missouri's revisions.

Missouri also proposes to rescind the following sections of the Missouri Coal Mining Regulations as they have been incorporated in the aforementioned proposed amended sections:

10 CSR 40–3.180—Casing and Sealing of Exposed Underground Openings
10 CSR 40–3.190—Requirements for Topsoil Removal, Storage and Redistribution for Underground Operations
10 CSR 40–3.200—Requirements for the Protection of the Hydrologic Balance for Underground Operations
10 CSR 40–3.210—Requirements for the Use of Explosions for Underground Operations
10 CSR 40–3.220—Disposal of Underground Development Waste and Excess Spoil
10 CSR 40–3.230—Requirements for the Disposal of Coal Processing Waste for Underground Operations
10 CSR 40–3.240—Air Resource Protection for Underground Operations
10 CSR 40–3.250—Requirements for the Protection of Fish, Wildlife and Related Environmental Values and Protection of Fish, Wildlife and Related Environmental Values and Protection Against Slides and Other Damage
10 CSR 40–3.260—Requirements for Backfilling and Grading for Underground Operations
10 CSR 40–3.270—Revegetation Requirements for Underground Operations
10 CSR 40–3.280—Requirements for Subsidence Control Associated With Underground Mining Operations
10 CSR 40–3.290—Requirements for Road and Other Transportation Associated With Underground Operations
10 CSR 40–3.300—Postmining Land Use Requirements for Underground Operations
10 CSR 40–3.310—Coal Recovery, Land Reclamation and Cessation of Operation for Underground Operations
10 CSR 40–6.110—Underground Mining Permit Applications Minimum Requirements for Information on Environmental Resources
10 CSR 40–6.120—Underground Mining Permit Applications Minimum Requirements for Reclamation and Operations Plan

We find that Missouri's proposal to rescind these sections do not make its rules or regulations less effective than the corresponding Federal regulations, as the Federal regulations are being incorporated by reference in the aforementioned proposed amended sections. Therefore, we are approving Missouri's rescissions.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment. As noted in Section II, we did not receive any public comments on this proposed amendment.

Federal Agency Comments

On February 14, 2019, pursuant to 30 CFR 732.17(h)(11)(i) and Section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Missouri program (Administrative Record No. MO–684–02). We did not receive any comments.

U.S. Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Missouri proposed to make in this amendment pertain to air or water quality standards; therefore, we did not ask EPA to concur on the amendment. However, on February 14, 2019, under 30 CFR 732.17(h)(11)(i), we requested comments from the EPA on the amendment (Administrative Record No. MO–684–02). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 14, 2019, we requested comments on the amendment

(Administrative Record No. MO–684–02). We did not receive any comments.

V. OSMRE's Decision

Based on the above finding, we are approving the Missouri amendment that was submitted on February 8, 2019 (Administrative Record No. MO–684). To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program. In accordance with the Administrative Procedure Act, this rule will take effect 30 days after the date of publication. Section 503(a) of SMCRA requires that the State's program must demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. SMCRA requires consistency of State and Federal standards.

VI. Statutory and Executive Order Reviews

Executive Order 12630—Governmental Actions and Interference With Constitutionally Protected Property Rights

This rule does not affect a taking of private property or otherwise have taking implications that would result in private property being taken for government use without just compensation under the law. Therefore, a takings implication assessment is not required. This determination is based on an analysis of the corresponding Federal regulations.

Executive Orders 12866—Regulatory Planning and Review and 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB guidance, dated October 12, 1993, the approval of State program amendments are exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has reviewed this rule as required by Section 3 of Executive Order 12988. The Department determined that this **Federal Register** document meets the criteria of Section 3 of Executive Order 12988, which is intended to ensure that the agency review its legislation and proposed regulations to eliminate drafting errors and ambiguity; that the agency write its legislation and regulations to minimize litigation; and that the agency's legislation and regulations provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Because Section 3 focuses on the quality of Federal legislation and regulations, the Department limited its review under this Executive Order to the quality of this **Federal Register** document and to changes to the Federal regulations. The review under this Executive Order did not extend to the language of the State regulatory program amendment that the State of Missouri drafted.

Executive Order 13132—Federalism

This rule has potential Federalism implications as defined under Section 1(a) of Executive Order 13132. Executive Order 13132 directs agencies to ''grant the States the maximum administrative discretion possible'' with respect to Federal statutes and regulations administered by the States. Missouri, through its approved regulatory program, implements and administers SMCRA and its implementing regulations at the state level. This rule approves an amendment to the Missouri program submitted and drafted by the State and, thus, is consistent with the direction to provide maximum administrative discretion to States.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175, and we have determined that it has no substantial direct effects on federally recognized Tribes or on the distribution of power and responsibilities between the Federal government and Tribes. Therefore, consultation under the Department's tribal consultation policy is not required. The basis for this determination is that our decision is on the State program and does not include Tribal lands or regulation of activities on Tribal lands. Tribal lands are regulated independently under the applicable, approved Federal program.

Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 requires agencies to prepare a Statement of Energy Effects for a rulemaking that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not significant energy action under the definition in Executive Order 13211, a Statement of Energy Effects is not required.

Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

This rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866; and this action does not address environmental health or safety risks disproportionately affecting children.

National Environmental Policy Act

Consistent with Sections 501(a) and 702(d) of SMCRA (30 U.S.C. 1251(a) and 1292(d), respectively) and the U.S. Department of the Interior Departmental Manual, part 516, section 13.5(A), State program amendments are not major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 3701 *et seq.*) directs OSMRE to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical, (OMB Circular A–119 at p. 14). This action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with SMCRA.

Paperwork Reduction Act

This rule does not include requests and requirements of an individual, partnership, or corporation to obtain information and report it to a Federal agency. As this rule does not contain information collection requirements, a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State's submittal, which is the subject of this rule, is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to constitute a major rule.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. This determination is based on an analysis of the corresponding Federal regulations, which were determined not to impose an unfunded mandate. Therefore, a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Alfred L. Clayborne,

Regional Director, DOI Unified Region 3, 4 and 6.

For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

PART 925—MISSOURI

■ 1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. In § 925.15 amend the table by adding an entry for ''February 8, 2019'' in chronological order by ''Date of final publication'' to read as follows:

§ 925.15 Approval of Missouri regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
February 8, 2019	January 28, 2022	10 CSR 40–3.060; 40–3.170; 40–3.180; 40–3.190; 40–3.200; 40–3.210; 40–3.220; 40–3.230; 40–3.240; 40–3.250; 40–3.260; 40–3.270; 40–3.280; 40–3.290; 40–3.300; 40–3.310; 40–4.020; 40–4.040; 40–4.060; 40–4.070; 40–6.100; 40–6.110; 40–6.120.

[FR Doc. 2022–01667 Filed 1–27–22; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2021–0451; FRL–9166–02–R5]

Air Plan Approval; Michigan; Finding of Failure To Attain the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard for the Detroit Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is determining that the Detroit sulfur dioxide (SO_2) nonattainment area failed to attain the 2010 primary 1-hour SO_2 national ambient air quality standard (NAAQS or ''standard'') by the applicable attainment date of October 4, 2018. This determination is based upon air quality modeling using actual and allowable emissions. This action requires the State of Michigan to submit one year after date of publication in the **Federal Register** a revision to its State Implementation Plan (SIP) that, among other elements, provides for expeditious attainment of the 2010 SO_2 standard. EPA is not finalizing the finding of failure to attain for the Rhinelander, Wisconsin area that was included in the notice of proposed rulemaking (NPRM), as a finding of failure to attain only applies to nonattainment areas and EPA expects to redesignate the area to attainment before the effective date of this action.

DATES: This final rule is effective on February 28, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2021–0451. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through *www.regulations.gov* or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Abigail Teener, Environmental Engineer, at (312) 353–7314 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Abigail Teener, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–7314, *teener.abigail@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background Information

On October 27, 2021 (86 FR 59327), EPA proposed to determine that the

Detroit SO_2 nonattainment area failed to attain the 2010 primary 1-hour SO_2 national ambient air quality standard NAAQS by the applicable attainment date of October 4, 2018. The background for this action is discussed in detail in the NPRM. EPA is not finalizing the finding of failure to attain for the Rhinelander, Wisconsin, area that was included in the NPRM, as a finding of failure to attain only applies to nonattainment areas and EPA expects to redesignate the area to attainment before the effective date of this action.

The determination of failure to attain for the Detroit area was based on air quality dispersion modeling, using actual and allowable emissions from the most recent three complete calendar years, prior to the attainment date of October 4, 2018. The NPRM describes EPA's modeling requirements to support attainment demonstrations as well as various features of the model that EPA used to make its determination of failure to attain. For an area to attain the 2010 SO_2 NAAQS by the October 4, 2018, attainment date, the design value based upon modeled actual and allowable air quality data from 2015–2017 at the area of maximum ambient SO_2 concentration must be equal to or less than 75 parts per billion (ppb) for the 1-hour standard. EPA's modeling analysis indicates that the highest predicted 3-year average 99th percentile 1-hour average concentration within the chosen modeling domain is 139 ppb. Therefore, based on modeled actual and allowable emissions for the 2015–2017 period, EPA is determining that the Detroit area failed to attain the 2010 1-hour SO_2 standard by the October 4, 2018, attainment date.

Under Clean Air Act (CAA) section 179(d), a finding of failure to attain requires a state to submit, no later than one year after the publication date of the final action, a SIP revision for the area meeting the requirements of CAA sections 110 and 172, the latter of which requires, among other elements, a demonstration of attainment within the time period specified in CAA sections 179(d)(3) and 172(a)(2). Therefore, this action requires Michigan to submit a SIP revision by January 30, 2023, per section 179(d). Regardless, as discussed in the NPRM, EPA's obligation to promulgate a Federal implementation plan (FIP) for the Detroit area remains in force, and EPA is actively working on a FIP.

II. Public Comments

The proposed action described above provided a public comment period that closed on November 26, 2021. EPA received no comments on the proposed finding of failure to attain for the Detroit area.

III. What action is EPA taking?

EPA is determining under CAA section 179(c)(1) that the Detroit area failed to attain the 2010 1-hour SO_2 standard by the applicable attainment date of October 4, 2018. This action requires Michigan under CAA section 179(d) to submit a revision to the SIP for the Detroit SO_2 nonattainment area. The required SIP revision must, among other elements, demonstrate expeditious attainment of the standards within the time period prescribed by CAA section 179(d). The SIP revision required under CAA section 179(d) is due for submittal to EPA no later January 30, 2023. EPA is not finalizing the finding of failure to attain for the Rhinelander, Wisconsin area that was included in the NPRM, as a finding of failure to attain only applies to nonattainment areas and EPA expects to redesignate the area to attainment before the effective date of this action.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *https://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review, and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and therefore was not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the provisions of the PRA because it does not contain any information collection activities.

C. Regulatory Flexibility Act (RFA)

EPA certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action requires the state to adopt and submit SIP revisions to satisfy CAA requirements and would not itself directly regulate any small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of $100 million or more, as described in UMRA (2 U.S.C. 1531–1538) and does not significantly or uniquely affect small governments. This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. This action determines that the Detroit SO_2 nonattainment area failed to attain the NAAQS by the applicable attainment date and triggers existing statutory timeframes for the State to submit SIP revisions. Such a determination in and of itself does not impose any Federal intergovernmental mandate.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. The finding of failure to attain the SO_2 NAAQS does not apply to tribal areas, and the action does not impose a burden on Indian reservation lands or other areas where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction within the Detroit SO_2 nonattainment area. Thus, this action does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because the effect of this action does not trigger additional planning requirements under the CAA. This action does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The effect of this action triggers additional planning requirements under the CAA.

K. Congressional Review Act (CRA)

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review, does not extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Sulfur oxides.

Dated: January 6, 2022.

Debra Shore,

Regional Administrator, Region 5.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

■ 2. In § 52.1170, the table in paragraph (e) is amended by adding an entry for ''Determination of failure to attain the 2010 SO_2 standard'' immediately after the entry for ''2010 Sulfur Dioxide Clean Data Determination'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Determination of failure to attain the 2010 SO_2 standard.	Detroit area (Wayne County, part).	.....	1/28/2022, [INSERT **FEDERAL REGISTER** CITATION].	Triggers requirements of CAA section 179(d) for the State of Michigan to submit by January 30, 2023, a revision to its SIP for the Detroit area that, among other elements, provides for expeditious attainment of the 2010 SO_2 standard within the time period specified in CAA sections 179(d)(3) and 172(a)(2).
*	*	*	*	*

[FR Doc. 2022–00607 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0261; FRL–8969–02–R9]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans and Determination of Attainment by the Attainment Date; California; San Joaquin Valley Serious Area and Section 189(d) Plan for Attainment of the 1997 24-hour $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve in part and disapprove in part portions of state implementation plan (SIP) revisions submitted by California to address Clean Air Act (CAA) requirements for the 1997 24-hour fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or ''standards'') in the San Joaquin Valley $PM_{2.5}$ nonattainment area. Specifically, the EPA is approving all but the contingency measures element of the submitted SIP revisions as meeting all applicable ''Serious'' area and CAA section 189(d) requirements for the 1997 24-hour $PM_{2.5}$ NAAQS and is disapproving the contingency measures element. The EPA is also

finalizing a determination that the San Joaquin Valley air quality planning area has attained the 1997 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date. This determination is based on sufficient, quality-assured, and certified data for 2018–2020. Based on our finding that the San Joaquin Valley area has attained the 1997 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date, we are also finalizing a determination that the requirement for contingency measures will no longer apply to the San Joaquin Valley nonattainment area for the 1997 24-hour $PM_{2.5}$ NAAQS. Lastly, the EPA is issuing a protective finding for transportation conformity determinations for the disapproval of the contingency measures element.

DATES: This rule is effective on February 28, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0261. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ashley Graham, Air Planning Office (ARD–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3877, or by email at *graham.ashleyr@epa.gov.*

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

Table of Contents

I. Summary of Proposed Rule

On September 24, 2021, the EPA proposed to approve in part and disapprove in part portions of SIP revisions submitted by the California Air Resources Board (CARB) to meet CAA requirements for the 1997 24-hour $PM_{2.5}$ NAAQS in the San Joaquin Valley $PM_{2.5}$ nonattainment area.[1] The San Joaquin Valley is classified as a Serious nonattainment area for the 1997 24-hour $PM_{2.5}$ NAAQS and is also subject to CAA section 189(d) requirements because of the failure of the area to attain the 1997 24-hour $PM_{2.5}$ NAAQS by the area's original Serious area attainment date (*i.e.,* December 31, 2015). The EPA's determination that the area failed to attain the original December 31, 2015 attainment date triggered the requirement for the state to submit the SIP revisions on which the EPA is taking final action in this document.

The SIP revisions on which we proposed action are those portions of the ''2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards'' (''2018 $PM_{2.5}$ Plan'')[2] and the ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan'' (''Valley State SIP Strategy'')[3] that pertain to the 1997 24-hour $PM_{2.5}$ NAAQS. CARB submitted the 2018 $PM_{2.5}$ Plan and Valley State SIP Strategy to the EPA as a revision to the California SIP on May 10, 2019. We refer to the portions of these two SIP submissions that pertain to the 1997 24-hour $PM_{2.5}$ NAAQS collectively as the ''SJV $PM_{2.5}$ Plan'' or ''Plan.'' The SJV $PM_{2.5}$ Plan addresses the Serious area and CAA section 189(d) attainment plan requirements for the 1997 24-hour $PM_{2.5}$ NAAQS in the San Joaquin Valley, including the demonstration that the area would attain those NAAQS by December 31, 2020.

The EPA proposed to approve the 2013 base year emissions inventories, the precursor demonstration, the best available control measures/best available control technology (BACM/BACT) demonstration, the five percent annual emissions reduction demonstration, the attainment demonstration, the reasonable further progress (RFP) demonstration, and the quantitative milestones demonstration in the SJV $PM_{2.5}$ Plan as meeting the Serious nonattainment area and CAA section 189(d) planning requirements for the 1997 24-hour $PM_{2.5}$ NAAQS. We also proposed to approve the motor vehicle emissions budgets for 2017 and 2020 and the inter-pollutant trading mechanism provided for use in transportation conformity analyses.

Based on complete (or otherwise deemed sufficient), quality-assured, and certified ambient air quality monitoring data for the 2018–2020 monitoring period, the EPA also proposed to determine that the San Joaquin Valley nonattainment area attained the 1997 24-hour $PM_{2.5}$ NAAQS by the December 31, 2020 attainment date.[4] This determination was based in part on the EPA's July 13, 2021 concurrence[5] on a demonstration provided by CARB that a wildfire exceptional event contributed to exceedances at eight monitoring sites within the San Joaquin Valley nonattainment area during August 20–24, 2020, and exclusion of these data from our evaluation.[6]

Because we proposed to determine that the San Joaquin Valley has attained the 1997 24-hour $PM_{2.5}$ NAAQS by the December 31, 2020 attainment date, we also proposed to determine that the requirement for a post-attainment milestone would no longer apply in the San Joaquin Valley nonattainment area for these NAAQS.[7] We explained that the purpose of the post-attainment quantitative milestone is to provide the EPA with the tools necessary to monitor

[1] 86 FR 53150.

[2] The 2018 $PM_{2.5}$ Plan was adopted by the San Joaquin Valley Unified Air Pollution Control District on November 15, 2018, and by CARB on January 24, 2019. The 2018 $PM_{2.5}$ Plan includes a revised version of Appendix H submitted by CARB as a technical correction on February 11, 2020.

[3] The Valley State SIP Strategy was adopted by CARB on October 25, 2018.

[4] EPA, 2020 Air Quality System (AQS) Design Value Report (''Design Value Report''), AMP480, accessed January 11, 2022. The Design Value Report excludes measurements with regionally concurred exceptional event flags. As discussed in our proposed action, at the time of our proposal, AQS reports for 24-hour $PM_{2.5}$ design values were available only for the 2006 24-hour $PM_{2.5}$ NAAQS as the pollutant standard. Following our proposed action, the AQS system was updated to also report 24-hour $PM_{2.5}$ design values for the 1997 24-hour $PM_{2.5}$ NAAQS as the pollutant standard. 40 CFR part 50 Appendix N specifies the data handling and design value calculations for both the 2006 24-hour $PM_{2.5}$ NAAQS and the 1997 24-hour $PM_{2.5}$ NAAQS. The data values derived using the 1997 24-hour $PM_{2.5}$ NAAQS as the pollutant standard are the same as those derived for the EPA's proposed action using the 2006 24-hour $PM_{2.5}$ NAAQS as the pollutant standard except for minor differences in the 2018 98th percentiles at the Bakersfield-Airport (Planz) (AQS ID: 06–029–0016) and Madera-Avenue 14 (AQS ID: 06–039–2010) sites, and the 2020 design value at the Madera-Avenue 14 site, due to data handling differences related to the levels of the two standards. The 24-hour $PM_{2.5}$ design values at all monitoring sites in the San Joaquin Valley nonattainment area for the 2018–2020 data period calculated using the 1997 24-hour $PM_{2.5}$ NAAQS as the pollutant standard are equal to or less than 65 $\mu g/m^3$ (*i.e.,* the level of the 1997 24-hour $PM_{2.5}$ NAAQS). The January 11, 2022 Design Value Report reflects the AQS system update to report 24-hour $PM_{2.5}$ design values for the 1997 24-hour $PM_{2.5}$ NAAQS as the pollutant standard.

[5] Letter dated July 13, 2021, from Elizabeth J. Adams, Director, Air and Radiation Division, EPA Region IX, to Michael Benjamin, Division Chief, Air Quality Planning and Science Division, CARB.

[6] 86 FR 53150, 53183.

[7] Id. at 53173.

the area's continued progress toward attainment in the event the area fails to attain by the attainment date,[8] and that once an area has attained the NAAQS, ''no further milestones are necessary or meaningful.'' [9] Similarly, the section 189(c)(2) requirement to submit a quantitative milestone report no longer applies when the area has attained the standard.[10] Accordingly, we proposed to find that upon a final determination that the San Joaquin Valley area has attained the 1997 24-hour $PM_{2.5}$ NAAQS by the attainment date, the post-attainment RFP milestone requirement will no longer apply and CARB would no longer be required to submit a quantitative milestone report for the San Joaquin Valley under 40 CFR 51.1013(b) for the purposes of the 2023 post-attainment milestone year identified in the Plan for the 1997 24-hour $PM_{2.5}$ NAAQS.[11]

Similarly, because the EPA does not believe that it is necessary to demonstrate conformity using post-attainment year budgets in areas that attain by the attainment date, we proposed that the requirement for post-attainment year (*i.e.,* 2023) motor vehicle emissions budgets would no longer apply in the area for the 1997 24-hour $PM_{2.5}$ NAAQS.[12]

Finally, the EPA proposed to disapprove the contingency measures element of the SJV $PM_{2.5}$ Plan because of several deficiencies, including that the contingency provisions of the District's Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters'') do not address the potential for failures to meet RFP, to meet a quantitative milestone, or to submit a quantitative milestone report.[13] In addition, the contingency measure provisions of Rule 4901 are not structured to achieve any additional emissions reductions if the EPA were to find that only certain counties in the San Joaquin Valley are violating the 1997 24-hour $PM_{2.5}$ NAAQS as of the attainment date, and thus only provide for reductions under certain circumstances. However, the EPA also proposed to find that the contingency measures requirement for the 1997 24-hour $PM_{2.5}$ NAAQS will no longer apply in the San Joaquin Valley nonattainment area if we finalize the determination that the area attained by the December 31, 2020 attainment date. Because we proposed to approve the RFP analysis, the modeled attainment demonstration, and the motor vehicle emissions budgets, we also proposed to issue a protective finding under 40 CFR 93.120(a)(3) in the event we finalize the disapproval of the contingency measures.[14]

Please see our September 24, 2021 proposed rule for additional background and a detailed explanation of the rationale for our proposed action.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period that ended on October 25, 2021. We received one set of comments in support of our proposal.[15] These comments are included in the docket for this action and do not require a response.

III. Final Action

For the reasons discussed in detail in our proposed action, the EPA is finalizing our determination that the San Joaquin Valley nonattainment area has attained the 1997 24-hour $PM_{2.5}$ NAAQS by the December 31, 2020 attainment date, based on complete (or otherwise deemed sufficient), quality-assured, and certified ambient air quality monitoring data for the 2018–2020 monitoring period.[16] The EPA is taking this final action pursuant to CAA sections 179(c)(1) and 188(b)(2). This final determination that the San Joaquin Valley nonattainment area has attained the 1997 24-hour $PM_{2.5}$ NAAQS does not constitute a redesignation of the area to attainment. Under CAA section 107(d)(3)(E), redesignations of nonattainment areas to attainment require states to meet a number of additional statutory criteria, including the EPA's approval of a SIP revision demonstrating maintenance of the standard for 10 years after redesignation. The designation status of the San Joaquin Valley area will remain Serious nonattainment for the 1997 24-hour $PM_{2.5}$ NAAQS until such time as the EPA determines that the area meets the CAA requirements for redesignation to attainment.

Also, for the reasons discussed in detail in our proposed action, under CAA section 110(k)(3), the EPA is taking final action to approve in part and disapprove in part portions of the SJV $PM_{2.5}$ Plan for the 1997 24-hour $PM_{2.5}$ NAAQS in the San Joaquin Valley nonattainment area as follows:

(1) We are approving the following elements as meeting the Serious nonattainment area planning requirements:

(a) The 2013 base year emissions inventories as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008(b);

(b) the BACM/BACT demonstration as meeting the requirements of CAA section 189(b)(1)(B) and 40 CFR 51.1010(a);

(c) the demonstration (including air quality modeling) that the Plan provides for attainment as expeditiously as practicable as meeting the requirements of CAA sections 179(d) and 189(b) and 40 CFR 51.1011(b);

(d) the RFP demonstration as meeting the requirements of CAA sections 172(c)(2) and 171(1) and 40 CFR 51.1012; and

(e) the quantitative milestone demonstration as meeting the requirements of CAA section 189(c) and 40 CFR 51.1013;

(2) We are approving the following elements as meeting the CAA section 189(d) planning requirements:

(a) The 2013 base year emissions inventories as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008(c);

(b) the BACM/BACT demonstration as meeting the requirements of CAA sections 189(a)(1)(C) [17] and 189(b)(1)(B) and 40 CFR 51.1010(c);

(c) the demonstration that the Plan will, at a minimum, achieve an annual five percent reduction in emissions of nitrogen oxides (NO_X) as meeting the requirements of CAA section 189(d) and 40 CFR 51.1010(c);

(d) the demonstration (including air quality modeling) that the Plan provides for attainment as expeditiously as practicable as meeting the requirements of CAA sections 179(d) and 189(d) and 40 CFR 51.1011(b);

(e) the RFP demonstration as meeting the requirements of CAA sections 172(c)(2) and 171(1) and 40 CFR 51.1012; and

(f) the quantitative milestone demonstration as meeting the requirements of CAA section 189(c) and 40 CFR 51.1013;

[8] 81 FR 58010, 58064 (August 24, 2016).

[9] 75 FR 13710, 13713 (March 23, 2010).

[10] Id.

[11] 86 FR 53150, 53173.

[12] Id. at 53178.

[13] Id. at 53175–53176.

[14] Id.

[15] Comment received October 25, 2021, from the North American Insulation Manufacturer's Association to Docket ID No. EPA–R09–OAR–2021–0261), including attachment.

[16] EPA, 2020 Air Quality System (AQS) Design Value Report, AMP480, accessed January 11, 2022. The Design Value Report excludes measurements with regionally concurred exceptional event flags.

[17] As discussed in the proposal, a section 189(d) plan must address any outstanding ''Moderate'' or Serious area requirements that have not previously been approved (86 FR 53150, 53154–53155). Because we have not previously approved a subpart 4 reasonably available control measure (RACM) demonstration for the San Joaquin Valley nonattainment area, we are also approving the BACM/BACT demonstration in the SJV $PM_{2.5}$ Plan as meeting the subpart 4 RACM/reasonably available control technology requirement for the area.

(3) We are approving the following motor vehicle emissions budgets for 2017 and 2020 as meeting the requirements of CAA section 176(c) and 40 CFR part 93, subpart A:

MOTOR VEHICLE EMISSIONS BUDGETS FOR THE SAN JOAQUIN VALLEY FOR THE 1997 24-HOUR $PM_{2.5}$ NAAQS

[annual average, tons per day]

County	2017 (RFP Year)		2020 (Attainment Year)	
	$PM_{2.5}$	NO_X	$PM_{2.5}$	NO_X
Fresno	0.9	28.5	0.9	25.3
Kern (San Joaquin Valley portion	0.8	28.0	0.8	23.3
Kings	0.2	5.8	0.2	4.8
Madera	0.2	5.3	0.2	4.2
Merced	0.3	10.7	0.3	8.9
San Joaquin	0.7	14.9	0.6	11.9
Stanislaus	0.4	11.9	0.4	9.6
Tulare	0.4	10.8	0.4	8.5

Source: 2018 $PM_{2.5}$ Plan, Appendix D, Table 3–1. Budgets are rounded up to the nearest tenth of a ton.

We are limiting the duration of our approval of the budgets to last until new budgets based on updated planning data and models have been submitted and the EPA has found the budgets to be adequate for conformity purposes. Upon the effective date of this final rule, the San Joaquin Valley metropolitan planning organizations (MPOs) and the U.S. Department of Transportation will be required to use the new budgets in transportation conformity determinations.[18] In addition, for these conformity determinations, the motor vehicle emissions from implementation of the transportation plan must be projected and compared to the budgets at the same level of accuracy and using the same method as the budgets in the Plan. For example, emissions must be rounded up to the nearest tenth of a ton per day (tpd).

(4) We are also approving the trading mechanism in the SJV $PM_{2.5}$ Plan for the 1997 24-hour $PM_{2.5}$ NAAQS for use in transportation conformity analyses by the San Joaquin Valley MPOs as allowed for under 40 CFR 93.124(b). The trading applies only to the following:

- Emissions sources included in the transportation conformity process;
- Trades using NO_X emissions reductions in excess of those needed to meet the NO_X budget;
- Trades in one direction from NO_X to direct $PM_{2.5}$; and
- A trading ratio of 2 tpd NO_X to 1 tpd $PM_{2.5}$.[19]

Clear documentation of the calculations used in the trade must be included in the conformity analysis; and

(5) We are disapproving the contingency measures element of the SJV $PM_{2.5}$ Plan for the 1997 24-hour $PM_{2.5}$ NAAQS for both the Serious area and CAA section 189(d) planning requirements for failing to meet the requirements of CAA section 172(c)(9). However, based on our finding of attainment by the applicable attainment date, we are also finalizing a determination that the contingency measures requirement no longer applies to the San Joaquin Valley area for the 1997 24-hour $PM_{2.5}$ NAAQS. Therefore, this final action does not trigger sanctions or FIP clocks.[20] In addition, because we are approving the RFP analysis, the modeled attainment demonstration, and the motor vehicle emissions budgets, we are issuing a protective finding for transportation conformity determinations under 40 CFR 93.120(a)(3) in connection with the final disapproval of the contingency measures element.

Lastly, based on our final determination that the San Joaquin Valley has attained the 1997 24-hour $PM_{2.5}$ NAAQS by the December 31, 2020 attainment date, we are finalizing the determinations that the requirements for a post-attainment milestone, a post-attainment year quantitative milestone report, and post-attainment year budgets no longer apply in the San Joaquin Valley nonattainment area for the 1997 24-hour $PM_{2.5}$ NAAQS.

IV. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this partial approval and partial disapproval of SIP revisions and finding of attainment do not in-and-of themselves create any new information collection burdens but simply disapprove certain state requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities

[18] Upon the effective date of this final rule, the newly-approved budgets will supersede the corresponding budgets for the 24-hour $PM_{2.5}$ NAAQS that the EPA approved at 76 FR 69896 (November 9, 2011).

[19] See the 2018 $PM_{2.5}$ Plan, Appendix D, D–125 to D–127. Upon the effective date of this final rule, the new trading ratio will replace the corresponding existing trading ratio of 9 to 1, NO_X to $PM_{2.5}$, for the 1997 24-hour $PM_{2.5}$ NAAQS.

[20] As noted in the proposed rule (86 FR 53150, 53152), on December 6, 2018 (83 FR 62720), the EPA determined that California had failed to submit a complete section 189(d) attainment plan for the 1997 24-hour $PM_{2.5}$ NAAQS, among other required SIP submissions for the San Joaquin Valley, by the statutory deadlines. Among other things, this finding triggered the obligation under CAA section 110(c) for the EPA to promulgate a federal implementation plan (FIP) no later than two years after the finding, unless the State has submitted, and the EPA has approved, the required SIP submission. Our final action on the SJV $PM_{2.5}$ Plan for the 1997 24-hour $PM_{2.5}$ NAAQS terminates our FIP obligation arising from the December 6, 2018 determination with respect to the 1997 24-hour $PM_{2.5}$ NAAQS in San Joaquin Valley. For all SIP elements other than the contingency measures, the FIP obligation is terminated by our approval of the relevant portions of the SJV $PM_{2.5}$ Plan SIP as meeting the applicable requirements. For the contingency measures element, the FIP obligation is terminated based on our final determination that the area has attained the 1997 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date, and that as a result, the contingency measures requirement for that NAAQS no longer applies, and thus, there is no SIP deficiency for a FIP to correct.

under the RFA. This action will not impose any requirements on small entities. This partial approval and partial disapproval of SIP revisions and finding of attainment do not in-and-of themselves create any new requirements but simply disapprove certain state requirements for inclusion in the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action, in part, disapproves certain pre-existing requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revisions that the EPA is partially approving and partially disapproving do not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this partial approval and partial disapproval of SIP revisions and finding of attainment do not in-and-of themselves create any new regulations but simply disapprove certain state requirements for inclusion in the SIP.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: January 24, 2022.

Martha Guzman Aceves,

Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(537)(ii)(A)(*8*) and (c)(537)(ii)(B)(*6*) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(537) * * *

(ii) * * *

(A) * * *

(*8*) ''Appendix H, RFP, Quantitative Milestones, and Contingency, 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards, Appendix H Revised February 11, 2020'' (portions pertaining to the 1997 24-hour $PM_{2.5}$ NAAQS only, and excluding section H.3 (''Contingency Measures'')).

(B) * * *

(*6*) 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards (''2018 $PM_{2.5}$ Plan''), adopted November 15, 2018 (portions pertaining to the 1997 24-hour $PM_{2.5}$ NAAQS only, and excluding Chapter 6 (''Demonstration of Federal Requirements for 2006 $PM_{2.5}$ Standards''), Chapter 7 (''Demonstration of Federal Requirements for 2012 $PM_{2.5}$ Standards''), and Appendix H, section H.3 (''Contingency Measures'')).

* * * * *

■ 3. Section 52.237 is amended by adding paragraph (a)(12) to read as follows:

§ 52.237 Part D disapproval.

(a) * * *

(12) The contingency measures portion of the 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards (''2018 $PM_{2.5}$ Plan''), adopted November 15,

2018, for San Joaquin Valley with respect to the 1997 24-hour $PM_{2.5}$ NAAQS.

* * * * *

■ 4. Section 52.244 is amended by adding paragraph (f)(3) to read as follows:

§ 52.244 Motor vehicle emissions budgets.

* * * * *

(f) * * *

(3) San Joaquin Valley, for the 1997 24-hour $PM_{2.5}$ NAAQS only (years 2017 and 2020 budgets only), approved February 28, 2022.

■ 5. Section 52.247 is amended by adding paragraph (p) to read as follows:

§ 52.247 Control Strategy and regulations: Fine Particle Matter.

* * * * *

(p) *Determination of Attainment:* Effective February 28, 2022, the EPA has determined that, based on 2018 to 2020 ambient air quality data, the San Joaquin Valley $PM_{2.5}$ nonattainment area has attained the 1997 24-hour $PM_{2.5}$ NAAQS by the applicable attainment date of December 31, 2020. Therefore, the EPA has met the requirement pursuant to CAA sections 179(c)(1) and 188(b)(2) to determine whether the area attained the standard. The EPA has also determined that, based on the determination of attainment by the applicable attainment date, the requirement of CAA section 172(c)(9) to provide for contingency measures no longer applies to the San Joaquin Valley area for the 1997 24-hour $PM_{2.5}$ NAAQS.

[FR Doc. 2022–01728 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R07–OAR–2021–0391; FRL–8693–02–R7]

Air Plan Approval; Missouri Redesignation Request and Associated Maintenance Plan for the Jefferson County 2010 SO_2 1-Hour NAAQS Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 27, 2017, the State of Missouri submitted a request for the Environmental Protection Agency (EPA) to redesignate the Jefferson County, Missouri, 2010 1-hour sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) nonattainment area to attainment and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the area. The State provided supplemental information on: May 15, 2018; February 7, 2019; February 25, 2019; and April 9, 2021. In response to these submittals, the EPA is taking the following final actions: Approve the State's plan for maintaining attainment of the 2010 1-hour SO_2 primary standard in the area; and approve the State's request to redesignate the Jefferson County SO_2 nonattainment area to attainment for the 2010 1-hour SO_2 primary standard.

DATES: This final rule is effective on February 28, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2021–0391. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Ashley Keas, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7629 or by email at *keas.ashley@epa.gov.*

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

Table of Contents

I. What is being addressed in this document?

On December 27, 2017, the State submitted a request for redesignation of the Jefferson County SO_2 nonattainment area to attainment and a SIP revision containing a 10-year maintenance plan for the area. On May 15, 2018, the State submitted a clarifying letter that Appendix A (containing the emissions inventory for the area) and Appendix B (containing a Consent Agreement entered between Missouri and Ameren sources in the area) of the SIP submittal should be considered part of the SIP revision request. On February 7, 2019, and February 25, 2019, the State submitted supplemental modeling information to the EPA. On April 9, 2021, the State submitted an addendum to the Consent Agreement which contains the emissions limits and monitoring, reporting, and recordkeeping requirements needed to determine compliance with the emissions limits for the covered sources. The EPA's proposal at 86 FR 34177 [June 29, 2021] discusses the EPA's review of the redesignation request, the maintenance plan (including Consent Agreement and addendum), and the supplemental information and provides support for the EPA's proposed approval of the request to redesignate the area to attainment and for proposed approval of the 10-year maintenance plan. Additional analysis of the redesignation request, 10-year maintenance plan, Consent Agreement and addendum, and supplemental modeling information is provided in a Technical Support Document (TSD) included in this docket. The public comment period on the EPA's proposed rule opened on June 29, 2021, the date of its publication in the **Federal Register**, and closed on July 29, 2021. During this period, the EPA received one comment. The EPA additionally received a request to extend the comment period due to the technical support document being added to the docket partway through the comment period. Therefore, the EPA reopened the comment period on August 17, 2021, and closed on September 16, 2021 (86 FR 45950). During this second comment period, the EPA received one additional comment. Both comments are addressed in section II.

II. The EPA's Responses to Comments

Comment 1: On July 29, 2021, the EPA received a comment from Ameren Missouri. The comment was largely supportive of the EPA's proposed redesignation of the Jefferson County area. Ameren also identified minor clarifications and corrections needed in the TSD. Specifically, Ameren noted that the TSD incorrectly stated that meteorological data was from the Weaver monitor when in fact the Weaver monitor does not collect meteorological data.

Response 1: The EPA updated this reference to the Johnson Tall Tower, the source of the meteorological data underlying the pollution rose on page

28 of the revised TSD, included in the docket for this action.

Comment 2: On September 16, 2021, the EPA received one comment from the Missouri Department of Natural Resources. The comment requested the EPA clarify statements in the proposed rule regarding the need for a SIP revision to remove monitoring requirements for the industrial monitoring sites located around Rush Island. Missouri references Appendix 1 to the Consent Agreement, *Additional QAPP Components,* which includes the process for discontinuing any of the monitors around Rush Island, and states that the EPA's approval of this Quality Assurance Project Plan (QAPP) into the SIP renders a SIP revision unnecessary to discontinue the operation of a monitor. Missouri requests that the EPA clarify that the monitors may be discontinued per the requirements of the Consent Agreement without the need for a SIP revision.

Response 2: The EPA agrees with Missouri that the Appendix to the Consent Agreement contains a QAPP that outlines criteria that must be met in order for Ameren to request discontinuation of a monitor in the SO_2 Monitoring Network.[1] Specifically, the Consent Agreement and QAPP outline criteria to be submitted by Ameren to Missouri in order to request monitor discontinuation. The EPA agrees that our approval of the Consent Agreement and QAPP into Missouri's SIP does allow Missouri to follow the process outlined in the Consent Agreement and QAPP for discontinuation of a monitor in Ameren's SO_2 Monitoring Network. To clarify the EPA's position as stated in the proposed rule, if a monitor in the SO_2 Monitoring Network is removed, a SIP revision would be triggered to update certain aspects of the maintenance plan that relied upon the operation of the monitor.

Specifically, Missouri would need to update the contingency plan triggers as relied upon in the maintenance plan and Consent Agreement. Additionally, and as discussed further below, Missouri must still be able to demonstrate that they meet the requirements for an appropriate monitoring network in the area and an appropriate method for verifying continued attainment throughout the maintenance area for the duration of the maintenance period.

[1] While the term ''SO_2 Monitoring Network'' is not defined in the Consent Agreement, the maintenance plan identifies the ''SO_2 Monitoring Network'' to include the following monitors operated by Ameren: Weaver Road & Highway AA, Natchez, and Fults.

Contingency Measures

The Consent Agreement that the EPA is approving into the SIP requires Ameren to install and operate an SO_2 Monitoring Network at locations representative of the impacts of Rush Island's emissions and includes specific requirements to be undertaken by Ameren should a monitor within the SO_2 Monitoring Network record an elevated concentration. As the EPA explained in the proposed rule, the EPA interprets these requirements to be contingency measures for purposes of Clean Air Act (CAA) section 175A.

Additionally, the maintenance plan includes contingency plan triggers and requirements applicable to entities responsible for elevated values recorded in the Jefferson County maintenance area. This includes the Mott Street Monitor as well as the Weaver Monitor located within the maintenance area near Rush Island.

Monitoring Network Commitment and Verification of Continued Attainment

In addition, Missouri commits in the maintenance plan to continued operation of the ''appropriate SO_2 network'' in the Jefferson County maintenance area and describes how the SO_2 monitoring network was expanded in accordance with the Consent Agreement to include the Weaver Road & Highway AA, Natchez, and Fults monitors. The maintenance plan states that the SO_2 monitoring network is reviewed annually through the Annual Network Monitoring Plan pursuant 40 CFR part 58, and any discontinuation or relocation of the monitors would require review and approval by the EPA.

The EPA agrees with Missouri that any proposed network modification of State or Local Area Monitoring Stations (SLAMS) is subject to the approval of the EPA Regional Administrator. For SLAMs that operate in a maintenance area, 40 CFR 58.14(c)(1) states that, ''. . . if the most recent attainment or maintenance plan adopted by the State and approved by EPA contains a contingency measure to be triggered by an air quality concentration and the monitor to be discontinued is the only SLAMS monitor operating in the nonattainment or maintenance area, the monitor may not be discontinued.'' This provision would apply to the Mott Street monitor, as it is the only SO_2 SLAMS operating within the Jefferson County area.

The industrial source monitors operated by Ameren are not required to meet the discontinuation criteria or process outlined for SLAMS monitors in 40 CFR part 58. However, these monitors characterize the air quality around the largest remaining source in the area, Rush Island, and certain concentration levels recorded by these monitors trigger contingency provisions per the maintenance plan and Consent Agreement. If Ameren were to request discontinuation of these industrial source monitors, the Consent Agreement would allow Missouri to approve such request without approval from the EPA. However, discontinuation of a monitor would impact the state's ability to meet the requirement for verification of continued attainment and Missouri's commitment to operating an appropriate monitoring network in the area, thereby materially changing Missouri's maintenance plan and the basis for the EPA's approval of Missouri's maintenance plan.

The EPA therefore disagrees with the commenter concerning whether a SIP revision is necessary if a monitor is discontinued pursuant to the terms of the Consent Agreement and finds that if a monitor is discontinued in the area, Missouri would need to revise the federally approved maintenance plan and include a justification for removal of the monitor in order to meet the requirements of section 110(l) of the CAA. The EPA expects that removal of a monitor would require a demonstration that the contingency provisions are adequately triggered in the absence of the monitor. In addition, Missouri must demonstrate that an appropriate SO_2 monitoring network remains in place in the maintenance area and that the maintenance plan still meets the requirement for verification of continued attainment under section 175A.

III. Have the requirements for approval of a SIP revision been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on the December 2017 SIP submittal from July 31, 2017, to September 7, 2017 and held a public hearing on August 31, 2017. The State received and addressed nineteen combined comments from a total of five sources. The State revised the maintenance plan based on public comment prior to submitting to the EPA.

On April 9, 2021, Missouri submitted a supplement to the SIP revision to the EPA consisting of an addendum to the Consent Agreement between Ameren and Missouri. The Consent Agreement addendum incorporates monitoring, reporting and recordkeeping

requirements needed to make the emissions limits contained in the Consent Agreement practically enforceable. Missouri held a public hearing for this SIP supplement on January 28, 2021, and made the supplement available for public review and comment from December 28, 2020, through February 4, 2021. Missouri received supportive comments from Ameren.

In addition, as explained in the EPA's proposed rule (and in more detail in the technical support document which is included in the docket for this action), the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

IV. What are the actions the EPA is taking?

The EPA is taking final action to approve the maintenance plan for the Jefferson County 2010 SO_2 1-hour NAAQS nonattainment area into the Missouri SIP (as compliant with CAA section 175A). The maintenance plan demonstrates that the area will continue to maintain the 2010 1-hour SO_2 NAAQS and includes contingency provisions to remedy any future violations of the 2010 1-hour SO_2 NAAQS and procedures for evaluation of potential violations.

Additionally, the EPA is taking final action to determine that the Jefferson County 2010 SO_2 1-hour NAAQS nonattainment area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 2010 1-hour SO_2 NAAQS. On this basis, the EPA is approving Missouri's redesignation request for the area and changing the legal designation of the portion of Jefferson County designated nonattainment at 40 CFR part 81 to attainment for the 2010 1-hour SO_2 NAAQS.

V. Environmental Justice Concerns

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. If an area is designated nonattainment of the NAAQS, the CAA provides for the EPA to redesignate the area to attainment upon a demonstration by the state authority that air quality is attaining the NAAQS and will continue to maintain the NAAQS in order to ensure that all those residing, working, attending school, or otherwise present in those areas are protected, regardless of minority and economic status.

The EPA utilized the EJSCREEN tool to evaluate environmental and demographic indicators within the area. The tool outputs are contained in the docket for this action. While the EPA's EJSCREEN tool demonstrates that demographic indicators are consistent or lower than national averages, there are vulnerable populations in the area including low-income populations and persons over 64 years of age.

This action addresses a redesignation determination for the Jefferson County, Missouri area. Under CAA section 107(d)(3), the redesignation of an area to attainment is an action that affects the status of a geographical area and does not impose any additional regulatory requirements on sources beyond those imposed by state law. As discussed in this document and the associated technical support document, Missouri has demonstrated that the air quality in the Jefferson County area is attaining the NAAQS and will continue to maintain the NAAQS. For these reasons, this action does not result in disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.

VI. Incorporation by Reference

In this document the EPA is amending regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing incorporation by reference of the Missouri State Implementation Plan described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- This action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The basis for this determination is contained in Section V of this action, ''Environmental Justice Concerns.''

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 29, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Maintenance plan, Redesignation, Sulfur oxides.

40 CFR Part 81

Environmental protection, Air pollution control, Designations, Intergovernmental relations, Redesignation, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 14, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, EPA amends 40 CFR parts 52 and 81 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart AA—Missouri

■ 2. In § 52.1320:

■ a. The table in paragraph (d) is amended by adding the entry ''(34)'' in numerical order.

■ b. The table in paragraph (e) is amended by adding the entry ''(81)'' in numerical order.

The additions read as follows:

§ 52.1320 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit number	State effective date	EPA approval date	Explanation
*	*	*	*	*
(34) Ameren Missouri	Consent Agreement and Addendum No. APCP–2015–034.	12/14/2020	1/28/2022 [insert **Federal Register** citation].	

(e) * * *

EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
*	*	*	*	*
(81) Jefferson County 1-hour SO_2 NAAQS Maintenance Plan and Supplemental Modeling Analyses.	Jefferson County	12/27/17; 5/15/18; 2/7/19; 2/25/19; and 4/9/21	1/28/2022, [insert **Federal Register** citation].	This action approves the Maintenance Plan and the Supplemental Modeling Analyses for the Jefferson County area.

■ 3. In § 52.1343, add paragraph (c) to read as follows:

§ 52.1343 Control strategy: Sulfur dioxide.

* * * * *

(c) *Redesignation to attainment.* As of February 28, 2022, the Jefferson County 2010 SO_2 nonattainment area is redesignated to attainment of the 2010 SO_2 1-hour National Ambient Air Quality Standard (NAAQS) in accordance with the requirements of Clean Air Act (CAA) section 107(d)(3) and EPA has approved its maintenance plan and supplemental modeling demonstration analyses as meeting the requirements of CAA section 175A.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

Subpart C—Section 107 Attainment Status Designations

■ 5. In § 81.326, revise the entry ''Jefferson County, MO'' in the table entitled ''Missouri—2010 Sulfur Dioxide NAAQS [Primary]'' to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—2010 SULFUR DIOXIDE NAAQS

[Primary]

Designated area [1]	Designation	
	Date [2]	Type
* * * * *	*	*
Jefferson County, MO	2/28/2022	Attainment.
Jefferson County (part)		
That portion within Jefferson County described by connecting the following four sets of UTM coordinates moving in a clockwise manner:		
(Herculaneum USGS Quadrangle), 718360.283, 4250477.056, 729301.869, 4250718.415, 729704.134, 4236840.30, 718762.547, 4236558.715.		
(Festus USGS Quadrangle), 718762.547, 4236558.715, 729704.134, 4236840.30, 730066.171, 4223042.637, 719124.585, 4222680.6.		
(Selma USGS Quadrangle), 729704.134, 4236840.30, 730428.209, 4236840.3, 741047.984, 4223283.996, 730066.171, 4223042.637.		
(Valmeyer USGS Quadrangle), 729301.869, 4250718.415, 731474.096, 4250798.868, 730428.209, 4236840.3, 729704.134, 4236840.30.		
* * * * *	*	*

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

[2] This date is April 9, 2018, unless otherwise noted.

* * * * *

[FR Doc. 2022–01645 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

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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 ENERGY

10 CFR Part 430

[EERE–2021–BT–STD–0031]

RIN 1904–AF19

Energy Conservation Program: Energy Conservation Standards for Consumer Furnaces

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

ACTION: Request for information.

SUMMARY: The U.S. Department of Energy (''DOE'') is initiating an effort to determine whether to amend the current energy conservation standards for certain classes of consumer furnaces. Under the Energy Policy and Conservation Act, as amended, DOE must review these standards at least once every six years and publish either a notice of proposed rulemaking (''NOPR'') to propose new standards or a notification of determination that the existing standards do not need to be amended. This request for information (''RFI'') solicits information from the public to help DOE determine whether amended standards for non-weatherized oil-fired, mobile home oil-fired, weatherized oil-fired, weatherized gas, and electric consumer furnaces would result in significant energy savings and whether such standards would be technologically feasible and economically justified. DOE also welcomes written comments from the public on any subject within the scope of this document (including those topics not specifically raised), as well as the submission of data and other relevant information.

DATES: Written comments and information are requested and will be accepted on or before February 28, 2022.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–STD–0031, by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* To *OEWGFurnaces2021STD0031@ee.doe.gov.* Include docket number EERE–2021–BT–STD–0031 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section IV of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing coronavirus 2019 (''COVID–19'') pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

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

The docket web page can be found at: *www.regulations.gov/docket/EERE-2021-BT-STD-0031.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section III for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

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Ms. Amelia Whiting, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–2588. Email: *amelia.whiting@hq.doe.gov.*

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

SUPPLEMENTARY INFORMATION:

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I. Introduction

A. Authority and Background

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles. These products include consumer furnaces, the subject of this document. (42 U.S.C. 6292(a)(5)). EPCA prescribed energy conservation standards for these products, and

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

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

directed DOE to conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(f)).

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

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

As previously noted, EPCA established energy conservation standards for consumer furnaces, which are expressed in terms of minimum annual fuel utilization efficiency (''AFUE''). (42 U.S.C. 6295(f)(1)–(2)) Pursuant to EPCA, DOE was required to conduct two rounds of rulemaking to consider amended energy conservation standards for consumer furnaces. (42 U.S.C. 6295(f)(4)(B) and (C)) In satisfaction of the first round of rulemaking under 42 U.S.C. 6295(f)(4)(B), DOE published a final rule on November 19, 2007 (''November 2007 final rule'') that revised the initial standards for four classes of consumer furnaces (*i.e.,* non-weatherized gas furnaces (''NWGFs''), mobile home gas furnaces (''MHGFs''), weatherized gas furnaces (''WGFs''), and non-weatherized oil-fired furnaces (''NWOFs''), but left them in place for two product classes (*i.e.,* mobile home oil-fired furnaces (''MHOFs'') and weatherized oil-fired furnaces (''WOFs'')). 72 FR 65136, 65137. Compliance with the amended standards established in the November 2007 final rule was to be required beginning November 19, 2015. *Id.* at 72 FR 65136, 65169.

On June 27, 2011, DOE published a direct final rule (''DFR'') (''June 2011 DFR'') revising the energy conservation standards for consumer furnaces pursuant to the voluntary remand in *State of New York, et al.* v. *Department of Energy, et al.* 76 FR 37408, 37415. In the June 2011 DFR, DOE addressed the energy conservation standards for the same six product classes addressed in the November 2007 final rule (*i.e.,* NWGFs, MHGFs, WGFs, NWOF, MHOFs, and WOFs) plus electric furnaces. The June 2011 DFR amended the existing AFUE energy conservation standards for NWGFs, MHGFs, and NWOFs, and amended the compliance date (but left the existing standards in place) for WGFs. The June 2011 DFR also established electrical standby mode and off mode standards for NWGFs, MHGFs, NWOFs, MHOFs, and electric furnaces. DOE confirmed the standards and compliance dates promulgated in the June 2011 DFR in a notice of effective date and compliance dates published on October 31, 2011 (''October 2011 notice''). 76 FR 67037. After publication of the October 2011 notice, the American Public Gas Association sued DOE to invalidate the rule as it pertained to NWGFs. Petition for Review, *American Public Gas Association, et al.* v. *Department of Energy, et al.,* No. 11–1485 (D.C. Cir. filed Dec. 23, 2011). On April 24, 2014, the Court granted a motion that approved a settlement agreement that was reached between DOE, APGA, and the various intervenors in the case, in which DOE agreed to a remand of the non-weatherized gas furnace and mobile home gas furnace portions of the June 2011 direct final rule in order to conduct further notice-and-comment rulemaking. Accordingly, the Court's order vacated the June 2011 DFR in part (*i.e.,* those portions relating to non-weatherized gas furnaces and mobile home gas furnaces) and remanded to the agency for further rulemaking. 86 FR 43120, 43124 (Aug. 6, 2021). As a result, the standards established by the June 2011 DFR for NWGFs and MHGFs did not go into effect. The court order left in place the standards for WGFs, NWOFs, MHOFs, WOFs, and electric furnaces. Amended standards for NWGFs and MHGFs are being addressed in a separate rulemaking. This RFI covers WGFs, NWOFs, MHOFs, WOFs, and electric furnaces.

On January 15, 2021, in response to a petition for rulemaking submitted by the American Public Gas Association, Spire, Inc., the Natural Gas Supply Association, the American Gas Association, and the National Propane Gas Association (83 FR 544883; Nov. 1, 2018) DOE published a final interpretive rule determining that, in the context of residential furnaces, commercial water heaters, and similarly situated products/equipment, use of non-condensing technology (and associated venting constitutes a performance-related ''feature'' under EPCA that cannot be eliminated through adoption of an energy conservation standard. 86 FR 4776 (''January 2021 Final Interpretive Rule'').

However, on December 29, 2021, DOE subsequently published a final interpretive rule that returns to the previous and long-standing interpretation (in effect prior to the January 15, 2021 final interpretive rule), under which the technology used to supply heated air or hot water is not a performance-related ''feature'' that provides a distinct consumer utility under EPCA. 86 FR 73947 (''December 2021 Final Interpretive Rule'').

EPCA also requires that, not later than 6 years after the issuance of any final rule establishing or amending a standard, DOE evaluate the energy conservation standards for each type of covered product, including those at issue here, and publish either a notification of determination that the standards do not need to be amended, or a NOPR that includes new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(1)) If DOE determines not to amend a standard based on the statutory criteria, not later than 3 years after the issuance of a final determination not to amend standards, DOE must publish either a notification of determination that standards for the product do not need to be amended, or a NOPR including new proposed energy conservation standards (proceeding to a final rule, as appropriate). (42 U.S.C. 6295(m)(3)(B)) DOE must make the analysis on which a determination is based publicly available and provide an opportunity for written comment. (42 U.S.C. 6295(m)(2)).

In proposing new standards, DOE must evaluate that proposal against the criteria of 42 U.S.C. 6295(o), as described in the following section, and follow the rulemaking procedures set out in 42 U.S.C. 6295(p). (42 U.S.C. 6295(m)(1)(B)) If DOE decides to amend the standard based on the statutory criteria, DOE must publish a final rule not later than two years after energy conservation standards are proposed. (42 U.S.C. 6295(m)(3)(A)).

DOE is publishing this RFI to collect data and information to inform its decision consistent with its obligations under EPCA.

B. Rulemaking Process

DOE must follow specific statutory criteria for prescribing new or amended standards for covered products. EPCA requires that any new or amended

energy conservation standard prescribed by the Secretary of Energy (''Secretary'') be designed to achieve the maximum improvement in energy or water efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) The Secretary may not prescribe an amended or new standard that will not result in significant conservation of energy, or is not technologically feasible or economically justified. (42 U.S.C. 6295(o)(3)).

To adopt any new or amended standards for a covered product, DOE must determine that such action would result in significant energy savings. (42 U.S.C. 6295(o)(3)(B)) The significance of energy savings offered by a new or amended energy conservation standard cannot be determined without knowledge of the specific circumstances surrounding a given rulemaking.[3] For example, the United States has now rejoined the Paris Agreement on February 19, 2021. As part of that agreement, the United States has committed to reducing GHG emissions in order to limit the rise in mean global temperature. As such, energy savings that reduce GHG emission have taken on greater importance. Additionally, some covered products and equipment have most of their energy consumption occur during periods of peak energy demand. The impacts of these products on the energy infrastructure can be more pronounced than products with relatively constant demand. In evaluating the significance of energy savings, DOE considers differences in primary energy and FFC effects for different covered products and equipment when determining whether energy savings are significant. Primary energy and FFC effects include the energy consumed in electricity production (depending on load shape), in distribution and transmission, and in extracting, processing, and transporting primary fuels (*i.e.,* coal, natural gas, petroleum fuels), and thus present a holistic picture of the impacts of energy conservation standards. Accordingly, DOE evaluates the significance of energy savings on a case-by-case basis.

To determine whether a standard is economically justified, EPCA requires that DOE determine whether the benefits of the standard exceed its burdens by considering, to the greatest extent practicable, the following seven factors:

(1) The economic impact of the standard on the manufacturers and consumers of the affected products;

(2) The savings in operating costs throughout the estimated average life of the product compared to any increases in the initial cost, or maintenance expenses likely to result from the standard;

(3) The total projected amount of energy and water (if applicable) savings likely to result directly from the standard;

(4) Any lessening of the utility or the performance of the products likely to result from the standard;

(5) The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the standard;

(6) The need for national energy and water conservation; and

(7) Other factors the Secretary considers relevant.

(42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

DOE fulfills these and other applicable requirements by conducting a series of analyses throughout the rulemaking process. Table I.1 shows the individual analyses that are performed to satisfy each of the requirements within EPCA.

TABLE I.1—EPCA REQUIREMENTS AND CORRESPONDING DOE ANALYSIS

EPCA requirement	Corresponding DOE analysis
Significant Energy Savings	• Shipments Analysis. • National Impact Analysis. • Energy and Water Use Determination.
Technological Feasibility	• Market and Technology Assessment. • Screening Analysis. • Engineering Analysis.
Economic Justification:	
1. Economic Impact on Manufacturers and Consumers.	• Manufacturer Impact Analysis. • Life-Cycle Cost and Payback Period Analysis. • Life-Cycle Cost Subgroup Analysis. • Shipments Analysis.
2. Lifetime Operating Cost Savings Compared to Increased Cost for the Product.	• Markups for Product Price Determination. • Energy and Water Use Determination. • Life-Cycle Cost and Payback Period Analysis.
3. Total Projected Energy Savings	• Shipments Analysis. • National Impact Analysis.
4. Impact on Utility or Performance	• Screening Analysis. • Engineering Analysis.
5. Impact of Any Lessening of Competition	• Manufacturer Impact Analysis.
6. Need for National Energy and Water Conservation.	• Shipments Analysis. • National Impact Analysis.
7. Other Factors the Secretary Considers Relevant.	• Employment Impact Analysis. • Utility Impact Analysis. • Emissions Analysis. • Monetization of Emission Reductions Benefits. • Regulatory Impact Analysis.

[3] See 86 FR 70892, 70901 (Dec. 13, 2021).

As detailed throughout this RFI, DOE is publishing this document seeking input and data from interested parties to aid in the development of the technical analyses on which DOE will ultimately rely to determine whether (and if so, how) to amend the standards for WGFs, NWOFs, MHOFs, WOFs, and electric furnaces.

C. Deviation From Appendix A

In accordance with Section 3(a) of 10 CFR part 430, subpart C, appendix A, DOE notes that it is deviating from that appendix's provision requiring a 75-day comment period for all pre-NOPR standards documents. 10 CFR part 430, subpart C, appendix A, section 6(d)(2). DOE is opting to deviate from this step because DOE believes that 30 days is a sufficient time to respond to this initial rulemaking document because the market and available technologies have not changed substantially from the previous rulemaking.

II. Request for Information

In the following sections, DOE has identified a variety of issues on which it seeks input to aid in the development of the technical and economic analyses regarding whether amended standards for WGFs, NWOFs, MHOFs, WOFs, and electric furnaces may be warranted.

A. Scope & Product Classes

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used, or by capacity or other performance-related features that justify differing standards. (42 U.S.C. 6295(q)) In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility of the feature to the consumer and other factors DOE determines are appropriate. *(Id.)* As discussed in Section I.A, DOE has recently published the December 2021 Final Interpretive Rule that returns to the previous and long-standing interpretation (in effect prior to the January 15, 2021 final interpretive rule), under which the technology used to supply heated air or hot water is not a performance-related ''feature'' that provides a distinct utility under EPCA. 86 FR 73947 (Dec. 29, 2021).

A ''furnace'' is ''a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

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

(2) Is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 British thermal units (''Btu'') per hour;

(3) Is an electric central furnace, electric boiler, forced-air central furnace, gravity central furnace, or low-pressure steam or hot water boiler; and

(4) Has a heat input rate of less than 300,000 Btu per hour for electric boilers and low-pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces. 10 CFR 430.2. (See also 42 U.S.C. 6291(23)).[4]

DOE divides consumer furnaces into seven classes for the purpose of setting energy conservation standards: (1) NWGFs, (2) MHGFs, (3) WGFs, (4) NWOFs, (5) MHOFs, (6) WOFs, and (7) electric furnaces. 10 CFR 430.32(e)(ii). As discussed in section I.B of this document, NWGFs and MHGFs were the subject of a lawsuit that resulted in an order to remand the standards to DOE for further analysis. As a result, DOE has been analyzing amended standards for those two consumer furnace classes as part of a separate, ongoing rulemaking covering only those two classes (see Docket No. EERE–BT–STD–2014–0031 [5]). Therefore, DOE is not considering NWGFs and MHGFs as part of this review. The product classes that DOE considered for this document are NWOFs, WGFs, MHOFs, WOFs, and electric furnaces. The current standards for WGFs, NWOFs, MHOFs, WOFs, and electric furnaces are shown in Table II–1.

TABLE II–1—ENERGY CONSERVATION STANDARDS FOR CONSUMER FURNACES COVERED IN THIS RFI

Product class	AFUE (percent)	$P_{W,SB}$ and $P_{W,OFF}$ (watts)
Non-weatherized oil-fired furnaces (not including mobile home furnaces)	83	11
Mobile Home oil-fired furnaces	75	11
Weatherized gas furnaces	81	N/A
Weatherized oil-fired furnaces	78	N/A
Electric furnaces	78	10

Issue 1: DOE seeks comment on whether there are any products that are covered by the definition of ''furnace'' and should be regulated by DOE, but are not covered by any of the current classes of consumer furnaces that are regulated by DOE.

Issue 2: DOE seeks information regarding any other new product classes it should consider for inclusion in its analysis. DOE also requests relevant data detailing the corresponding impacts on energy use that would justify separate product classes (*i.e.,* explanation for why the presence of these performance-related features would increase or decrease energy consumption).

B. Significant Savings of Energy

On June 27, 2011, DOE adopted amended energy conservations standard for consumer furnaces, central air conditioners, and heat pumps that are expected to result in an estimated 3.36 to 4.38 quadrillion Btu (''quads'') of cumulative energy savings over a 30-year period for the three products. 76 FR 37408, 37412 (June 27, 2011). Of this, 0.012 quads were from the efficiency standards adopted for NWOFs at 83 percent AFUE. Additionally, in the June 2011 DFR, DOE estimated that an energy conservation standard established at the maximum technologically feasible (''max-tech'') AFUE level, which was

[4] In turn, a forced-air central furnace is defined as a gas or oil burning furnace designed to supply heat through a system of ducts with air as the heating medium. The heat generated by combustion of gas or oil is transferred to the air within a casing by conduction through heat exchange surfaces and is circulated through the duct system by means of a fan or blower. 10 CFR 430.2. A gravity central furnace is defined as a gas fueled furnace which depends primarily on natural convection for circulation of heated air and which is designed to be used in conjunction with a system of ducts. 10 CFR 430.2. An electric central furnace is defined as a furnace designed to supply heat through a system of ducts with air as the heating medium, in which heat is generated by one or more electric resistance heating elements and the heated air is circulated by means of a fan or blower. 10 CFR 430.2.

[5] The rulemaking docket is available online at: *www.regulations.gov/docket/EERE-2014-BT-STD-0031.*

determined to be 97 percent, would have resulted in 0.376 additional quads of savings for NWOFs.[6] Potential energy savings for MHOFs, WOFs, and electric furnaces from amended AFUE standards were not considered in the June 2011 DFR. (EERE–2011–BT–STD–0011–0012, Technical Support Document: Chapter 10. National and Regional Impact Analyses at pp. 10–96–10–97) For MHOFs and WOFs, DOE found that only a very small number of these products are shipped, resulting in *de minimis* potential for energy savings from amended AFUE standards. Because electric furnace efficiency already approaches 100-percent AFUE, DOE concluded that electric furnaces would also have *de minimis* energy savings potential and did not consider amending the AFUE standards. 76 FR 37408, 37443, 37445.

While DOE's RFI is not limited to the following issues, DOE is particularly interested in comment, information, and data on energy use and shipments, as outlined in sections II.B.1 and II.B.2 of this document, to inform whether potential amended energy conservation standards would result in a significant savings of energy.

1. Energy Use Analysis

As part of the rulemaking process, DOE conducts an energy use analysis to identify how products are used by consumers, and thereby determine the energy savings potential of energy efficiency improvements. The energy use analysis is meant to represent typical energy consumption in the field.

Issue 3: DOE requests feedback on the levels of energy savings that could be expected from the adoption of more-stringent standards for consumer furnaces, specifically for those classes of consumer furnaces covered by this notice (WGFs, NWOFs, MHOFs, WOFs, and electric furnaces).

Issue 4: DOE requests data on the typical operating conditions for WGFs, NWOFs, MHOFs, WOFs, and electric furnaces in high heating and reduced heating modes.

Issue 5: DOE requests feedback and sources of data or recommendations to support sizing criteria of WGFs, NWOFs, MHOFs, WOFs, and electric furnaces for typical consumer space-heating applications.

2. Shipments

DOE develops shipments forecasts of consumer furnaces to calculate the national impacts of potential amended energy conservation standards on energy consumption, net present value (''NPV''), and future manufacturer cash flows. DOE shipments projections are based on available historical data broken out by product class and efficiency. Current sales estimates allow for a more accurate model that captures recent trends in the market.

Issue 6: DOE requests historical consumer furnace shipments data for each product class covered by this notice (*i.e.,* WGFs, NWOFs, MHOFs, WOFs, and electric furnaces). DOE is interested in shipments data, broken out by product class, efficiency level, and region. If disaggregated shipments data are not available at the product class level, DOE requests shipments data at any broader available category.

C. Technological Feasibility

1. Technology Options

In the development of the June 2011 DFR, DOE considered a number of technology options that manufacturers could use to reduce energy consumption in NWOFs, WGFs, MHOFs, WOFs, and electric furnaces. However, as discussed in section II.B of this document, DOE did not consider amended AFUE standards for MHOFs, WOFs, and electric furnaces in the June 2011 DFR. Regarding NWOFs and WGFs, DOE considered 13 technology options that would be expected to impact the AFUE of consumer furnaces: (1) Condensing secondary heat exchanger for non-weatherized furnaces, (2) heat exchanger improvements for non-weatherized furnaces, (3) condensing and near-condensing technologies for WGFs, (4) two-stage or modulating combustion, (5) pulse combustion, (6) low NO_X premix burners, (7) burner derating, (8) insulation improvements, (9) off-cycle dampers, (10) concentric venting, (11) low-pressure, air-atomized oil burners, (12) high-static oil burners, and (13) delayed-action oil pump solenoid valves. 76 FR 37408, 37449. DOE seeks comment on any changes to these technology options that could affect whether DOE could propose a ''no-new-standards'' determination, such as an insignificant increase in the range of efficiencies and performance characteristics of these technology options. DOE also seeks comment on whether there are any other technology options that DOE should consider in its analysis.

Issue 7: DOE seeks information on the aforementioned technologies, including their applicability to the current market and how these technologies may impact the energy use of consumer furnaces as measured according to the DOE test procedure. DOE also seeks information on how these technologies may have changed since they were considered in the June 2011 DFR analysis.

Additionally, the June 2011 DFR established separate standby mode and off mode energy conservation standards for NWOFs and electric furnaces. 76 FR 37408, 37433. WGFs and WOFs were not considered in the analysis of standby mode and off mode energy consumption because DOE did not find any weatherized furnaces that were not sold as part of a single package air conditioner or ''dual fuel'' single package heat pump systems, and determined that the existing test procedures for central air conditioners and heat pumps account for standby mode power consumption within the seasonal energy efficiency ratio (''SEER'') rating. MHOFs were not considered in the analysis of standby mode and off mode standards due to *de minimis* potential for energy savings. 76 FR 37408, 37433. For the standby/off mode metric, DOE considered three technology options that would be expected to impact the standby/off mode efficiency rating: (1) Switching mode power supplies, (2) toroidal transformers, and (3) a relay that disconnects power to the blower's brushless permanent magnet[7] (''BPM'') motor while in standby mode. 76 FR 37408, 37450.

Issue 8: DOE seeks information on the aforementioned technologies, including their applicability to the current market and how these technologies may impact the standby mode and/or off mode energy use of NWOFs and electric furnaces as measured according to the DOE test procedure. DOE also seeks information on how these technologies may have changed since they were considered in the June 2011 DFR analysis.

Issue 9: DOE request information on whether other standby mode and off mode technologies are available to reduce energy consumption of consumer furnaces in standby mode and/or off mode.

2. Screening Analysis

The purpose of the screening analysis is to evaluate the technologies that improve product efficiency to determine which technologies will be eliminated

[6] This value was calculated by subtracting the energy savings in quads for furnaces at the standard level adopted in the June 2011 DFR (*i.e.,* 83 percent AFUE which corresponded to efficiency level 1 in that analysis) from the energy savings in quads associated with max-tech level (*i.e.,* 97 percent AFUE, which corresponded to efficiency level 4).

[7] In the June 2011 DFR, DOE referred to these motors as electronically commutated motors (''ECM''). BPM is a more generalized term for the same type of motor.

from further consideration and which will be passed to the engineering analysis for further consideration. DOE determines whether to eliminate certain technology options from further consideration based on the following criteria: (1) Technological feasibility; (2) practicability to manufacture, install, and service; (3) adverse impacts on product utility or product availability; (4) adverse impacts on health or safety; and (5) unique-pathway proprietary technologies. 10 CFR part 430, subpart C, appendix A, 7(b).

The technology options screened out in the June 2011 DFR for both AFUE and standby/off mode power consumption are summarized in Table II.2. 76 FR 37408, 37448–37450.

TABLE II.2—PREVIOUS SCREENING ANALYSIS FROM THE JUNE 2011 DFR

Technology option	Reason for screening				
	Technological feasibility	Practicability to manufacture	Adverse impacts on product utility or availability	Adverse impacts on health and safety	Unique pathway proprietary technologies
Condensing and near-condensing technologies for WGFs	X				
Pulse combustion				X	
Low NO_X premix burners	X				
Burner derating			X		
Advanced forms of insulation	X				
Low-pressure, air-atomized oil burners	X				
Relay that disconnects power to the blower's BPM motor *			X		

* This technology option applies to standby mode and off mode power consumption.

As displayed in Table II.2, a condensing secondary heat exchanger was screened out for WGFs in the June 2011 DFR. As of the publication of the June 2011 DFR, DOE was not aware of any WGFs that included a condensing secondary heat exchanger. For WGFs, condensate disposal presented challenges for using condensing technology. In particular, condensate can freeze in cold climates, which could cause the unit to malfunction. However, DOE has since identified one such model on the market, which suggests that technical challenges associated with condensate disposal in WGFs have been overcome. While DOE's RFI is not limited to the following issues, DOE is particularly interested in comment, information, and data on the following.

Issue 10: DOE requests feedback on what impact, if any, the screening criteria described in this section would have on each of the aforementioned technology options. Similarly, DOE seeks information regarding how these same criteria would affect any other technology options not already identified in this document with respect to their potential use in consumer furnaces.

Issue 11: DOE requests data and information on WGFs that include a condensing secondary heat exchanger. In particular, DOE requests information on methods for condensate disposal and preventing condensate freezing and any associated increase in installation or maintenance costs. Additionally, DOE seeks comment on whether this technology and associated condensing efficiency levels would be appropriate for consideration as a national standard for WGFs.

3. Engineering Efficiency Analysis

The engineering analysis estimates the cost-efficiency relationship of equipment at different levels of increased energy efficiency (''efficiency levels''). This relationship serves as the basis for the cost-benefit calculations for consumers, manufacturers, and the Nation.

The current energy conservation standard for each consumer furnace product class is based on AFUE and determined according to appendix N to subpart B of 10 CFR part 430. The current standards for consumer furnaces are found at 10 CFR 430.32(e). As part of DOE's analysis, DOE develops efficiency levels as potential energy conservation standards to evaluate in the rulemaking analyses. Among these, DOE typically establishes efficiency levels at the maximum-available and max-tech efficiencies. The maximum-available efficiency level represents the highest efficiency units currently available on the market. The max-tech efficiency level represents the theoretical maximum possible efficiency if all available design options are incorporated in a model. In applying these design options, DOE would only include those that are compatible with each other that when combined, would represent the theoretical maximum possible efficiency.

In the energy efficiency analysis in the June 2011 DFR, the max-tech level for NWOFs was determined to incorporate a condensing secondary heat exchanger at 97-percent AFUE. (EERE–2011–BT–STD–0011–0012, Technical Support Document: Chapter 5. Engineering Analysis at p. 5–7). As discussed in section II.C.2 of this document, a condensing secondary heat exchanger was screened out as a design option for WGFs, so the max-tech level was determined to incorporate non-condensing technology at a level of 81-percent AFUE. 76 FR 37408, 37439. As discussed in section IV.A.1.a of this document, MHOFs, WOFs, and electric furnaces were not analyzed for amended AFUE standards and therefore no max-tech level was determined for those classes. For the analysis of standby mode and off mode in the June 2011 DFR, which as discussed in section III.E.1 of this document applied only to NWOFs and electric furnaces, DOE determined the max-tech level to be 10 and 9 watts, respectively. 76 FR 37408, 37463.

Issue 12: DOE seeks input on whether the maximum-available AFUE levels are appropriate and technologically feasible for consideration as possible energy conservation standards for consumer furnaces for each current product class. DOE seeks information on the design options incorporated into these maximum-available models, and also on the order in which manufacturers incorporate each design option when improving efficiency from the baseline to the maximum-available efficiency level (*i.e.,* which design options would be included at intermediate efficiency levels between the baseline and maximum-available).

Issue 13: DOE seeks feedback on the max-tech AFUE level for each product class, and on the design options that

would be incorporated at the max-tech AFUE level. As part of this request, DOE also seeks information as to whether there are limitations on the use of certain combinations of design options. DOE is particularly interested in any design options that may have become available since the June 2011 DFR that would allow greater energy savings relative to the max-tech efficiency levels assessed for each product class in that rulemaking. Specifically, DOE requests comment and data regarding whether max-tech AFUE levels and associated technologies considered in the June 2011 DFR for NWOFs and WGFs are still appropriate.

Issue 14: DOE seeks feedback on the max-tech standby mode and off mode power consumption (*i.e.,* the lowest power consumption possible) for each product class, and on the design options that would be incorporated at the max-tech level. As part of this request, DOE also seeks information as to whether there are limitations on the use of certain combinations of design options. DOE is particularly interested in any design options that may have become available since the June 2011 DFR that would allow greater energy savings relative to the max-tech levels assessed for each product class in that rulemaking. DOE also seeks comment and data on whether the standby mode and off mode power consumption levels considered in the June 2011 DFR for NWOFs and electric furnaces are still appropriate.

D. Economic Justification

In determining whether a proposed energy conservation standard is economically justified, DOE analyzes, among other things, the potential economic impact on consumers, manufacturers, and the Nation. DOE seeks comment on whether there are economic barriers to the adoption of more-stringent energy conservation standards. DOE also seeks comment and data on any aspects of its economic justification analysis from the June 2011 DFR that may indicate whether a more-stringent energy conservation standard would be economically justified or cost effective.

While DOE's request for information is not limited to the following issues, DOE is particularly interested in comment, information, and data on the following.

1. Life-Cycle Cost and Payback Period Analysis

DOE conducts the life-cycle cost (''LCC'') and payback period (''PBP'') analysis to evaluate the economic effects of potential energy conservation standards for consumer furnaces on individual consumers. For any given efficiency level, DOE measures the PBP and the change in LCC relative to an estimated baseline level. The LCC is the total consumer expense over the life of the equipment, consisting of purchase, installation, and operating costs (expenses for energy use, maintenance, and repair). Inputs to the calculation of total installed cost include the cost of the equipment—which includes the manufacturer selling price, distribution channel markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy prices and price projections, repair and maintenance costs, equipment lifetimes, discount rates, and the year that compliance with new and amended standards is required.

Issue 15: DOE requests feedback on the typical distribution channels for consumer furnaces. DOE further seeks comment on whether there is a significant retail distribution channel for consumer furnaces.

Issue 16: DOE requests shipments data for consumer furnaces, broken down by product class, that show current market shares by efficiency level. DOE also seeks input on similar historic data.

Issue 17: DOE requests comment on the anticipated future market share of higher-efficiency products as compared to less-efficient products for each consumer furnace product class, in the absence of amended efficiency standards.

2. Manufacturer Impact Analysis

The purpose of the manufacturer impact analysis (''MIA'') is to estimate the financial impact of amended energy conservation standards on manufacturers of consumer furnaces, and to evaluate the potential impact of such standards on direct employment and manufacturing capacity. As part of the MIA, DOE would analyze impacts of amended energy conservation standards on subgroups of manufacturers of covered equipment, including small business manufacturers. DOE uses the Small Business Administration's (''SBA'') small business size standards to determine whether manufacturers qualify as small businesses, which are listed by the North American Industry Classification System (''NAICS'').[8] Manufacturing of consumer furnaces is classified under NAICS 333415, ''Air-conditioning and warm air heating equipment and commercial and industrial refrigeration equipment manufacturing,'' and the SBA sets a threshold of 1,250 employees or less for a domestic entity to be considered as a small business. This employee threshold includes all employees in a business' parent company and any other subsidiaries.

One aspect of assessing manufacturer burden involves examining the cumulative impact of multiple DOE standards and the product-specific regulatory actions of other Federal agencies that affect the manufacturers of a covered product or equipment. Multiple regulations affecting the same manufacturer can strain profits and lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

Issue 18: To the extent feasible, DOE seeks the names and contact information of any domestic or foreign-based manufacturers in the United States of the consumer furnaces that are the subject of this notification.

Issue 19: DOE requests the names and contact information of small business manufacturers, as defined by the SBA's size threshold that distribute in the United States consumer furnaces that are the subject of this notification. In addition, DOE requests comment on any other manufacturer subgroups that could disproportionally be impacted by amended energy conservation standards. DOE requests feedback on any potential approaches that could be considered to address impacts on manufacturers, including small businesses.

Issue 20: DOE requests information regarding the cumulative regulatory burden impacts on manufacturers of consumer furnaces associated with (1) other DOE standards applying to different products or equipment that these manufacturers may also make, and (2) product-specific regulatory actions of other Federal agencies. DOE also requests comment on its methodology for computing cumulative regulatory burden and whether there are any flexibilities it can consider that would reduce this burden while remaining consistent with the requirements of EPCA.

III. Submission of Comments

DOE invites all interested parties to submit in writing by the date under the **DATES** heading, comments and information on matters addressed in this notification and on other matters relevant to DOE's consideration of

[8] Available online at: *www.sba.gov/document/support-table-size-standards.*

amended energy conservation standards for the consumer furnaces covered by this notification (specifically, WGFs, NWOFs, WOFs, MHOFs, and electric furnaces). After the close of the comment period, DOE will review the public comments received and may begin collecting data and conducting the analyses discussed in this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page requires you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. If this instruction is followed, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. Faxes will not be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, or text (ASCII) file format. Provide documents that are not secured, written in English, and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

DOE considers public participation to be a very important part of the process for developing test procedures and energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of this process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this process should contact Appliance and Equipment Standards Program staff at (202) 287–1445 or via email at *ApplianceStandardsQuestions@ee.doe.gov.*

Signing Authority

This document of the Department of Energy was signed on January 23, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on January 25, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–01765 Filed 1–27–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0027; Airspace Docket No. 21–ANM–70]

RIN 2120–AA66

Proposed Amendment of Domestic VOR Federal Airway V–356; Mile High, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Domestic VOR Federal Airway V–356, by revoking the segment between the FIDLE and ELORE intersections due to the absence of a supporting navigational aid signal.

DATES: Comments must be received on or before March 14, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: 1(800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0027; Airspace Docket No. 21–ANM–70 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0027; Airspace Docket No. 21–ANM–70) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0027; Airspace Docket No. 21–ANM–70.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th Street, Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

While conducting a routine flight inspection of V–356 in the vicinity of Mile High, CO, the FAA has determined that the Mile High, CO, (DVV) VHF Omnidirectional Radar and Tactical Air Navigational System (VORTAC) beacon is unusable on the airway below 18,000 mean sea level (MSL) between the FIDLE and ELORE intersections. The section of V–356 in this area is dependent upon the DVV signal for identification of the airway. The FAA is proposing to revoke the section between FIDLE and ELORE, since it can no longer be supported. There are several alternate routes that can be utilized when navigating between Red Table, CO and DVV, including V–134 to V–328, and V–361 to V–8, as well as other combinations of airways in between.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revoke the segment of the Domestic VOR Federal Airway V–356 between the FIDLE and ELORE intersection due to the lack of usable signal transmitted from DVV.

V–356: V–356 currently extends from Red Table, CO via the intersection of Red Table 058° and Mile High, CO 265° radials, to Mile High. The proposed route would revoke the segment between the intersection of Red Table 058° (T) 046° (M) and Kremling, CO 190° (T) 176° (M) radials and the intersection of Gill, CO 211° (T) 198° (M) and Mile High, CO 265° (T) 257° (M) radials. The rest of the route would remain unchanged.

Domestic VOR Federal Airways are published in paragraph 6010(a) of FAA Order JO 7400.11F dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal Airway listed in this document would be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

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 Department of Transportation (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 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6010 (a)—Domestic VOR Federal Airways.

* * * * *

V–356 [Amended]

From Red Table, CO; to INT Red Table 058° (T) 046° (M) and Kremmling, CO 190° (T) 176° (M) radials. From INT Gill, CO 211° (T) 198° (M) and Mile High, CO 265° (T) 257° (M) radials; to Mile High.

* * * * *

Issued in Washington, DC, on January 25, 2022.

Michael R. Beckles,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2022–01719 Filed 1–27–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2021–OESE–0122]

Proposed Priorities, Requirements, and Definition—Project Prevent Grant Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, and definition.

SUMMARY: The Department of Education (Department) proposes priorities, requirements, and a definition under the Project Prevent grant program, Assistance Listing Number (ALN) 84.184M. We may use one or more of these priorities, requirements, and definition for competitions in fiscal year (FY) 2022 and later years. We propose priorities and requirements designed to direct funds toward local educational agencies (LEAs) impacted by community violence and to expand the capacity of LEAs to implement community- and school-based strategies to help prevent community violence and mitigate the impacts of exposure to community violence. The Department also proposes to define ''community violence'' for purposes of the Project Prevent grant program.

DATES: We must receive your comments on or before February 28, 2022.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov,* including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priorities, requirements, and definition, address them to Nicole White, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E326, Washington, DC 20202.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Nicole White, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E326, Washington, DC 20202. Telephone: (202) 453–6729. Email: *Project.Prevent@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, and definition. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, and definition, we urge you to clearly identify the specific section of the proposed priorities, requirements, or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from the proposed priorities, requirements, and definition. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, and definition by accessing *Regulations.gov*. You may also inspect the comments in person. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT** to make arrangements to inspect the comments in person.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will

provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities, requirements, and definition. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The Project Prevent grant program provides grants to LEAs to increase their capacity to implement community- and school-based strategies to help prevent community violence and mitigate the impacts of exposure to community violence. Project Prevent grant funds allow LEAs to increase their capacity to identify, assess, and serve students exposed to community violence, helping LEAs to (1) offer affected students mental health services; (2) support conflict management programs; and (3) implement other community- and school-based strategies to help prevent community violence and to mitigate the impacts of exposure to community violence.

Program Authority: 20 U.S.C. 7281.

Background: Children and youth's exposure to community violence, whether as victims, justice-involved youth, or witnesses, is often associated with long-term physical, psychological, and emotional harms. Research has demonstrated that community violence is a risk factor for experiencing an adverse childhood experience (ACE) such as abuse, neglect, witnessing violence, or having a family member who is incarcerated, and has an impact on future violence and victimization in a community.[1] ACEs can lead children and youth to experience depression, anxiety, and post-traumatic stress disorder; have difficulty in, or disconnect from, school and the workforce; and engage in delinquency or violent acts, potentially perpetuating the conditions that contribute to a cycle of community violence.

Several Federal agencies have worked to address the issues surrounding children and youth's exposure to community violence. Since 1980, the Centers for Disease Control and Prevention has been studying patterns of violence and the effects of violence on communities and individuals, as well as advancing strategies to help prevent violence and mitigate the impacts of exposure to violence.[2] Furthermore, in 2010, Attorney General Eric Holder launched the Defending Childhood initiative to better understand and address the problem of children's exposure to community violence. As part of this initiative, in December 2012 the Attorney General's Task Force on Children Exposed to Violence released a report and national action plan that has helped inform the development of this program. The report recognized the duty of local coalitions of professionals from multiple disciplines across the full range of service systems (health care, schools, family services, law enforcement, and child advocacy centers), as well as families and other community members, to assess local challenges and resources, and develop strategies to reduce violence and the number of children exposed to violence.[3]

In addition, in 2012 the U.S. Department of Health and Human Services launched a national effort to ''reduce the pervasive, harmful, and costly health impact of community violence and trauma by integrating trauma-informed approaches throughout health, behavioral health, and related systems and addressing the behavioral health needs of people involved in or at risk of involvement in the criminal and juvenile justice systems.'' This includes the outlining of ''Principles and Guidance for a Trauma-Informed Approach.'' [4]

Community violence, which is defined in this document, is a significant public health, public safety, and community infrastructure concern nationwide and is a leading cause of death, injury, and intergenerational trauma for people in the United States. Community violence imposes enormous human, social, and economic costs, including disruption to employment and hindering of a community's social and economic development.[5] While the vast majority of young people are able to persevere, those who have been victims of violence are at substantially higher risk of being violently revictimized or killed. Additionally, both direct and indirect violence exposure have been associated with poor economic outcomes and poor health outcomes, including chronic illness, anxiety, depression, and substance use.[6]

Programs facilitated in schools by counselors, mental health providers, and community leaders for students who have been exposed to or are at high risk of involvement in community violence have been shown to help students develop the social and emotional skills needed to navigate difficult circumstances outside of the classroom so that they are able to turn away from violence and reengage in school.[7] When properly implemented and consistently funded, coordinated, community-based strategies that use trauma-responsive care and interrupt cycles of community violence may produce lifesaving and cost-saving results in a short period of time. These strategies identify those at the highest risk and highest need, coordinate individualized wraparound resources, provide pathways to healing and stability, and monitor and support long-term success.

The Biden-Harris Administration is taking a number of steps to prioritize investment in community violence interventions. Community violence interventions are proven strategies for reducing gun violence and other violent crime in urban communities through approaches other than incarceration.[8] These approaches include outreach, conflict mediation, violence interruption, and trauma-informed school-based mental health services to effectively reduce community violence. Efforts to ensure public safety and reduce community violence may also be carried out collaboratively and in partnership with law enforcement, where appropriate, to build safer, thriving communities.

Proposed Priorities

The Department proposes the following three priorities for this

[1] Centers for Disease Control and Prevention. (2020, April 3). Adverse Childhood Experiences (ACEs). Retrieved from: *www.cdc.gov/violenceprevention/aces/riskprotectivefactors.html.*

[2] National Center for Injury Prevention and Control, Division of Violence Prevention. Retrieved from: *www.cdc.gov/violenceprevention.*

[3] U.S. Department of Justice. (2012). *Report of the Attorney General's National Task Force on Children Exposed to Violence.* Retrieved from: *https://www.justice.gov/archives/defendingchildhood/task-force-children-exposed-violence.*

[4] Substance Abuse & Mental Health Services Administration. (2012). *SAMHSA's Working Definition of Trauma and Principles and Guidance for a Trauma-Informed Approach.* Retrieved from: SAMHSA's Concept of Trauma and Guidance for a Trauma-Informed Approach.

[5] U.S. Department of Health and Human Services. *Crime and Violence—Healthy People 2030.* Retrieved from: *https://health.gov/healthypeople/objectives-and-data/social-determinants-health/literature-summaries/crime-and-violence.*

[6] Break the Cycle of Violence Act, S. 2275, 117th Cong. (2021). Retrieved from: *https://www.govinfo.gov/content/pkg/BILLS-117s2275is/html/BILLS-117s2275is.htm.*

[7] Chicago Lab Crime Report. Retrieved from: *https://www.youth-guidance.org/bam/.*

[8] The White House. *FACT SHEET: Biden-Harris Administration Announces Initial Actions to Address the Gun Violence Public Health Epidemic.* Retrieved from: *https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/07/fact-sheet-biden-harris-administration-announces-initial-actions-to-address-the-gun-violence-public-health-epidemic/.*

program. We may apply one or more of these priorities in any year in which this program is in effect.

Proposed Priority 1—Addressing the Impacts of Community Violence.

Background: In Proposed Priority 1, the Department recognizes the tremendous impact community violence has on the well-being of students. Children and youth exposed to violence are at risk for poor long-term behavioral and mental health outcomes regardless of whether they are victims, justice-involved youth, direct witnesses, or hear about the crime. For example, children and youth exposed to violence may experience behavioral health challenges, depression, anxiety, and post-traumatic stress disorder, which can negatively affect educational outcomes. Children and youth exposed to violence may also show increased signs of aggression starting in upper-elementary school.[9]

Schools are often the center of the community for students and their families, providing students with the resources and referrals they need to meet their full potential. Consequently, the needs of children and youth often are best met through cross-agency collaboration and partnerships between schools and organizations in the community. Consistent with the Secretary's vision for community engagement to advance systemic change, the Department would use this priority to emphasize the importance and efficacy of a coordinated effort between schools and communities to lessen the short- and long-term effects that community violence has on students.

Proposed Priority: Projects that implement community- and school-based strategies to help prevent community violence and mitigate the impacts of children and youth's exposure to community violence in collaboration with local community-based organizations (*e.g.,* local civic or community service organizations, local faith-based organizations, or local foundations or non-profit organizations) and include community and family engagement in the implementation of the strategies.

Proposed Priority 2—Established Partnership with a Local Community-Based Organization.

Background: As described in the background to Proposed Priority 1, the needs of children and youth often are often best met through cross-agency collaboration and partnerships between schools and organizations in the community. In forging this collaboration, the Department places specific emphasis on the importance of structured and defined partnerships to efficiently and effectively implement community- and school-based intervention strategies to help prevent community violence and mitigate the impacts of exposures to community violence. In particular, memorandums of agreement (MOA) and memorandums of understanding (MOUs) signed by the authorized representative of a local community-based organization elevate the level of partnership between an LEA and a partner organization by clearly defining the roles, responsibilities, and resources that each entity will bring to the partnership.

We may use this priority as a complement to Proposed Priority 1 or other priorities for this program, or as a stand-alone priority.

Proposed Priority: An application that includes at least one memorandum of agreement (MOA) or memorandum of understanding (MOU) signed by the authorized representative of a local community-based organization that agrees to partner with the applicant on the proposed project and provide resources or administer services that are likely to substantially contribute to positive outcomes for the proposed project. The MOA or MOU must clearly delineate the roles and responsibilities of each entity.

Proposed Priority 3—Supporting Children and Youth from Low-Income Backgrounds.

Background: The neighborhoods where children and youth live and go to school can have a major impact on their health and well-being. Many children and youth in the United States live in neighborhoods with high rates of, and prevalence of risk factors associated with, violence-related injuries and deaths, crime, poverty, and other health and safety risks. Students from low-income backgrounds are more likely to live in places with these risks.[10] In a study that examined the characteristics of school shootings, the Government Accountability Office found that the number of school shootings generally increased relative to school poverty level.[11] Proposed Priority 3 is intended to allow the Department to support activities in LEAs that experience and are impacted by community violence at a disproportionate rate.

Proposed Priority: In its application, an applicant must demonstrate, based on Small Area Income and Poverty Estimates (SAIPE) data from the U.S. Census Bureau or, for an LEA for which SAIPE data are not available, the same State-derived equivalent of SAIPE data that the State uses to make allocations under part A of title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA), one or more of the following:

(a) At least 25 percent of the students enrolled in the LEA to be served by the proposed project are from families with an income below the poverty line.

(b) At least 30 percent of the students enrolled in the LEA to be served by the proposed project are from families with an income below the poverty line.

(c) At least 35 percent of the students enrolled in the LEA to be served by the proposed project are from families with an income below the poverty line.

(d) At least 40 percent of the students enrolled in the LEA to be served by the proposed project are from families with an income below the poverty line.

(e) At least 45 percent of the students enrolled in the LEA to be served by the proposed project are from families with an income below the poverty line.

Types of Priorities: When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

The Department proposes the following program requirement and

[9] U.S. Department of Health and Human Services, *Crime and Violence—Healthy People 2030.* Retrieved from: *https://health.gov/healthypeople/objectives-and-data/social-determinants-health/literature-summaries/crime-and-violence.*

[10] U.S. Department of Health and Human Services, *Neighborhood and Built Environment—Healthy People 2030.* Retrieved from: *https://health.gov/healthypeople/objectives-and-data/browse-objectives/neighborhood-and-built-environment.*

[11] U.S. Government Accountability Office, Characteristics of School Shootings. Retrieved from: *https://www.gao.gov/assets/gao-20-455.pdf.*

application requirements for this program. We may apply one or more of these requirements in any year in which the program is in effect.

Proposed Program Requirement:

Eligible Applicants: Eligible applicants for this program are local educational agencies (LEAs), as defined in 20 U.S.C. 7801(30).

Proposed Application Requirements:

(a) *Severity and magnitude of the problem; identification of schools to be served by the proposed project.* Applicants must—

(1) Identify the schools proposed to be served by project activities;

(2) Describe the community violence that affects students in those schools, including collaborating and coordinating with organizations and law enforcement (where appropriate), and with other organizations to utilize data and information such as incidents of community violence, gun crime and other violent crime, rates of child abuse and neglect, and other school and community crime and safety data, including on a per capita basis (such as homicides per 100,000 persons); prevalence of risk factors associated with violence-related injuries and deaths; findings from student mental health screenings or assessments, school climate surveys, and student engagement surveys; demographic data provided by U.S. Census surveys; and other relevant data and information; and

(3) Provide a comparison of the school and community data cited to similar data at the State or local level, if available.

(b) *Collaboration and coordination with community-based organizations.* Applicants must—

(1) Describe how they intend to work collaboratively with community-based organizations to achieve project goals and objectives;

(2) Provide evidence of collaboration and coordination through letters of support, memoranda of agreement, or memoranda of understanding from at least one community-based organization; and

(3) Describe how they will use grant program funds to supplement, rather than supplant, existing or new efforts to reduce community violence and mitigate the direct and indirect effects of community violence on students.

(c) *Project activities.* Applicants must propose to conduct three or more of the following:

(1) Appropriately tailored professional development opportunities for LEA and school mental health staff (*e.g.,* counselors, psychologists, and social workers), other specialized instructional support personnel, and other school staff, as appropriate, on how to screen for and respond to violence-related trauma and implement appropriate school-based interventions to help prevent community violence and mitigate the impacts of children and youth's exposure to community violence.

(2) Activities designed to improve the range, availability, and quality of school-based mental health services by hiring school and clinical psychologists, school counselors, or school social workers with expertise or training in violence prevention, trauma-informed care, and healing-centered strategies, and qualified to respond to the mental and behavioral health needs of students who have experienced trauma as a result of exposure to community violence.

(3) Training for school staff (*e.g.,* teachers, administrators, specialized instructional support personnel, and support staff), community partners, youth, and families on the effects of exposure to community violence, the importance of screening students, and how to screen and provide interventions to students exposed to community violence.

(4) Developing or improving processes to better target services to students who are exposed to community violence and to assess such students who may be experiencing mental, social, emotional, or behavioral challenges.

(5) Enhancing linkages between LEA mental health services and community mental health systems to help ensure affected students receive referrals to treatment as appropriate.

(6) Undertaking activities in collaboration and coordination with law enforcement to address community violence affecting students, to support victims' rights, and to promote public safety.

(d) *Evidence-based, culturally competent, and developmentally appropriate programs and practices.* Applicants must—

(1) Describe the continuum of evidence-based, culturally competent, and developmentally appropriate (as defined in 34 CFR 77.1(c)) programs and practices that will be implemented at the school and community level and how these programs and practices will be organized to provide differentiated support based on student need, to help break the cycle of community violence. These programs and practices must include all of the following:

(i) Interventions and activities that are available to all students in a school with the goal of preventing negative or violent behavior (such as harassment, bullying, fighting, gang participation, sexual assault, and substance abuse) and enhancing student knowledge and interpersonal and emotional skills regarding positive behavior (such as communication and problem-solving, empathy, and conflict management, de-escalation, and mediation).

(ii) Interventions and activities related to positive coping techniques, anger management, conflict management, de-escalation, and mediation, promotion of positive behavior, and development of protective factors.

(iii) Interventions and services, such as mentorship programming, that target individual students who are at a higher risk for committing or being a victim of violence.

(2) Describe the research and evidence supporting the proposed programs and practices and the expected effects on the target population.

(e) *Framework for planning, implementation, and sustainability.* Applicants must—

(1) Describe how the proposed project is integrated and aligned with the mission and vision of the LEA, including a description of the relationship of the project to the LEA's existing school safety or related plan;

(2) Describe the anticipated challenges to success of the project and how they will be addressed, such as sustaining project implementation beyond the availability of grant funds and mitigating turnover at the LEA leadership, school leadership, and staff levels; and

(3) Include a timeline of activities for—

(i) Planning that includes: Conducting a needs assessment that is comprehensive and examines areas for improvement, both within the school and the community, related to learning conditions that create a safe and healthy environment for students; creating a logic model (as defined in 34 CFR 77.1); completing resource mapping; selecting evidence-based, culturally competent, and developmentally appropriate programs; developing evaluation plans; and engaging community and school partners, families, and other stakeholders;

(ii) Implementation that includes: Training on and execution of evidence-based, culturally competent, and developmentally appropriate programs; continuing engagement with stakeholders; communicating and collaborating strategically with community partners; and evaluating program implementation; and

(iii) Sustainability that includes: Further developing and expanding on the project's successes beyond the end of the grant, at the school and

community levels, in alignment with other related efforts.

(f) *Planning period.* Projects funded under this program may use up to 12 months during the first year of the project period for program planning. Applicants that propose a planning period must provide sufficient justification for why this program planning time is necessary, provide the intended outcomes of program planning in Year 1, and include a description of the proposed strategies and activities to be supported.

Proposed Definition

The Department proposes to establish a definition of ''community violence'' for use in this program. We may apply it in any year in which this program is in effect.

Community violence means firearm injuries, assaults, homicides, and other acts of interpersonal violence committed outside the context of a familial or romantic relationship.

Final Priorities, Requirements, and Definition: We will announce the final priorities, requirements, and definition in a document published in the **Federal Register**. We will determine the final priorities, requirements, and definition after considering responses to the proposed priorities, requirements, and definition and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use the priorities, requirements, and definition, we invite applications through a notice inviting applications in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing the proposed priorities, requirements, and definition only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on an analysis of anticipated costs and benefits, we believe that the proposed priorities, requirements, and definition are consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with the Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Potential Costs and Benefits

The Department believes that this proposed regulatory action would not impose significant costs on eligible entities, whose participation in our programs is voluntary, and costs can generally be covered with grant funds. As a result, the proposed priorities, requirements, and definition would not impose any particular burden except when an entity voluntarily elects to apply for a grant. The proposed priorities, requirements, and definition would help ensure that the Project Prevent grants program selects high-quality applicants to implement activities that meet the goals of the program. We believe these benefits would outweigh any associated costs.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make the proposed priorities, requirements, and definition easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

• Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections?

• Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?

• What else could we do to make the proposed regulations easier to understand?

To send any comments that concern how the Department could make the proposed priorities, requirements, and definition easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are LEAs. Of the impacts we estimate accruing to grantees or eligible entities, all are voluntary. Therefore, we do not believe that the proposed priorities, requirements, and definition would significantly impact small entities beyond the potential for increasing the likelihood of their applying for, and receiving, competitive grants from the Department.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). This helps ensure that the public understands the Department's collection instructions, respondents provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The proposed requirements contain information collection requirements. Under the PRA the Department has submitted these requirements to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of the law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the notice of final priorities, requirements, and definition we will display the control number assigned by OMB to any information collection proposed in this document and adopted in the notice of final priorities, requirements, and definition.

For the years that the Department holds a Project Prevent grant competition, we estimate 150 LEAs will apply and submit an application. We estimate that it will take each LEA 40 hours to complete and submit the application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this collection is 6,000 hours. At $97.28 per hour (using mean wages for Education and Childcare Administrators [12] and assuming the total cost of labor, including benefits and overhead, is equal to 200 percent of the mean wage rate), the total estimated cost for 150 LEAs to complete the Project Prevent application is approximately $583,680.

Consistent with 5 CFR 1320.8(d), the Department is soliciting comments on the information collection. We must receive your comments on the collection activities contained in these proposed priorities, requirements, and definition on or before February 28, 2022. Comments related to the information collection activities must be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov* by selecting the Docket ID number ED–2021–OESE–0122 or via postal mail, commercial delivery, or hand delivery by referencing the Docket ID number and the title of the information collection request at the top of your comment. Comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

Note: The Office of Information and Regulatory Affairs and the Department review all comments related to the information collection activities posted at *www.regulations.gov.*

COLLECTION OF INFORMATION

Information collection activity	Estimated number of responses	Hours per response	Total estimated burden hours	Estimated cost at an hourly rate of $97.28
Project Prevent Application	150	40	6,000	$583,680

We consider your comments on this proposed collection of information in—

• Deciding whether the proposed collection is necessary for the proper performance of our functions, including

[12] *See http://www.bls.gov/oes/current/oes_nat.htm.*

whether the information will have practical use;

- Evaluating the accuracy of our estimate of the burden of the proposed collection, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Ian Rosenblum,

Deputy Assistant Secretary for Policy and Programs. Delegated the authority to perform the functions and duties of the Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2022–01611 Filed 1–27–22; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0204; FRL–9440–01–R3]

Air Plan Approval; Delaware; Revision of Regulation for Sulfur Content of Fuel Oil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Delaware. This revision pertains to the reduction of the maximum allowable sulfur content limit for distillate fuels, from a current limit of 3,000 parts per million (ppm) (0.3% by weight) to 15 ppm (0.0015% by weight) and residential fuels from a current limit of 1.0% by weight to 0.5% by weight. This revision also adds requirements for sampling and testing along with certification and recordkeeping. Additionally, start up, shut down and malfunction provisions that were previously included in the Delaware SIP have been removed in this revision. EPA is proposing to determine that such removal corrects a deficiency identified in the June 12, 2015, SIP call issued to Delaware. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before February 28, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2014–0204 at *https://www.regulations.gov,* or via email to *gordon.mike@epa.gov*. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Mallory Moser, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is 215–814–2030. Ms. Moser can also be reached via electronic mail at *moser.mallory@epa.gov*.

SUPPLEMENTARY INFORMATION: On July 10, 2013, the Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to the Delaware SIP which comprises revisions to Title 7 of Delaware's Administrative Code (7 DE Admin. Code) 1108—Sulfur Dioxide Emissions from Fuel Burning Equipment. The revision to 7 DE Admin. Code 1108 will reduce the amount of sulfur in fuel oils used in fuel burning units.[1] The revised regulation also establishes the date of compliance and adds necessary record keeping and recording provisions to ensure compliance with the regulation. The revision removes start up, shut down and malfunction provisions that were previously included in the Delaware SIP. On August 19, 2016, EPA received a supplemental letter from DNREC withdrawing a portion of Section 3.0 of 7 DE Admin. Code 1108 from the July 10, 2013, SIP submittal subject to EPA's review. The portion removed from the 2013 submittal is the last sentence of Section 3.0 which states, ''In order to employ an emission control rather than sulfur content limits as a means of complying with this Regulation, an owner or operator of fuel burning equipment must demonstrate to the Department in advance that the equivalent emission will be achieved.'' This provision will be retained as a State enforceable only requirement.[2] Delaware's August 19, 2016, letter is available in the docket for this

[1] A ''fuel burning unit'' is defined as ''each unit, or any combination of units discharging to a common stack used for the burning of fuel or other combustible material for the primary purpose of utilizing the thermal energy released.'' This definition is included in the Delaware SIP at 40 CFR 52.420(c).

[2] Although this provision remains in the underlying Delaware regulations, because Delaware withdrew this provision from its SIP revision, it is not and will not be incorporated into the Delaware SIP. Consequently, EPA would not recognize any alternate emissions control approved by Delaware pursuant to this provision as a means of complying with the federally approved SIP.

rulemaking and online at *www.regulations.gov*.

I. Background

The revision consists of an amendment to the Delaware SIP to reduce the maximum allowable sulfur content limit for distillate and residential fuels. If the SIP revision were approved, the sulfur content limit for distillate fuel would be lowered to 15 ppm by weight. The sulfur content limit for a residential fuel would be lowered to 0.5% by weight. For any other fuel, the sulfur content would remain 1.0% by weight. The combustion of sulfur-containing fuel oil releases sulfur dioxide (SO_2) emissions, which contribute to the formation of regional haze and fine particulate matter ($PM_{2.5}$), all of which impact the environment and human health. Regional haze impairs visibility through scattering and absorption of light. $PM_{2.5}$ pollution exposure has been linked to a variety of health problems. In addition to improving public health and the environment, decreased emissions of SO_2 will contribute to the attainment or maintenance, or both, of the SO_2 and $PM_{2.5}$ national ambient air quality standards (NAAQS).

In addition, the July 10, 2013, SIP submission partially responds to a SIP call issued by EPA to address startup, shutdown and malfunction (SSM) events which are contrary to the CAA and existing EPA guidance.[3] On June 12, 2015, pursuant to CAA section 110(k)(5), EPA finalized an action (2015 SSM SIP Action) that clarified, restated, and updated EPA's interpretation that SSM exemption and affirmative defense SIP provisions are inconsistent with CAA requirements. In the 2015 SSM SIP Action, EPA also issued a finding that certain SIP provisions in 36 states (applicable in 45 statewide and local jurisdictions) are substantially inadequate to meet CAA requirements and thus issued a ''SIP call'' for each of the identified SIP provisions. 80 FR 33840. *See also* 78 FR 12460 (February 22, 2013) (proposed finding for SIP call). Delaware was among the 36 states that received a 2015 SIP call. EPA established a due date, November 22, 2016, for states subject to the SIP call to submit corrective SIP revisions.

Several provisions in the Delaware SIP were identified in the 2015 SIP call as substantially inadequate to meet CAA requirements. This included 7 DE Admin. Code 1108, Section 1.2 (Sulfur Dioxide Emissions from Fuel Burning Equipment), which stated that ''[t]he provisions of this regulation shall not apply to the start-up and shutdown of equipment which operates continuously or in an extended steady state when emissions from such equipment during start-up and shutdown are governed by an operation permit issued pursuant to the provisions of 2.0 of 7 DE Admin. Code 1102.'' This SIP submission from Delaware that is the subject of this action contains a revised version of 7 DE Admin. Code 1108 to delete the language identified in the 2015 SSM SIP call formerly at Section 1.2. That language provided impermissible exemptions from the low sulfur fuel oil provisions where sources obtained permits from Delaware.

II. Summary of SIP Revision and EPA Analysis

This SIP revision amends 7 DE Admin. Code 1108 sections 1.0 through 3.0 and adds sections 4.0 and 5.0. The amendments to section 1.0 (General provisions) remove language related to the start-up and shutdown of equipment and provide clarity to existing language pertaining to the fact that catalyst regeneration only applies to catalyst regeneration in fluid catalytic cracking operations.

The amendments to section 2.0 (Limit on Sulfur Content of Fuel): (1) Remove language related to oil sampling methods and sulfur concentrations of residual and distillate fuels; (2) establish a compliance date of July 1, 2016, such that no person shall offer for sale, sell, deliver, or purchase any fuel having a sulfur content greater than the applicable limits established within the regulations, when such fuel is intended for use in any fuel burning equipment; (3) lower sulfur content in residual fuel from 1% by weight to 0.5% by weight; (4) lower sulfur content in distillate fuel from 3,000 ppm to 15 ppm; and (5) establish a transitional period through June 30, 2017, for distillate fuel stored, offered for sale, sold, delivered, purchased, and used in Delaware prior to July 1, 2016, having a sulfur content greater than the limits specified within this regulation.[4]

The amendments to section 3.0 (Emission Control in Lieu of Sulfur Content Limits of 2.0 of This Regulation) remove language and add clarifying language related to any fuel burning equipment employing emission controls of SO_2 such that fuel burning equipment with controls achieving equal or better reductions are not subject to fuel sulfur limits.

Section 4.0 (Sampling and Testing Methods and Requirements): (1) Establishes sampling and testing requirements for oil samples using standard American Society for Testing and Materials (ASTM) methods ASTM D4057–06; (2) establishes sampling and testing requirements for sulfur concentrations of residual and distillate fuels using the standard ASTM method D2622–10; and (3) allows the use of any alternative method found in 40 Code of Federal Regulations (CFR) 80.580 and/or approved by EPA and DNREC, to provide flexibility.

Section 5.0 (Recordkeeping and Reporting) establishes certification and recordkeeping requirements for any person subjected to limits on sulfur content of fuel, when selling or delivering any fuel oil to be used in Delaware.

In addition, this SIP revision removes section 1.2, which EPA determined in its June 12, 2015, SSM SIP Action to be substantially inadequate to meet CAA requirements and, therefore, SIP called pursuant to CAA section 110(k)(5). The provision was one of several that were identified as inadequate from the Delaware SIP because they impermissibly provide exemptions from otherwise applicable emissions limitations during periods of startup and shutdown.[5]

This proposed SIP revision to implement low sulfur fuel oil provisions is expected to reduce regional haze and visibility impairment in Delaware. Additionally, decreased emissions of SO_2 will contribute to the attainment, maintenance, or both, of the SO_2 and $PM_{2.5}$ NAAQS in Delaware and the surrounding areas.

III. Proposed Action

Delaware's SIP revision, which incorporate amendments made to 7 DE Admin. Code 1108, will lower the maximum allowable sulfur content limit combusted or sold in Delaware and aid in reducing SO_2 emissions. These emissions are a cause of regional haze and reducing them will help Delaware and the surroundings areas to attain and maintain the SO_2 and $PM_{2.5}$ NAAQS.

[3] After issuing a statement in 2020 to change aspects of the policy articulated in the 2015 SSM SIP Action, EPA in 2021 reinstated and reaffirmed the 2015 policy (*see* September 30, 2021, memorandum ''Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' from Janet McCabe, Deputy Administrator). Neither the 2020 nor 2021 guidance memoranda affected the SSM SIP call for Delaware, and, as stated in the McCabe memorandum, EPA intends to implement the 2015 SSM SIP Action, including taking this action on the SIP submittal in partial response to the 2015 SIP call.

[4] These provisions address the Mid-Atlantic/Northeast Visibility Union (MANE–VU) regional haze strategy. *See* 79 FR 25506.

[5] The Delaware specific portion of the 2015 SIP Call can be found at 80 FR 33960 (June 12, 2015).

EPA has determined that this SIP revision meets the requirements of the CAA. Therefore, EPA is proposing to approve the July 10, 2013, SIP revision which sets sulfur limits for combustion and sale in Delaware, as amended by Delaware on August 19, 2016. EPA is soliciting public comment on the issues discussed in this document. These comments will be considered before taking final action.

In addition, based on Delaware's removal of the language in section 1.2, which EPA identified in the 2015 SSM SIP Action as an impermissible SSM exemption provision, EPA proposes to find that this SIP revision adequately addresses the specific deficiency that EPA identified in the 2015 SSM SIP Action with respect to section 1.2 of the Delaware SIP. If EPA were to finalize approval of the SIP revision and finalize the finding that this SIP revision adequately addresses the SIP call, the SIP call for section 1.2 of the Delaware SIP would be resolved. The remaining portions of the SIP call issued to Delaware in 2015 would remain in effect pending future EPA action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference of the state rules being approved. In accordance with requirements of 1 CFR 51.5, EPA is thus proposing to incorporate by reference Delaware's Sulfur Dioxide Emissions from Fuel Burning Equipment requirements as described in 7 DE Admin. Code 1108, not including the last sentence of section 3.0, which Delaware withdrew from this SIP revision. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, regarding fuel oil sulfur limits for combustion and sale in the State of Delaware, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Regional Haze, Sulfur oxides.

Dated: January 13, 2022.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2022–01808 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2021–0572, FRL–9439–01–R2]

Approval and Promulgation of Implementation Plans; New York; Ozone and Particulate Matter Controls Strategies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve several revisions to the New York State Implementation Plan (SIP) for the purposes of implementing control of air pollution by particulate matter (PM) and oxides of nitrogen (NO_X). The proposed SIP revisions consist of amendments to several existing regulations outlined within New York's Codes, Rules, and Regulations (NYCRR) that implement control measures for PM and NO_X. The intended effect of this action is to approve control strategies, required by the Clean Air Act (CAA or the Act), which will result in emission reductions that will help attain and maintain the national ambient air quality standards for ozone and PM. These actions are being taken in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before February 28, 2022.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R02–OAR–2021–0572 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit

https://www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Fausto Taveras, Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007–1866, at (212) 637–3378, or by email at *Taveras.Fausto@epa.gov.*

SUPPLEMENTARY INFORMATION: The Supplementary Information section is arranged as follows:

I. What action is the EPA proposing?

The EPA is proposing to approve revisions to the New York SIP submitted by the State of New York on February 3, 2021 and October 15, 2020 that pertain to existing regulations, Title 6 of the New York Code of Rules and Regulations (6 NYCRR Part 219, ''Incinerators'' (Part 219), and 6 NYCRR Part 222, ''Distributed Generation Sources'' (Part 222), respectively. The EPA is also proposing to approve attendant revisions to 6 NYCRR Part 200 (Part 200), Section 200.9, ''General Provisions, Reference materials'' (Section 200.9).

These revisions include additional control strategies that will reduce NO_X and PM emissions from major sources throughout the state. The EPA is proposing to approve New York's SIP submittals listed within this action as a SIP-strengthening measure for New York's ozone and PM SIP. The EPA is also proposing to approve New York's SIP submittal since it incorporates additional reasonably available control technology/reasonably available control measures (RACT/RACM) rules for NO_X at Municipal and Private Solid Waste Incineration Units.

II. What is the background for this proposed rulemaking?

2008 and 2015 Ozone NAAQS Revisions

In March 2008, EPA revised the health-based National Ambient Air Quality Standard (NAAQS) for ozone to 0.075 parts per million (ppm) averaged over an 8-hour time frame (2008 8-hour Ozone Standard). *See* 73 FR 16435 (March 27, 2008). In October 2015, the EPA revised this standard to 0.070 ppm averaged over an 8-hour time frame (2015 8-hour Ozone Standard). *See* 80 FR 65291 (October 26, 2015).

On May 21, 2012, the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 2008 8-hour Ozone Standard and, on July 20, 2012, the designations became effective. *See* 77 FR 30160 (May 21, 2012). The New York-Northern New Jersey-Long Island Connecticut metropolitan area (NYMA) was designated by the EPA as a ''marginal'' nonattainment area for the 2008 ozone NAAQS.[1] In 2016, the EPA determined that the NYMA did not attain the 2008 ozone standard by the July 20, 2015 attainment date and was reclassified from a ''marginal'' to a ''moderate'' nonattainment area. *See* 81 FR 26697 (May 4, 2016). SIPs for ''moderate'' nonattainment areas were due by January 1, 2017. *See id.* On April 30, 2018, the EPA finalized its attainment/nonattainment designations for most areas across the country as to the 2015 8-hour Ozone Standard, in which the NYMA was designated by the EPA as a ''moderate'' nonattainment area. *See* 83 FR 25776 (June 4, 2018). On September 23, 2019, the EPA reclassified the NYMA to ''serious'' nonattainment as to the 2008 8-hour Ozone Standard. *See* 84 FR 44238 (August 23, 2019). The serious area attainment date and the deadline for RACT measures not tied to attainment was July 20, 2021. *See id.*

PM NAAQS Revisions

On September 21, 2006, the EPA retained the primary and secondary 24-hour PM_{10} standard of 150 micrograms per cubic meter of air ($\mu g/m^3$), as an average over a 24-hour period, not to be exceeded more than once per year on average over a 3-year period, that was initially promulgated on June 2, 1987. *See* 71 FR 61144 (October 17, 2006); *see also* 52 FR 24634 (July 1, 1987).

On October 17, 2006, the EPA strengthened the primary and secondary 24-hour $PM_{2.5}$ NAAQS to 35 $\mu g/m^3$. *See* 71 FR 61144. On November 13, 2009, the EPA promulgated designations for the revised 24-hour $PM_{2.5}$ standard set in 2006, designating the NY–NJ–CT area as ''nonattainment.'' *See* 74 FR 58688. On June 27, 2013, New York submitted a request to redesignate the New York portion of the NY–NJ–CT nonattainment area, from ''nonattainment'' to ''attainment.'' As part of this request, New York also submitted a maintenance plan to ensure that New York's portion of the NYMA would continue attainment through 2025. On April 18, 2014, the EPA took final action to approve New York's SIP revision to redesignate the New York portion of the NY–NJ–CT to ''attainment'' for the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 79 FR 21857.

On December 14, 2012, the EPA promulgated a revised primary NAAQS for $PM_{2.5}$ for the annual standard, setting the level at 12 micrograms per cubic meter ($\mu g/m^3$) calculated as an annual average, which is averaged over a three-year period. *See* 78 FR 3086.

On January 15, 2015, the EPA finalized its attainment/nonattainment designations for areas across the country with respect to the revised primary $PM_{2.5}$ NAAQS and on April 15, 2015, the designations became effective. *See* 80 FR 2206. The NYMA was designated by the EPA as an ''Unclassifiable/Attainment'' area for the revised primary $PM_{2.5}$ NAAQS. *See id.*

III. What was included in New York's submittals?

On February 3, 2021 and October 15, 2020, the New York State Department of Environmental Conservation (NYSDEC or New York), submitted to the EPA proposed revisions to the SIP, which included State adopted revisions to three regulations contained in Part 219, ''Incinerators,'' and Part 222, ''Distributed Generation Sources'' with effective dates of March 14, 2020 and March 25, 2020, respectively. New York also submitted attendant revisions to Part 200, Section 200.9, ''General Provisions, Reference materials. These revisions are applicable statewide, with the exception of Part 222 which will only be applicable to sources located within the NYMA. These revisions will provide NO_X and $PM_{2.5}$ emission reductions statewide and will address, in part, attainment of the 2008 and 2015 8-hour Ozone Standards within the NYMA and maintain New York State's attainment of the PM NAAQS.

[1] The New York portion of the NYMA, is composed of the five boroughs of New York City and the surrounding counties of Nassau, Suffolk, Westchester, Rockland and the Shinnecock Indian Nation. *See* 40 CFR 81.333.

IV. What is the EPA's evaluation of Part 219, ''Incinerators''?

A. Background

The NYSDEC revised 6 NYCRR Part 219, by repealing and replacing 6 NYCRR Subpart 219–4, ''Human and Animal Crematories,'' to better reflect the current state of cremation technology and reduce emissions of PM from new animal and human crematories constructed in the state. New York also repealed and reserved 6 NYCRR Subparts 219–5 and 219–6, requiring the existing units subject to these requirements comply with the more stringent standards under the revised 6 NYCRR Subpart 219–4 (Subpart 219–4). New York also revised 6 NYCRR Subpart 219–1 (Subpart 219–1) and Part 200, Section 200.9 to clarify various definitions used throughout Part 219. In addition, New York is adding a new 6 NYCRR Subpart 219–10, ''Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_X) at Municipal and Private Solid Waste Incineration Units'' (Subpart 219–10), to impose 24-hour and annual average RACT NO_X emission limits for private and municipal waste combustion units.

B. What are the new requirements of Part 219?

NYSDEC revised Subpart 219–1 and Part 200, Section 200.9 to incorporate minor edits to definitions used throughout Part 219, in order to provide clarity to applicable owners or operators. The newly revised Subpart 219–4 applies to all new, modified, and existing cremation units used for the cremation of human and animal remains throughout the New York State. Under this regulation, owners and operators of applicable cremation units must comply with the PM emission limitations and operating requirements. 6 NYCRR Section 219–4.1 was revised to add definitions for existing, modified, and new cremation units. 6 NYCRR Section 219–4.2 was revised to address that Subpart 219–4 is applicable to all new, modified, and existing cremation units used for animal and human remains.

6 NYCRR Section 219–4.3 was revised to implement the PM emission limits for new, modified, and existing cremation units. Under Section 219–4.3, no owner or operator may cause or allow emissions of particulates into the outdoor atmosphere from an existing cremation unit to exceed 0.08 grains per dry standard cubic foot of flue gas (0.08 gr/dscf), corrected to 7 percent oxygen. And no person may cause or allow emissions of particulates into the outdoor atmosphere from a new or modified cremation unit to exceed 0.05 gr/dscf, corrected to 7 percent oxygen.

Under 6 NYCRR Section 219–4.4, the owner and operator of cremation units must comply with various operating requirements including: An opacity limit, a minimum secondary combustion chamber temperature and residence time during cremation, installation of an continuous temperature monitoring instruments and continuous recording requirement, a prohibition on the combustion of certain materials, preparation of a cremation certification form prior to cremation, and a prohibition on the charging of remains in excess of the manufacturer's rated capacity of the cremation unit.

6 NYCRR Section 219–4.5 was revised to establish the emission testing and modeling requirements for cremation units. Owners or operators of affected cremation units must demonstrate compliance with this Subpart by either conducting onsite testing or stack testing. 6 NYCRR Section 219–4.6 establishes operator training and certification requirements for crematory operators. 6 NYCRR Section 219–4.7 outlines the annual inspection and maintenance requirements for the cremation units. 6 NYCRR Section 219–4.8 describes the recording requirements for crematory facilities.

6 NYCRR Section 219–4.9 was revised to describe the compliance schedule for existing cremation units that are subject to the requirements under Subpart 219–4. Section 219–4.9 outlines that owner or operator of an existing cremation unit must obtain appropriate operator certifications, as described in 6 NYCRR Section 219–4.6, within 12 months of the effective date of 6 NYCRR Subpart 219–4 for each uncertified operator at the facility. Owners and operators also must demonstrate compliance with the requirements of this Subpart no later than 60 months from the effective date of 6 NYCRR Subpart 219–4.

New York has repealed and reserved 6 NYCRR Subparts 219–5 and 219–6, requiring that the existing units subject to those requirements comply with the more stringent standards under the new Subpart 219–4.

Subpart 219–10 is new and applies to all new, modified, and existing municipal and private solid waste incineration units. 6 NYCRR Section 219–10.2 establishes the 24-hour and annual average NO_X emissions limitation and describes the procedures that affected facilities can use to demonstrate that they have installed RACT.[2] Both the 24-hour and annual average NO_X emission limits vary between the combustion technology utilized by the owner or operator. Incineration units that utilize Mass Burn Waterwall or Rotary Combustor technology must comply with presumptive RACT limits, while owners or operators of other combustion technologies must perform a facility-specific RACT analysis. The analysis must include proposed 24-hour and annual average NO_X emission limitations, the available NO_X control technology, the projected effectiveness of the technologies considered, and the costs for installations and operation for each of the technologies. The RACT analysis was to be submitted to the NYSDEC by June 30, 2021. Approved RACT determinations will be submitted by the NYSDEC to the EPA for approval as separate SIP revisions.

6 NYCRR Section 219–10.3 outlines the compliance demonstration for the owners or operators of a municipal or private solid waste incineration unit subject to this Subpart. Under 6 NYCRR Section 219–10.3, owners or operators of a municipal or private solid waste incineration applicable to this Subpart must demonstrate compliance within one year of the date of issuance of a permit modification issued pursuant to the requirements of this Subpart. Owners or operators applicable to this shall install, calibrate, maintain, and operate a Continuous Emissions Monitoring System (CEMS) for measuring the oxides of nitrogen discharged to the atmosphere from the municipal or private solid waste incineration units.

C. What is EPA's evaluation?

The EPA reviewed both New Jersey and Connecticut's PM emission limits for human and animal cremation units and compared those limits with the limits adopted by NYSDEC in this rule.[3] The EPA has observed that New York's PM limits are more stringent than both New Jersey and Connecticut's for similar crematory technologies.

The EPA has also reviewed New Jersey and Connecticut's NO_X emission limits for municipal and private solid waste incineration units with similar

[2] The NO_X emission limits are on a parts per million dry volume basis (ppmvd), corrected to 7% oxygen.

[3] Title 7, Chapter 27, Subchapter 11 of New Jersey's Incinerator regulation provides PM emission rates for various types of Incinerators. *See https://www.nj.gov/dep/aqm/currentrules/Sub11.pdf.* Section 22a–174–18 of Connecticut's regulations provides controls for PM and visible emissions from existing incinerators. *See https://eregulations.ct.gov/eRegsPortal/Browse/RCSA/Title_22aSubtitle_22a-174Section_22a-174-18/.*

combustion technology and compared those limits with the limits adopted by NYSDEC in this rule.[4] The EPA observed that Connecticut adopted similar RACT emission limits, on a 24-hour average, for Mass Burn Waterwall combustors. The EPA also observed that NO_X emission limits outlined within New York's rule will be as stringent as New Jersey's for similar combustion technologies.

The EPA has reviewed New York's SIP submittal, which seeks to incorporate revisions to 6 NYCRR Part 219, ''Incinerators. After evaluating Part 219 for consistency with the CAA, EPA regulations, and EPA policy, the EPA proposes to find that the submission fully addresses the ozone nonattainment requirement found in CAA Section 172, 42 U.S.C. Section 7502, and proposes to approve this revision. The EPA also proposes that the submission addresses the PM requirements found in CAA Section 175A, 42 U.S.C. Section 7505a.

V. What is the EPA's evaluation of Part 222, ''Distributed Generation Sources''?

A. Background

New York revised Part 222 to impose more stringent NO_X control requirements on sources operated as part of demand response programs or designated as price-responsive ''economic'' generation sources in New York City, Long Island, and Rockland and Westchester counties. Distributed Generation (DG) units enrolled within demand response programs are often low-level NO_X controlled diesel-fired engines that contribute significant NO_X emissions within the NYMA during High Electrical Demand Days. The revisions to Part 222 essentially entail control requirements beginning in 2021 with additional phased-in control requirements beginning in 2025. Both control requirements will increase the stringency of emissions limits for these engines used in non-emergency applications.

B. What are the new requirements of Part 222?

Part 222 was revised to include revisions of several definitions, a change in application and permitting requirements, a change in control requirements for economic dispatch sources, and revisions to emission testing and recordkeeping. DG sources are stationary reciprocating or rotary internal combustion engines used by host facilities or sites to supply electricity into the distribution grid or produce electricity for use at the host facilities or both. This includes, but is not limited to, emergency power generation stationary internal combustion engines and demand response sources. The demand response program is an emergency program sponsored by the New York Independent System Operator (NYISO) or distribution utilities in New York to call upon owners of low-level NO_X controlled distributed generation engines to generate electricity for host facilities on high demand days, to reduce demand on the electrical grid and preserve its reliability. Economic dispatch sources are defined as distributed generation sources used to provide electricity for general use to a building, structure, or collection of structures in place of electricity supplied by the distribution utilities. Economic dispatch sources are also considered as price-responsive generation sources which are distributed generation sources used to provide electricity for short periods of time when the cost of electricity supplied by the distribution utility is high. The revised Part 222 applies to owners and operators of distributed generation sources classified as economic sources located within the NYMA with a maximum mechanical output rating of 200 horsepower (hp) or greater where the potential to emit of NO_X at a facility is less than 25 tons/year.

6 NYCRR Section 222.1 was revised to incorporate the applicability of Part 222. 6 NYCRR Section 222.2 was revised to amend the definitions that apply to this Part, which include: Compression ignition, demand response program, demand response source, demand response event, distribution utility, distributed generation source, economic dispatch source, lean burn engine, maximum load relief, model year, rich burn engine, spark ignition, and three-way catalyst controls. The definitions of Part 200, as well as 6 NYCRR Subpart 200.1 and Subpart 201–2 of still apply to Part 222 unless they are inconsistent with the definitions outlined within 6 NYCRR Section 222.2.

6 NYCRR Section 222.3 was revised to specifically require owners or operators of a distributed generation source to obtain a permit or registration certificate in accordance with 6 NYCRR Part 201 prior to the operation as an economic dispatch source. The revisions also require owners or operators to notify NYSDEC, in writing by March 15, 2021 or 30 days prior to operating, whichever is later, their distributed generation source as an economic dispatch source.

6 NYCRR Section 222.4 (Section 222.4) was revised to implement the control requirements of economic dispatch sources that will be subject to Part 222. Effective May 1, 2021, depending upon the engine and fuel type, economic dispatch sources must comply with presumptive NO_X emission limits, or at least be a model year of 2000, or must be equipped with control technology (Phase One).[5] As of May 1, 2025, the second and final phase of NO_X emission limits for economic dispatch sources will become effective. Depending on the engine and fuel type, owners and operators must comply with more stringent NO_X emission limits than the Phase One limits. Section 222.4 allows owners or operators of impacted sources to request an extension of the compliance date for the 2025 NO_X control requirements in Part 222. Owners or operators that request additional time to install controls or install new engines or turbines must provide evidence to NYSDEC; in any case, the extension may not exceed two years beyond the 2025 compliance date. Also, emission test reports that demonstrate compliance with the control requirements outlined in Section 222.4 must be submitted and approved by NYSDEC before a distributed generation source may be operated as an economic dispatch source on or after May 1, 2025.

6 NYCRR Section 222.5 was revised to require owners or operators to submit the emission test reports outlined in Section 222.4. This section also describes how the emission test reports must be submitted, the emission test methods, and additional protocols required.

6 NYCRR Section 222.6 (Section 222.6) was revised to include the recordkeeping provisions required by owners and operators subject to Part 222. NYSDEC may enter a facility during normal operating hours to inspect an economic dispatch source subject to the requirements of Part 222, and inspect any records, papers, logbooks, and operational data maintained pursuant to Part 222. Facilities subject to Part 222 must also maintain records regarding hours of operation and fuel use for a period of five years. Section 222.6 also requires that owners or operators to conduct

[4] Title 7, Chapter 27, Subchapter 19 of New Jersey's NO_X RACT regulation provides NO_X emission rates for Municipal Waste Combustors. *See https://www.nj.gov/dep/aqm/currentrules/Sub19.pdf.* Section 22a-174–38 of Connecticut's regulations provides NO_X emission limits for Municipal Waste Combustors. *See https://eregulations.ct.gov/eRegsPortal/Browse/RCSA/Title_22aSubtitle_22a-174Section_22a-174-38/.*

[5] Model year is defined within Part 222 as the calendar year in which the engine was originally produced; or the annual new model production period of the engine manufacturer if it is different than the calendar year.

stack testing to demonstrate compliance with the emission standards detailed in Part 222 for economic dispatch sources that will operate on May 1, 2025 and beyond.

C. What is EPA's evaluation?

New York has revised Section 222.4 (control requirements) to require more stringent NO_X emission limits on sources used in demand response programs or designated as economic dispatch sources in the NYMA. New York has estimated that once the phased-in controls requirements are implemented by the May 1, 2025 compliance date, actual NO_X emissions in the State will be reduced by 5 tons per day. The following summarizes the revised control requirements from Section 222.4 that are expected to result in NO_X reductions beginning on May 1, 2025:

- For combustion turbines firing natural gas, presumptive NO_X emission limits are reduced to 25 parts per million on a dry volume basis corrected to 15 percent oxygen.
- For combustion turbines firing oil, presumptive NO_X emission limits are reduced to 42 parts per million on a dry volume basis corrected to 15 percent oxygen.
- For spark ignition engines firing natural gas, presumptive NO_X emission limits are reduced to 1.0 grams per brake horsepower-hour.
- For compression-ignition engines firing distillate oil with nameplate rating less than 750 hp, presumptive NO_X emission limits are reduced to 0.30 grams per brake horsepower-hour.
- For compression-ignition engines firing distillate oil with nameplate rating greater than or equal to 750 hp, presumptive NO_X emission limits are reduced to 0.50 grams per brake horsepower-hour.

The EPA believes that the new presumptive emission limits and other control requirements will result in additional NO_X reductions throughout the State thereby strengthening New York's ozone SIP and will help the State reach attainment for the 2008 and 2015 ozone standards.

The EPA agrees with New York's evaluation that the newly-adopted regulation will lead to an estimated reduction of 3.5 tons per day in 2021 and 5 tons per day by 2025 for demand response sources. A 3.5 or 5 ton per day reduction in NO_X emissions is a necessary step towards meeting New York's obligation under Section 110 of the CAA. This reduction will result in NO_X reductions throughout the NYMA, strengthen New York's ozone SIP, and help the State reach attainment for the 2008 and 2015 ozone NAAQS. The EPA evaluated the provisions of Part 222 for consistency with the CAA, EPA regulations, and EPA policy and proposes to find that the submission fully addresses the ozone nonattainment requirements found in CAA Section 172, 42 U.S.C. 7502, and proposes to approve this revision.

VI. What other revisions did New York make?

New York also made administrative changes to Part 200 (''General Provisions'') which reflect the revisions to Part 219 and Part 222 discussed above. Specifically, the revisions to Part 200 will add new references in Section 200.9, ''Referenced Material'', Table 1. The revisions to Table 1 of Section 200.9 include all documents referenced in New York's amendments to Part 219 and Part 222. It is important to note that EPA is proposing to approve only those respective revisions made to Part 200, specifically Section 200.9 as amended on March 14, 2020 and March 25, 2020.

VII. What is the EPA's conclusion?

The EPA evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA proposes that the revisions discussed above (6 NYCRR Part 200, ''General Provisions'', Part 219, ''Incinerators,'' and Part 222, ''Distributed Generation Sources,'' with effective dates of March 14, 2020 and March 25, 2020, respectively) meet the SIP requirements of the Act. The EPA is proposing to approve Part 219 and Part 222. The EPA is also proposing to approve attendant revisions to Part 200, Section 200.9, ''General Provisions, Reference material. These revisions meet the requirement of the Act and EPA's regulations, and are consistent with EPA guidance and policy. EPA is taking this action pursuant to Section 110 and Part D of the Act and EPA's regulations.

VIII. Incorporation by Reference

In this document, the EPA is also proposing to incorporate by reference NYSDEC rules discussed in sections IV and V of this preamble in accordance with the requirements of 1 CFR 51.5. The EPA has made and will continue to make these materials available through the docket for this action, EPA–R02–OAR–2021–0572, at *https://regulations.gov,* and at the EPA Region II Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IX. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. *See* 42 U.S.C. 7410(k); *see also* 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993), and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose

any substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen Dioxide, Intergovernmental Relations, Incorporation by Reference, Ozone, Particulate matter, Reporting and recordkeeping requirements, Waste treatment and disposal.

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

Dated: January 24, 2022.

Lisa F. Garcia,

Regional Administrator, Region 2.

[FR Doc. 2022–01784 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2021–0945; FRL–9487–01–R1]

Air Plan Approval; New Hampshire; Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This submission revises previously approved transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. In addition, the revision continues to rely on the Federal rule for General Conformity. The intended effect of this action is to approve State criteria and procedures to govern conformity determinations. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before February 28, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2021–0945 at *https://www.regulations.gov,* or via email to *rackauskas.eric@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05–2), Boston, MA 02109–3912, tel. (617) 918–1628, email *rackauskas.eric@epa.gov.*

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

Table of Contents

I. Background and Purpose

On September 9, 2021, the New Hampshire Air Resources Division (ARD) submitted a revision to its State Implementation Plan (SIP) consisting of amendments to Env–A 1500, *Conformity.* This revision consists of minor administrative language changes, updated definitions and references to Federal rules, and clarifications to roles and responsibilities for Federal, state, and municipal partners.

a. What is Transportation Conformity?

Transportation Conformity is required under Section 176(c) of the Clean Air Act to ensure that Federally-supported highway, transit projects, and other activities are consistent with (''conform to'') the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Clean Air Act, for the following transportation related criteria pollutants: Ozone, particulate matter ($PM_{2.5}$ and PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards. The transportation conformity regulation is found in 40 CFR part 93, subpart A and provisions related to conformity SIPs are found in 40 CFR 51.390.

b. What is General Conformity?

General Conformity is a requirement of section 176(c) of the Clean Air Act (CAA) Amendments of 1990. General Conformity is a safeguard that no action by the Federal government interferes with a SIP's protection of the National Ambient Air Quality Standards (NAAQS). Under General Conformity, any action by the Federal government cannot: Cause or contribute to any new violation of any standard in any area; interfere with provisions in the applicable SIP for maintenance of any standard; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard, any required interim emission reductions, or any other milestones, in any area. The general conformity regulation is found in 40 CFR part 93, subpart B and provisions related to conformity SIPs are found in 40 CFR 51.851.

On April 5, 2010, EPA revisited the Federal General Conformity Requirements Rule to clarify the conformity process, authorize innovative and flexible compliance approaches, remove outdated or unnecessary requirements, reduce the paperwork burden, provide transition tools for implementing new standards, address issues raised by Federal agencies affected by the rules, and provide a better explanation of conformity regulations and policies (75

FR 17254). This April 2010 General Conformity rule eliminated the Federal regulatory requirement for states to adopt and submit general conformity SIPs, instead making submission of a general conformity SIP a state option.

c. Evaluation of State Submittal

EPA previously approved a version of EnvA–1500 into the New Hampshire SIP on November 29, 2013 (78 FR 71504). For transportation conformity, the September 9, 2021, revision contains updated references to the Code of Federal Regulations (CFR), updates to public comment period timeframes, and clarifications to roles of interagency partners. Specifically, the rule updates multiple references to the CFR to the April 1, 2018, version from April 1, 2011. The rule also changes language for a public comment for planning organizations and New Hampshire Department of Transportation (NHDOT) from ''a minimum of 10 days'' to ''between 10 and 30 days,'' to match language in the NHDOT Statewide Transportation Improvement Program (STIP) Revision Procedures.

The New Hampshire submittal also provides updated language to project-level conformity determinations for carbon monoxide (CO) hot spot areas. EPA notes that New Hampshire's twenty-year maintenance period for the CO NAAQS expired on January 29, 2021. As a result of this maintenance period expiration, conformity requirements for the CO standard, including hot spot analyses, also expired.[1] No conformity or project level hot spot analyses are required for the State's CO maintenance area, but the language would continue to apply in the event of a future more stringent CO NAAQS and/or future nonattainment classification.

The NH submittal contains updated language for General Conformity. As noted above, States are not required to submit state-level General Conformity regulations into the SIP, rather they can rely upon the federal provisions. The New Hampshire submittal adequately refers to the General Conformity Federal rule for implementation and contains only minor changes in references to the 2018 Code of Federal Regulations, as mentioned above.

II. Proposed Action

EPA is proposing to approve New Hampshire's Env–A 1500 *Conformity* into the New Hampshire SIP. This revision and proposed approval are consistent with the CAA. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference of NH's updated Env–A 1500, *Conformity,* as discussed in sections I. and II. of this preamble, into 40 CFR part 52. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 24, 2022.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

[FR Doc. 2022–01627 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

[1] See Docket for letter to NHDOT.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 241

[EPA–HQ–OLEM–2020–0550; 7815–02–OLEM]

RIN 2050–AH13

Petition To Revise the Non-Hazardous Secondary Material Standard: Proposed Response

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of tentative response to petition for rulemaking.

SUMMARY: The Environmental Protection Agency (EPA or ''the Agency'') is responding to a rulemaking petition from American Forest and Paper Association et al. (''the petition'') requesting amendments to the Non-Hazardous Secondary Materials (NHSM) regulations, initially promulgated on March 21, 2011, and amended on February 7, 2013, February 8, 2016, and February 7, 2018 under the Resource Conservation and Recovery Act (RCRA). The NHSM regulations establish standards and procedures for identifying whether non-hazardous secondary materials are solid wastes when legitimately used as fuels or ingredients in combustion units. The petition requested the following amendments: Change the legitimacy criterion for comparison of contaminants in the NHSM to the traditional fuel the unit is designed to burn from mandatory to ''should consider''; remove associated designed to burn and other limitations for creosote-treated railroad ties (CTRT); and revise the definition of ''paper recycling residuals'' (PRR) to remove the limit on non-fiber materials in PRR that can be burned as a non-waste fuel. The EPA is proposing to deny the requested amendments. In addition, as an alternative to granting the third request, EPA is proposing a change to the definition of PRR to set a numerical limit on the amount of non-fiber materials that may be included for the residuals to be considered a non-waste fuel.

DATES: Comments must be received on or before March 29, 2022.

ADDRESSES: You may send comments, identified by Docket ID No. EPA–HQ–OLEM–2020–0550, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/* (our preferred method). Follow the online instructions for submitting comments.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, OLEM Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.
- *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday–Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted by the Agency without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document. Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are open to the public by appointment only to reduce the risk of transmitting COVID–19. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Tracy Atagi, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5303P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–0511; email address: *atagi.tracy@epa.gov.*

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this preamble.

I. General Information

A. List of Abbreviations and Acronyms Used in This Proposed Rule

Btu British thermal unit
CAA Clean Air Act
CBI Confidential business information
CFR Code of Federal Regulations
CISWI Commercial and Industrial Solid Waste Incinerator
CTRT Creosote-treated railroad ties
EPA U.S. Environmental Protection Agency
FR Federal Register
HAP Hazardous air pollutants
MACT Maximum achievable control technology
NAICS North American Industrial Classification System
ND Non-detect
NESHAP National emission standards for hazardous air pollutants
NHSM Non-hazardous secondary material
OMB Office of Management and Budget
PAH Polycyclic aromatic hydrocarbons
ppm Parts per million
PRR Paper Recycling Residuals
RCRA Resource Conservation and Recovery Act
RIN Regulatory information number
SBA Small Business Administration
SO_2 Sulfur dioxide
SVOC Semi-volatile organic compound
U.S.C. United States Code
VOC Volatile organic compound

B. What is the statutory authority for this proposed rule?

The EPA is proposing to deny the requested revisions in the AF&PA petition and is proposing regulatory revisions to the definition of paper recycling residuals under the authority of sections 2002(a)(1) and 1004(27) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. 6912(a)(1) and 6903(27). Section 129(a)(1)(D) of the Clean Air Act (CAA) directs the EPA to establish standards for Commercial and Industrial Solid Waste Incinerators (CISWI), which burn solid waste. Section 129(g)(6) of the CAA provides that the term ''solid waste'' is to be established by the EPA under RCRA (42 U.S.C. 7429(g)(6)). Section 2002(a)(1) of RCRA authorizes the Agency to promulgate regulations as are necessary to carry out its functions under the Act. The statutory definition of ''solid waste'' is stated in RCRA section 1004(27).

C. Does this proposed rule apply to me?

Categories and entities potentially affected by this action, either directly or indirectly, include, but may not be limited to the following:

GENERATORS AND POTENTIAL USERS [a] OF CATEGORICAL NON-WASTE FUELS

Primary industry category or subcategory	NAICS [b]
Utilities	221
Manufacturing	31, 32, 33
Wood Product Manufacturing	321
Sawmills	321113
Wood Preservation (includes railroad tie creosote treating)	321114
Paper Manufacturing	322
Cement Manufacturing	32731
Rail Transportation (includes line haul and short line)	482
Scenic and Sightseeing Transportation, Land (Includes: Railroad, scenic and sightseeing)	487110
Port and Harbor Operations (Used railroad ties)	488310
Landscaping Services	561730
Solid Waste Collection	562111
Solid Waste Landfill	562212
Solid Waste Combustors and Incinerators	562213
Marinas	713930

[a] Includes: Major Source Boilers, Area Source Boilers, and Solid Waste Incinerators.
[b] NAICS—North American Industrial Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities potentially impacted by this action. This table lists examples of the types of entities which the EPA is aware could potentially be affected by this action. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in this rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Public Participation

A. Written Comments

Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2020–0550, at *https://www.regulations.gov* (our preferred method), or the other methods identified in the **ADDRESSES** section. Once submitted, comments cannot be edited or removed from the docket. The EPA may publish any comment received to its public docket. Do not submit to EPA's docket at *https://www.regulations.gov* any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only. Our Docket Center staff also continues to provide remote customer service via email, phone, and webform. Hand deliveries or couriers will be received by scheduled appointment only. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

III. Background

A. History of the NHSM Rulemakings

The NHSM regulations establish standards and procedures for identifying when non-hazardous secondary materials burned in combustion units are solid wastes. The RCRA statute defines ''solid waste'' as ''any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material* . . . resulting from industrial, commercial, mining, and agricultural operations, and from community activities.'' (RCRA section 1004(27) (emphasis added)). The key concept is that of ''discard'' and, in fact, this definition hinges on the meaning of the phrase ''other discarded material,'' since this term encompasses all other examples provided in the definition.

The meaning of ''solid waste,'' as defined under RCRA, is of particular importance as it relates to section 129 of the CAA. If a material or any portion thereof is a solid waste under RCRA, a combustion unit burning it is required to meet the CAA section 129 emission standards for solid waste incineration units. If the material is not a solid waste, combustion units are required to meet the CAA section 112 emission standards. CAA section 129 further states that the term ''solid waste'' shall have the meaning ''established by the Administrator pursuant to the Solid Waste Disposal Act.'' *Id* at section 7429(g)(6). The Solid Waste Disposal Act, as amended, is commonly referred to as RCRA.

The Agency first solicited comments on how the RCRA definition of solid waste should apply to NHSMs when used as fuels or ingredients in combustion units in an advanced notice of proposed rulemaking (ANPRM), which was published in the **Federal Register** on January 2, 2009 (74 FR 41). The EPA then published an NHSM proposed rule on June 4, 2010 (75 FR 31844), which the EPA finalized on March 21, 2011 (76 FR 15456).

In the March 21, 2011 rule, the EPA finalized standards and procedures to be used to identify whether NHSMs are

solid wastes when used as fuels or ingredients in combustion units. ''Secondary material'' was defined for the purposes of that rulemaking as any material that is not the primary product of a manufacturing or commercial process, and can include post-consumer material, off-specification commercial chemical products or manufacturing chemical intermediates, post-industrial material, and scrap (codified at 40 CFR 241.2). ''Non-hazardous secondary material'' is a secondary material that, when discarded, would not be identified as a hazardous waste under 40 CFR part 261 (codified at 40 CFR 241.2). Traditional fuels, including historically managed traditional fuels (*e.g.,* coal, oil, natural gas) and ''alternative'' traditional fuels (*e.g.,* clean cellulosic biomass) are not secondary materials and thus, are not solid wastes under the rule unless discarded (codified at 40 CFR 241.2).

A key concept included in the March 21, 2011 rule is that NHSMs used as non-waste fuels in combustion units must meet the legitimacy criteria specified in 40 CFR 241.3(d)(1). Application of the legitimacy criteria helps ensure that the fuel product is being legitimately and beneficially used and not simply being discarded through combustion. To meet the legitimacy criteria, the NHSM must be managed as a valuable commodity, have a meaningful heating value and be used as a fuel in a combustion unit that recovers energy, and contain contaminants or groups of contaminants at concentration levels comparable to (or lower than) those in traditional fuels which the combustion unit is designed to burn.

Based on these criteria, the March 21, 2011 rule identified the following NHSMs as not being solid wastes:

- The NHSM that meets the legitimacy criteria and is used as a fuel and that remains within the control of the generator (whether at the site of generation or another site the generator has control over) (40 CFR 241.3(b)(1));
- The NHSM that meets the legitimacy criteria and is used as an ingredient in a manufacturing process (whether by the generator or outside the control of the generator (40 CFR 241.3(b)(3));
- Discarded NHSM that has been sufficiently processed to produce a fuel or ingredient that meets the legitimacy criteria (40 CFR 241.3(b)(4)); or
- On a case-by-case petition process, NHSM that has been determined to have been handled outside the control of the generator, has not been discarded and is indistinguishable in all relevant aspects from a fuel product, and meets the legitimacy criteria (40 CFR 241.3(c)).

In 2013, the EPA amended the NHSM rules to ''clarify several provisions in order to implement the non-hazardous secondary materials rule as the agency originally intended.'' [1] While the 2013 final rule did not contain any provisions specific to creosote-treated wood or CTRT, the EPA noted that AF&PA and the American Wood Council submitted a letter with supporting information on December 6, 2012, seeking a categorical non-waste determination for CTRT combusted in any unit.[2] The EPA discussed at the time that the Agency was reviewing the petition and also asked petitioners to provide additional information regarding CTRT, including industry sectors that burn CTRT; types of combustion units; types of traditional fuels that could otherwise be burned in these combustion units; extent of use of CTRT in non-industrial boilers; and laboratory analyses of CTRT for the contaminants, as defined under 40 CFR 241.2, known to be significant components of creosote, such as polycyclic aromatic hydrocarbons. The EPA also provided notice that, assuming the additional information supported the petitioners' representations, the Agency intended to propose a categorical non-waste fuel determination for CTRT.

On February 8, 2016 (81 FR 6687), the EPA published final NHSM rule amendments that provided a categorical non-waste fuel determination for CTRT that undergo, at a minimum, metal removal and shredding or grinding and are used as fuel in units designed to burn both biomass and fuel oil as part of normal operations and not solely as part of start-up or shut-down operations.[3] In addition, the final rule included a special provision for units at major source pulp and paper mills or power producers subject to 40 CFR part 63, subpart DDDDD that were designed to burn biomass and fuel oil as part of normal operations, but are modified (*e.g.,* oil delivery mechanisms are removed) in order to use natural gas instead of fuel oil. These units may continue to combust the CTRT as product fuel if the following conditions are met: (A) CTRT must be burned in an existing (*i.e.,* commenced construction prior to April 14, 2014) stoker, bubbling bed, fluidized bed, or hybrid suspension grate boilers; and (B) CTRT can comprise no more than 40 percent of the fuel that is used on an annual heat input basis.

A similar categorical non-waste fuel determination approach was applied to creosote-borate and mixtures of creosote and certain non-creosote treated railroad ties (*i.e.,* other treated railroad ties, or OTRT) in the February 7, 2018 NHSM rule amendments.[4]

B. Summary of the Petitioners' Requested Changes

The Agency is responding to a rulemaking petition (''the petition'') requesting amendments to the NHSM regulations, initially promulgated on March 21, 2011, and amended on February 7, 2013, February 8, 2016, and February 7, 2018 under the Resource Conservation and Recovery Act (RCRA).

The petition was received on December 7, 2018; petitioners included American Forest and Paper Association (AF&PA), Association of American Railroads (AAR), Treated Wood Council (TWC), American Short Line and Regional Railroad Association (ASLRRA), and American Wood Council (AWC). The petition requested the following amendments to the NHSM regulations: (1) Change from mandatory to ''should consider'' the legitimacy criterion for comparison of contaminants in the NHSM to the traditional fuel the unit is designed to burn found at 40 CFR 241.3(d)(1)(iii); (2) remove associated designed to burn and other limitations for creosote-treated railroad ties found at 40 CFR 241.4(a)(7)–(a)(10); and (3) revise the definition of paper recycling residuals (PRR) that can be burned as non-waste found at 40 CFR 241.2 to remove the limit on non-fiber materials.

C. Background on Creosote-Treated Railroad Ties (CTRT)

One outcome that the petitioners seek to achieve with their requested regulatory changes is to expand the national capacity for burning CTRT as non-waste fuel. Creosote was introduced as a wood preservative in the late 1800s to prolong the life of railroad ties. As creosote is a byproduct of coal tar distillation, and coal tar is a by-product of making coke from coal, creosote is considered a derivative of coal. Approximately 17 million railroad ties are removed from service each year in the U.S. After railroad ties are removed from service, they are transferred for sorting/processing. Based on information provided by industry,[5] the processing of the railroad ties into fuel

[1] *Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste; Final Rule.* 78 FR 9112, February 7, 2013.

[2] 78 FR 9173, February 7, 2013.

[3] 81 FR 6723, February 8, 2016.

[4] 83 FR 5318–19, February 7, 2018.

[5] AFPA Rail Tie Petition Request December 6, 2012, EPA–HQ–RCRA–2013–0110–0002.

by the reclamation/processing companies involves several steps. Metals (spikes, nails, plates, etc.) are removed using a magnet, once or several times during the process. The railroad ties are then ground or shredded to a specified size depending on the particular needs of the end-use combustor, with chip size typically between 1–2 inches. This step occurs in several phases, including primary and secondary grinding, or in a single phase. Once the railroad ties are ground to a specific size, additional metal is removed if present and there is further screening based on the particular needs of the end-use combustor. Depending on the configuration of the facility and equipment, screening occurs concurrently with grinding or at a subsequent stage. Throughout the process, a non-toxic surfactant may be applied to the railroad ties being processed to minimize dust. Once the processing of CTRT is complete, the CTRT are sold directly to the end-use combustor for energy recovery.

Use of CTRT as an alternative fuel may have the potential to produce various environmental benefits including reducing fossil fuel use,[6] increasing the heat value of the fuel mix and improving the combustion temperature and conditions.[7] Additionally, combusting CTRT provides an alternative to landfill disposal, which studies have shown may reduce methane emissions from anaerobic decay and extend landfill capacity. Even when accounting for energy recovery of the methane generated from landfill disposal of CTRT, the fuel offset from combusting CTRT for energy recovery is estimated to be 20 times greater than energy recovery from landfill gas.[8]

However, as noted in the 2011 NHSM final rule, creosote is produced from the process of distillation of coal tar for the purpose of creating a wood preservative, not a fuel, and creosote has different chemical concentrations than coal. In particular, CTRT has elevated levels of hexachlorobenzene, a CAA 112 Hazardous Air Pollutant (HAP), as well as other HAPs, when compared to coal. (76 FR 15483, March 21, 2011). Thus the 2016 NHSM non-waste determination is limited to CTRTs that are used as fuel in specific types of units where CTRTs have contaminants at levels comparable to or lower than the traditional fuel that combustion units are designed to burn.

In addition, the EPA has also recently become aware of reported problems associated with processing CTRT for use as fuel. Grinding CTRT can create dust that may blow onto neighboring properties. Processing CTRT into fuel can also be associated with other, more-generalized issues like excess noise from grinding, loud night-time operations, and the smell of creosote. These issues, combined with public concerns, led the Georgia state legislature to ban the combustion of CTRT for commercial electricity generation in June 2020.[9] The public complaints that prompted this legislative action were associated with two power plants that received modified permits allowing them to combust fuel oil and CTRT in 2018.[10] Since that time, the Georgia Environmental Protection Division received at least 23 complaints related to these combustors at the two plants.[11] About half of these complaints involved the smell of creosote or smoke and air quality concerns; issues associated with dust, excess noise, and runoff were also alleged five times each. Five complaints attributed headaches and burning eyes and airways to the effect of creosote combustion at the plants.

Based on EPA discussions with Georgia Environmental Protection Division, it appears that inefficient boiler operations, particularly during start-up and shut-down operations, (which were subsequently corrected) and CTRT grinding were most likely to blame for the community complaints.[12] Notably, the large majority of complaints were associated with the facility where grinding operations took place. Additionally, the Georgia legislation banning CTRT combustion for commercial energy generation created an exemption for any boiler that ''also provides steam or electricity to any co-located forest products processing plant.'' [13] This provision was added to the legislation to allow a CTRT-combusting paper mill in southern Georgia to continue its operations because it had not prompted similar citizen complaints.[14]

As was done in Georgia, state and local governments have authority under their state solid waste and water programs, as well as local ordinances, to address citizen complaints associated with the management and processing of CTRT prior to their use as a non-waste fuel, including problems associated with dust, excess noise, and runoff. CTRT remain solid waste until processed to produce a non-waste fuel per 40 CFR 241.3(b)(4) and thus remain under such solid waste regulatory authority. In addition, a federal non-waste determination under 40 CFR part 241 does not affect a state's authority to regulate a non-hazardous secondary material as a solid waste under the state's RCRA Subtitle D solid waste management program.

It remains unclear how frequently CTRT processing causes community concerns and how processors and state and local governments have responded. EPA is aware of a handful of cases outside of Georgia in which similar concerns were raised by communities where CTRT grinding takes place,[15] but EPA lacks comprehensive information on the frequency and extent of such issues and challenges. These environmental concerns may impact a material's classification as an NHSM. In order to fulfill the ''valuable commodity'' legitimacy criterion required of NHSM burned as fuel (40 CFR 241.3(d)(1)(i)), the material must be ''managed in a manner consistent with the analogous fuel or otherwise be adequately contained to prevent releases to the environment.'' Likewise, when no analogous fuel exists, the material must be ''adequately contained so as to prevent releases to the environment. EPA is requesting comment on CTRT processing to help the Agency determine whether it is standard practice to manage CTRT intended for combustion as an NHSM in a manner that fulfills the ''valuable commodity'' legitimacy criterion by preventing environmental releases.

[6] While creosote is a coal derivative, because the creosote has already been used once as a preservative on railway ties, burning those ties still may reduce the need for burning of fossil fuels.

[7] In addition, one study indicates that co-firing CTRT with coal at 10% the annual heating value may reduce emissions of certain pollutants. However, that study is very limited and cannot be extrapolated to the use of CTRT as a fuel in general. Little is known about impacts of variability in CTRT or coal composition and how these would impact emissions for any given combustor design or control device configuration. For more information, see *Creosote Treated Railroad Ties and Coal Co-firing Technical Support Document,* available in the docket.

[8] Bolin and Smith, ''Creosote-Treated Ties End-of-Life Evaluation'', p. 9.

[9] H.R. 857, 150th Gen Assemb., Reg. Sess. (Georgia 2020).

[10] *See* Permit Amendment Nos. 4911–195–0020–E–01–1 and 4911–119–0025–E–04–1 available in the docket.

[11] *See Compilation of Citizen Complaints Regarding Combustion of Creosote-Treated Railroad Ties* available in the docket.

[12] *See June 30, 2020 Georgia EPD Meeting Summary* available in the docket.

[13] H.R. 857, 150th Gen Assemble. Reg. Sess. (Georgia 2020).

[14] March 5, 2020 hearing before the Ga. House Natural Resources and Environment Comm., 2019–2020 Reg. Sess. (2020) (Statement of Alan Powell). *See https://livestream.com/accounts/25225474/events/8737135/videos/202562457* at 13:30.

[15] *See Compilation of Citizen Complaints Regarding Combustion of Creosote-Treated Railroad Ties* available in the docket.

Specifically, EPA is requesting public comment on the potential health and environmental risks associated with managing and processing CTRT prior to combustion and potential approaches to addressing these issues. Information on the types of control methods or devices available, their efficacy, and their practicality may assist the Agency in making decisions regarding CTRT processing in the future. Useful comments may include information such as industry standards, best management practices (BMPs) or standard operating procedures (SOPs), and state or local regulations or ordinances regarding dust containment. In addition, the Agency is requesting comment on the location of CTRT grinding facilities and whether the communities surrounding them face the risk of bearing an undue cumulative environmental health burden. Moreover, EPA is also requesting comment on other sources of environmental pollution and demographic trends (especially regarding vulnerable populations) in the vicinity of CTRT management locations.

IV. EPA Response to Petitioners' Requested Changes

A. Request To Change the Contaminant Comparison Criterion From Mandatory to ''Should Consider''

1. Petitioners' Request

40 CFR 241.3(d)(1)(iii) currently states that, ''The non-hazardous secondary material must contain contaminants or groups of contaminants at levels comparable in concentration to or less than those in traditional fuel(s) that the combustion unit is designed to burn.'' Petitioners requested the following revision in the regulatory language: ''Persons should *consider* whether the non-hazardous secondary material contains contaminants or groups of contaminants at levels comparable in concentration to or lower than those in traditional fuel(s) that the combustion unit is *capable* of burning. . . . *The factor in this paragraph does not have to be met for the non-hazardous secondary material to be considered a non-waste fuel.*'' [emphasis added].

Petitioners' rationale for this suggested change focused on a July 7, 2017 decision by the U.S. Court of Appeals for the D.C. Circuit that rejected mandatory compliance with the contaminant comparison criterion portion of the legitimacy test in the context of the RCRA rules defining ''solid wastes'' under RCRA's Subtitle C hazardous waste program (''DSW rule''). *American Petroleum Institute* v. *Environmental Protection Agency,* 862 F.3d 50 (D.C. Cir. 2017) (''*API*''). Petitioners argued that, in light of the Court's DSW rule decision, the continued mandatory use of contaminant comparison criterion in the NHSM rule, including limiting railroad tie non-waste fuel classifications to certain types of combustion units, can no longer be justified.

Petitioners referenced preamble language the EPA used in the 2015 DSW final rule regarding the contaminant comparison criterion, and said that ''[t]his language is consistent with the Identification of Non-Hazardous Secondary Materials that are Solid Wastes final rule (76 FR 15456, March 21, 2011).'' (80 FR 1727, January 13, 2015) From this preamble language petitioners concluded that the EPA has acknowledged the equivalence of the contaminant comparison factors in the two rules (*i.e.,* Factor 4 in the DSW rule and third legitimacy criterion in the NHSM rule).

In 2017, the *API* Court invalidated the fourth factor in the DSW rule, finding that ''[n]ever in the rulemaking does EPA make out why a product that fails those criteria is likely to be discarded in any legitimate sense of the term.'' 862 F.3d at 62. Petitioners say that the Court also challenged the EPA's ''bare assertion that high levels of hazardous constituents . . . could indicate discard,'' and noted that the contaminant comparison at issue was ''not a reasonable tool for distinguishing products from wastes.'' *Id* at 60, 63 (internal quotes omitted).

Petitioners argued that the *API* holding, with its critique of the EPA's application of this element of the definition of legitimate recycling in the DSW rule, applies with equal force to the NHSM legitimacy criteria set forth at 40 CFR 241.3(d). See *id* at 63. Therefore, petitioners alleged that, based on the reasoning and holding in *API*, the contaminant comparison criterion currently contained in the NHSM rule's legitimacy criteria and the corresponding NHSM rules for railroad ties treated with creosote and other wood preservatives can no longer be used as mandatory elements to determine whether a secondary material is discarded or not.

Furthermore, petitioners asserted that the EPA has recognized that the contaminant comparison should not be a determining factor for whether a material is being discarded. In its 2016 Rule on Additions to List of Categorical Non-Waste Fuels, the EPA expressly noted that ''CTRTs do not become wastes solely because of the switch to natural gas.'' 81 FR 6687, 6731 (Feb. 8, 2016). In that rule, the EPA reasoned that facilities that have demonstrated the ability to burn fuel oil and biomass should not be penalized for switching to natural gas, a fuel that creates less air pollution. In addition, petitioners stated that the EPA properly determined that resinated wood should qualify as a categorical non-waste fuel under the NHSM rule, despite expressly recognizing that this material ''may not meet the regulatory contaminant legitimacy criteria in every situation'' (78 FR 9112, 9156, February 7, 2013). Petitioners claimed that this prior EPA precedent is fully consistent with the Court's decision in *API* and underscores the need to eliminate the contaminant comparison as a mandatory factor in the NHSM rule's legitimacy criteria generally, and as a condition as applied to individual NHSMs.

2. EPA Response

The argument that the 2017 *API* decision invalidates the contaminant comparison criterion for NHSM fails because the contaminant standards in each rule were established for different purposes and in different contexts. The DSW rule establishes standards for legitimate recycling of hazardous secondary materials into products. The exclusions in the DSW rule address reclamation and specifically omit burning for energy recovery. Unlike NHSMs, hazardous secondary materials that are burned for energy recovery are always solid waste, unless the material is a commercial chemical product that is itself a fuel. (*See* 40 CFR 261.2(c)(2)). The contaminant comparison in 40 CFR 260.43(b) compares hazardous constituents in the product of the recycling process to the corresponding constituents in the analogous product made from virgin material. While 40 CFR 260.43(b) specifies that this factor ''does not have to be met for the recycling to be considered legitimate,'' the regulation also explains that ''[i]n evaluating the extent to which this factor is met and in determining whether a process that does not meet this factor is still legitimate, persons can consider exposure from toxics in the product, the bioavailability of the toxics in the product and other relevant considerations.'' In other words, the definition of legitimate recycling in 40 CFR 260.43, as it relates to hazardous constituents, focuses on the effect those hazardous constituents have on the risks posed by the product of recycling.

In contrast, the NHSM rule was established solely to determine whether an NHSM that is combusted as a fuel or an ingredient is a waste or a non-waste for purposes of applying appropriate emission standards under CAA section

129 or CAA section 112. Without the contaminant criterion, an NHSM could contain contaminant levels that are significantly higher than the traditional fuels they are meant to replace and still be considered a non-waste fuel. Burning is an inherently destructive process, even if there is energy recovery. Thus, through the NHSM rules, the Agency evaluates whether burning an NHSM for energy recovery also has the effect of destroying contaminants that would not otherwise be present in the corresponding traditional fuel, indicating discard may be occurring.

NHSM standards for categorical non-wastes also differ significantly from the DSW rule because the NHSM standards allow consideration of ''other relevant factors'' in determining whether the contaminant comparison criterion is met. (*See* 40 CFR 241.4(b)(5)(ii)). Thus, the NHSM standards already provide flexibility to meet the contaminant comparison criterion, where appropriate. The *API* court's rejection of the mandatory contaminant comparison for hazardous wastes in the DSW rule turned, in large part, on what the court viewed as a rigid and severe standard. The court felt that the requirement ''sets the bar at the contaminant level of the analogue without regard to whether any incremental contaminants are significant in terms of health and environmental risks.'' 862 F.3d at 60. However, the court went on to commend an exception to that test in which a recycler could satisfy this legitimacy criterion with evidence of ''lack of exposure from toxics in the product, lack of the bioavailability of toxins in the product, or other relevant considerations which show that the recycled product does not contain levels of hazardous constituents that pose a significant human health or environmental risk.'' *Id.* (quoting 40 CFR 260.43(a)(4)(iii) (2016)). Ultimately, the court found the exception to be insufficient ''due to the draconian character of the procedures.'' *Id.* at 61. That is, if a recycler failed to satisfy any step in the exception process, an otherwise legitimate product would be considered to be hazardous waste. The NHSM regulations avoid these problems by allowing the Agency to consider ''other relevant factors,'' which offers flexibility without the ''draconian'' procedures of the 2015 DSW rule.

Therefore, for all of the reasons stated above, the API decision does not directly apply because the context of burning NHSM differs fundamentally from hazardous waste recycling.

Finally, we also note that the NHSM legitimacy criteria have been in place since 2011 and were upheld by the D.C. Circuit Court in *Solvay* v. *EPA.* 608 Fed. Appx. 10 (D.C. Cir. 2015) (45 ELR 20107 Nos. 11–1189, (D.C. Cir., 06/03/2015)). A substantive change to the contaminant comparison criterion that would allow NHSM generators to ''consider'' significantly higher levels of contaminants in their NHSM-derived fuel, without any threshold or indication of when such a consideration might result in an NHSM being a solid waste, would create regulatory uncertainty for the combustion units that burn this material and rely on an accurate non-waste determination for their CAA permit applicability determinations. The Agency is, therefore, proposing to deny the Petitioners' request regarding the contaminant comparison criterion.

B. Request To Remove Associated Designed To Burn and Other Limitations for Creosote-Treated Railroad Ties

1. Petitioners' Request

As discussed above, 40 CFR 241.3(d)(1)(iii) states that ''[t]he non-hazardous secondary material must contain contaminants or groups of contaminants at levels comparable in concentration to or less than those in the traditional fuel(s) that the combustion unit *is designed to burn* . . .'' (emphasis added). As currently applied, the petitioners believe the designed to burn criterion means that the exact same railroad tie is considered a solid waste when burned in one unit, but a non-waste fuel when burned in another. The petition stated that the EPA has acknowledged the character of the NHSM does not change depending on the design of the boiler it goes to, and has offered no rationale for how the existence of a fuel oil nozzle in a boiler (*i.e.,* a boiler originally designed to burn fuel oil, but later retrofitted to burn natural gas) informs the question of whether railroad ties are being legitimately used as fuel, or in fact are simply being discarded in a hypothetical ''sham recycling'' operation.

In addition, petitioners argued, the EPA has imposed other restrictions unrelated to the characteristics of the NHSM itself—including a requirement that the facility in question must have been built before April 2014 and that the amount of NHSM combusted in that facility may not exceed 40% of the total fuel mix in a given year. Petitioners claimed that, in adding these various requirements regarding the characteristics of the combustion unit, the characteristics of the material and the motivation of the recycler are essentially rendered irrelevant to the determination of whether the material is a solid waste. Petitioners felt that this is contrary to RCRA case law and an arbitrary and unreasonable basis on which to decide whether the material is, in fact, being discarded or legitimately used as fuel.

Petitioners indicated that, as the agency charged with environmental protection, the EPA should encourage the widespread use of railroad ties and other similarly situated NHSM as fuel, rather than restrict that use and condemn valuable fuel sources to landfills. Furthermore, the Petitioners stated that the regulatory revisions requested in the Petition promote environmental sustainability, consistent with the EPA's Waste Management Hierarchy, eliminate undue and burdensome regulation, and reduce costs associated with such regulatory burdens.

According to a survey conducted jointly by the Railway Tie Association, ASLRRA and the AAR, railroads removed an average annual total of 23,975,000 railroad ties as part of track upgrade projects in the period from 2013 to 2016. The survey indicated that railroads sent 81.3% of those railroad ties to cogeneration facilities. As asserted in the joint comments previously submitted by AAR, TWC, and AF&PA on January 3, 2017, the designed to burn criterion disqualified approximately 58% of the existing boiler capacity to burn these railroad ties. Petitioners noted this capacity limitation means it takes much longer to move ties through the fewer eligible facilities, and railroads must transport the ties longer average distances to reach an eligible facility.

The primary alternative for managing the large volume of railroad ties removed from the rail lines each year is landfill disposal. According to petitioners, if substantial numbers of ties are excluded from the scope of what can be burned for energy generation in lieu of fossil fuels, the result will be an increased use of non-renewable fuels and an increase in the volume of ties sent to landfills. As the landfilled ties decay, they release greenhouse gases—including methane—into the Earth's atmosphere, an outcome that petitioners argued is contrary to public policy and the EPA's stated goals.

Further, at a cost of $70 to $90 per ton, petitioners projected that landfilling the additional railroad ties will cost railroads an additional $74 to $95 million per year.[16] Petitioners argue

[16] EPA notes that there are other options to landfilling CTRTs, including using them as fuel in units that are in compliance with CAA 129 and

that reduction of these burdensome and unnecessary costs is consistent with Executive Order 13771 and the EPA's August 17, 2018 memorandum reinforcing the work of the EPA's Regulatory Reform Task Force.

2. EPA Response

Regarding petitioners' claim that the same NHSM is treated differently in different units, such a claim ignores the underlying premise of the NHSM rules, which is to determine whether an NHSM that is combusted is a waste or a non-waste for purposes of applying appropriate emission standards under CAA section 129 or CAA section 112 to the unit burning the NHSM. Thus, it is entirely appropriate that an NHSM would be considered a non-waste fuel when burned in a unit designed to burn a comparable traditional fuel, and a solid waste when burned in a unit that is not designed to burn a comparable traditional fuel. Contaminants or groups of contaminants in the NHSM must occur at levels comparable to or lower than those in the traditional fuel the unit is designed to burn. Under 40 CFR 241.4(a)(7)(i) and (8)(i), each unit must be designed to burn both biomass and fuel oil, since contaminant levels in CTRT (*e.g.,* SVOCs) are considerably higher than biomass alone. Without the designed to burn criterion, contaminant levels could be compared to any traditional fuel or combination of fuels, resulting in a unit burning contaminants under the boiler provisions in CAA section 112 that the unit would otherwise never have been eligible to handle.[17]

It should be noted that as a result of the 2013 NHSM rule, the regulations already provide considerable flexibility in implementing the designed to burn criterion. Persons making contaminant level comparisons may choose a traditional fuel that can be or is burned in the particular type of boiler, whether or not the combustion unit is permitted to burn that traditional fuel. Broad groups of similar traditional fuels may be used when comparing contaminant levels (*e.g.,* coal, biomass, fuel oil, and natural gas). The regulatory language in 40 CFR part 241 makes it clear that a unit is considered designed to burn a traditional fuel if it is physically capable of burning the fuel, regardless of whether it has burned, or is permitted to burn, such a fuel.

Petitioners suggest replacing language in the CTRT rules regarding which units are ''designed to burn'' CTRT with units ''operating in compliance with all applicable permits.'' However, the NHSM rules are used to determine which CAA permits are applicable to a unit combusting NHSM, making the suggested reference to ''applicable permits'' circular and meaningless.

In regards to petitioners' comments on EPA's decision to include in the non-waste determination CTRT burned as fuel in units at major source pulp and paper mills or power producers subject to 40 CFR part 63, subpart DDDDD that had been originally designed to burn biomass and fuel oil, but had switched to natural gas (*see* 40 CFR 241.4(7)(ii),[18] the EPA could have reasonably limited the contaminant comparison to the much lower contaminant levels in natural gas. However, as part of the Agency's authority to consider ''other relevant factors'' in making a categorical non-waste fuel determination in cases where one of the legitimacy criteria is not met (*See* 40 CFR 241.4(b)(5)(ii)), the Agency elected to include units that no longer burn fuel oil to avoid ''penalizing'' the converted units that switched to cleaner-burning fuel.[19] Conditions imposed on CTRT combusted in natural gas-fired units are part of the relevant factors the EPA used to determine whether discard has occurred (see 81 FR 6724–25).

The designed to burn criterion is fundamental to the NHSM program since it is the primary mechanism for identifying which traditional fuel should be used as the basis of determining whether contaminant levels in the NHSM are comparable to or less than the traditional fuel being replaced. Without the designed to burn criterion, CTRT could be combusted in biomass-only boilers, including biomass boilers that are area sources under the CAA. These boilers would have higher emissions when burning CTRT rather than biomass. Emission standards for dioxins, SO_2, NO_X, etc. for non-major sources are addressed under the CAA section 129 standards but are not addressed by area source boiler standards under CAA section 112 which require only tune-ups. The Agency is therefore proposing to deny petitioners' request regarding the designed to burn criterion. See section IV.A. above for a discussion on the contaminant comparison criterion.

C. Preamble Discussion of Storage Times for Railroad Ties

1. Petitioners' Request

In addition to the requested regulatory changes, the petition raises an issue related to railroad tie storage timeframes as it impacts NHSM eligibility as discussed in the 2016 NHSM rule. In the preamble to that rule, the EPA discussed its presumption that storage of ties for a year or longer without an end-use determination is not ''reasonable,'' and indicates that the material has been discarded. Petitioners asserted that this is incompatible with the realities of railroad operations. That is, unlike discrete facilities from which valuable secondary materials are easily reclaimed, the railroad right-of-way extends over thousands of miles across the United States. Petitioners said that many locations where ties are removed are not readily accessible except by rail and tie pickup interrupts freight and passenger train service and competes with safety-related operations such as track maintenance and inspection. Train service and safety are regulated by the Surface Transportation Board and Federal Railroad Administration, respectively. Petitioners indicated that, due in part to those agencies' requirements, service and safety must take precedence over tie recovery. Petitioners asserted that these challenges make it unrealistic to collect used ties within one year of removal from service—but for reasons completely unrelated to the determination of whether ties are managed as a ''valuable commodity'' under the NHSM framework. Moreover, the EPA has recognized that ''the reasonable timeframe for storage may vary by industry'' (81 FR 6725, February 8, 2016). In the context of railroad tie management, petitioners asserted that three or more years is a reasonable storage timeframe.

2. EPA Response

Regarding storage time for CTRT (to meet the valuable commodity criterion), petitioners misinterpreted the preamble discussion in the February 8, 2016 rule, which explained that the amount of time for industry to decide on value and end use of CTRT (whether sent to a landfill, used as fuel, or another non-fuel purpose) could exceed one year (81 FR 6725). In such circumstances, lengthy storage of the treated railroad ties generally occurs because the railroad has not determined the end use of the ties, not because the ties are being stored for later transfer to a pre-established buyer. Further, CTRT would be considered discarded until processed

landscaping; see Smith, Stephen T., ''2018 Railroad Tie Survey,'' *https://www.rta.org/assets/docs/RTASponsoredResearch/Environmental/2019-4-9%20Tie%20Survey%20Report%20Final.pdf.*

[17] This issue would be a concern even under the petitioners' requested change to make the contaminant comparison criterion ''to be considered'' rather than mandatory.

[18] EPA is neither reopening nor taking comment on these regulations.

[19] 81 FR 6724, February 8, 2016.

into a non-waste fuel, since NHSMs that are transferred off-site for reclamation and reuse as a fuel are considered discarded and must be processed and meet the legitimacy criteria.

The general reasoning for this off-site standard is that the incentive for management of the NHSM as a valuable fuel product is lessened when transferred to a third party. To be considered a non-waste fuel when transferred off-site without first undergoing processing, the material would have to undergo the petition process under 241.3(c) to demonstrate that the material has not been discarded. EPA continues to find, as noted in the 2016 rule, that railroad ties removed from service can be stored for long periods of time without a final determination regarding their final end use, and they are considered discarded. In order for these ties to be considered a non-waste fuel, they must be processed, thus transforming the railroad ties into a product fuel, and then combusted in prescribed units under prescribed conditions.

D. Request To Amend the Definition of ''*Paper Recycling Residuals*''

1. Petitioners' Request

Petitioners also requested that the EPA amend the definition of ''paper recycling residuals'' (PRR) to amend the description and remove the definitional condition that PRR that ''contain more than *small amounts* of non-fiber materials . . . are not paper recycling residuals'' (40 CFR 241.2, emphasis added). Petitioners believed that this condition is overly vague and directly at odds with the Court's decision in *API.*

Petitioners requested that the second sentence in the definition precluding materials that contain ''more than small amounts of non-fiber materials'' from qualifying as PRR should be removed. They argued that this condition suggests that the list of non-fiber materials identified in the definition are somehow viewed as contaminants in PRR. But, as discussed above, petitioners argue that in vacating the contaminant comparison criterion in the DSW rule, the D.C. Circuit made clear that the mere presence of some contaminants in a material destined for legitimate recycling is not the basis for finding that the material has been ''discarded'' and thus subject to regulation as a solid waste.

In addition to arguing that this condition is inconsistent with the D.C. Circuit's holding in *API,* the petitioners believe that the ''small amount'' limitation is overly vague. While members of the regulated community have used good faith efforts in determining that PRR burned as fuel meet this condition, it is well established that ''a statute which either forbids or requires the doing of an act so vague that men of common intelligence must necessarily guess at its meaning and differ as to its applications, violates the first essential of due process of law.'' *FCC* v. *Fox Television Stations, Inc.,* 567 U.S. at 239, 253 (2012) (internal citation omitted). According to petitioners, the ''small amount'' criterion in the definition of PRR falls squarely within this ''impermissibly vague'' infirmity and should be removed from the definition to help ensure that ''those enforcing the law do not act in an arbitrary or discriminatory way.'' *FCC,* 567 U.S. at 253 (internal citation omitted).

Furthermore, petitioners argue that the current definition describing PRR as ''composed primarily of wet strength and short wood fibers'' is not correct as the re-pulping of recovered fibers can result in a variety of strengths and sizes of fibers in PRR, so the current limitation to ''wet strength and short wood fibers'' is unnecessarily restrictive. Some residuals from recycling paper, paperboard and corrugated containers are composed of fibers other than wet strength fibers or short-wood fibers, but nonetheless cannot be used to make new paper or paper products and therefore are burned for their energy value.

2. EPA Response

EPA disagrees with the petitioner's arguments for removing language limiting the amount of non-fiber materials in PRR burned as a non-waste fuel. The reasoning for not including the non-fiber materials as PRR was not focused on discard due to contaminants present, but rather, discard due to lack of heating value and not contributing to energy recovery. In the April 14, 2014 proposed rule, the EPA requested, but did not receive, information regarding the percent of non-fiber materials commonly present in PRR and their heating value (79 FR 21017). Lacking information to the contrary, the Agency determined that PRR with higher amounts of non-fiber materials would likely have a lower heating value. Combustion of materials with low heating values is typically be considered discard. PRR already has a relatively low heating value (as fired and generated, average 3,700 Btu/lb),[20] so large amounts of non-fiber materials would lower the heating value of the material, further raising the question of burning as discard.

In the review of the petition, the Agency reaffirms the previous conclusion that residuals from processes such as mixed paper waste recycling with significant quantities of non-fiber materials (*e.g.,* clays, starches, waxes and adhesives, other plastics, filler and coating additives, and dyes and inks) are considered to be a solid waste fuel when combusted, due to a lack of meaningful heating value.[21]

However, the EPA does believe that it may be more appropriate to set a numerical threshold for non-fiber material, rather than prohibit them entirely or rely on the term ''small amounts.'' As indicated above, information on such threshold amounts of non-fiber materials was not received from industry and a review of current scientific studies also did not reveal specific amounts. As an alternative, although not directly used for PRR as fuels, the Scrap Specifications Circular (2021); Institute of Scrap Recycling Industries Guidelines for Paper Stock identifies a 2% prohibitive material content limit for mixed paper stock used for re-pulping paper.[22] In the circular, prohibitive material is material which by its presence, in excess of the amount allowed, will make the pack unusable as the grade specified, as well as any materials that may be damaging to equipment. In evaluating the grades of paper identified in the circular, the maximum allowance of prohibitive materials in mixed paper (which consists of all paper and paperboard of various qualities not limited to the type of fiber content) is 2%. The Agency has concluded that this prohibitive material measure can provide an analogous measure for non-fiber materials contained within PRR.

Furthermore, the definition of PRR as ''composed of primarily wet strength and short wood fibers'' was based on previously submitted industry information (81 FR 6721, February 8, 2016). However, based on the information submitted in this petition, the Agency agrees that the reference to ''primarily wet strength and short wood fibers'' is too limiting and inadvertently excludes fibers of different strength and size that may provide heating value, and therefore we are proposing to change the language to ''fibers that are too small or weak to be used to make new paper and paperboard products.''

[20] 81 FR 6716, February 8, 2016.

[21] 81 FR 6718, February 8, 2016.

[22] Institute of Scrap Recycling Industries (ISRI) Scrap Specifications Circular (2021), page 34; *http://www.scrap2.org/specs/.*

Accordingly, the Agency proposes to revise the definition of PRR as follows: Paper recycling residuals (PRR) means the secondary material generated from the recycling of paper, paperboard and corrugated containers composed primarily of fibers that are too small or weak to be used to make new paper and paperboard products. Residuals that contain more than 2% by weight of non-fiber materials, including polystyrene foam, polyethlene film, other plastics, waxes, adhesives, dyes and inks, clays, starches and other coating and filler material are not PRR under this definition.

V. Effect of This Final Rule on Other Programs

Beyond amending the definition of PRR, this tentative denial does not change the effect of the NHSM regulations on other programs as described in the March 21, 2011 NHSM final rule, as amended on February 7, 2013 (78 FR 9138), February 8, 2016 (81 FR 6688) and February 7, 2018 (83 FR 5317). Refer to section VIII of the preamble to the March 21, 2011 NHSM final rule [23] for the discussion on the effect of the NHSM rule on other programs.

VI. State Authority

A. Relationship to State Programs

This tentative denial and proposed change to the definition of PRR does not change the relationship to state programs as described in the March 21, 2011 NHSM final rule. Refer to section IX of the preamble to the March 21, 2011 NHSM final rule [24] for the discussion on state authority including, ''Applicability of State Solid Waste Definitions and Beneficial Use Determinations'' and ''Clarifications on the Relationship to State Programs.'' The Agency, however, would like to reiterate that this proposed rule (like the March 21, 2011 and the February 7, 2013 final rules) is not intended to interfere with a state's program authority over the general management of solid waste.

B. State Adoption of the Rulemaking

No federal approval procedures are included in this rulemaking action under RCRA subtitle D. While states are not required to adopt regulations promulgated under RCRA subtitle D, some states incorporate federal regulations by reference or have specific state statutory requirements that their state program can be no more stringent than the federal regulations. In those cases, the EPA anticipates that, if required by state law, the changes being made in this document will be incorporated (or possibly adopted by authorized state air programs) consistent with the state's laws and administrative procedures.

VII. Costs and Benefits

This action is definitional in nature, and any costs or benefits accrue to the corresponding Clean Air Act rules. In accordance with the Office of Management and Budget (OMB) Circular A–4 requirement that the EPA analyze the costs and benefits of regulations, the EPA prepared a regulatory impact analysis document for the proposal that examines the scope of indirect impacts.

VIII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review because it may raise novel policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA as this action only changes the definition of PRR for the purposes of the NHSM regulations. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2050–0205.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities and that the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule has no net burden on the small entities subject to the rule. While this proposed action will provide greater clarity, reduce regulatory uncertainty associated with paper recycling residuals, and help increase management efficiency, it would not change the substantive requirements of the regulations. The proposed 2% limit for non-fiber material in PRR that would replace the current limit of ''small amounts'' is based on a voluntary consensus standard set by the Institute of Scrap Recycling Industries (ISRI) in their Scrap Specifications and would not require a change in current industry practices. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The costs involved in this action are imposed only by participation in a voluntary federal program. UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. Affected entities are not required to manage the additional NHSMs as non-waste fuels.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. It will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Potential aspects associated with the categorical non-waste fuel determinations under this proposed rule may invoke minor indirect tribal implications to the extent that entities generating or consolidating these NHSMs on tribal lands could be affected. However, any impacts are expected to be negligible. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in the Executive Order 12866, and because the EPA does not believe the

[23] 76 FR 15456, March 21, 2011 (page 15545).

[24] 76 FR 15456, March 21, 2011 (page 15546).

environmental health or safety risks addressed by this action present a disproportionate risk to children. The change to the definition of PRR would not affect the overall risk to children posed by boiler emissions. This is because the overall level of emissions, or the emissions mix from boilers, are not expected to change significantly because of the change in definition of PRR and these units remain subject to the protective standards established under CAA section 112.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The selected NHSMs affected by this proposed action would not be generated in quantities sufficient to significantly (adversely or positively) impact the supply, distribution, or use of energy at the national level. Even if 100% of the available PRR were converted to energy (an unlikely best-case scenario), that would translate to a potential increase of only 0.002% to 0.003% in the national energy supply, and these effects would be localized at recycling paper mills.

I. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. The EPA proposes to use a 2% by weight limit on the amount of non-fiber content allowed in paper recycling residuals (PRR) when burned as a non-waste fuel. This is based on a voluntary consensus standard set by the Institute of Scrap Recycling Industries (ISRI) in their Scrap Specifications Circular (2021); which identifies a 2% prohibitive material content limit for paper stock used for re-pulping paper. See page 34; *http://www.scrap2.org/specs/.* In the circular, prohibitive material is material which by its presence, in excess of the amount allowed, will make the pack unusable as the grade specified, as well as any material that may be damaging to equipment. In evaluating the grades of paper identified in the circular, the maximum allowance of prohibitive materials in mixed paper (which consists of all paper and paperboard of various qualities not limited to the type of fiber content) is 2%. The Agency proposes that this prohibitive material measure can provide an analogous measure for allowable amounts of non-fiber materials (including polystyrene foam, polyethlene film, other plastics, waxes, adhesives, dyes and inks, clays, starches and other coating and filler material) contained within PRR.

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

The EPA believes that this action, if finalized, would not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The proposed change in definition of PRR is not expected to significantly change the overall level of emissions, or the emissions mix from boilers, and these units remain subject to the protective standards established under CAA section 112.

However, if EPA were to grant the petitioners' requests, CTRT could be combusted in biomass-only boilers, including biomass boilers that are area sources under the CAA. As discussed earlier, these boilers would have higher emissions when burning CTRT rather than biomass. Emission standards for dioxins, SO_2, NO_X, etc. for non-major sources are addressed under the CAA section 129 standards but are not addressed by area source boiler standards under CAA section 112 which require only tune-ups. The risks from increased emissions would most likely be disproportionately borne by minority and low-income communities. In areas within three miles of boilers, the minority share of the population was found to be 33 percent, compared to the national average of 25 percent. For these same areas, the percent of the population below the poverty line (16 percent) is also higher than the national average (13 percent).

List of Subjects in 40 CFR Part 241

Environmental protection, Air pollution control, Waste treatment and disposal, Non-Hazardous Secondary Materials.

Michael S. Regan,

Administrator.

For the reasons stated in the preamble, the EPA is proposing to amend 40 CFR part 241 of the Code of Federal Regulations as follows:

PART 241—SOLID WASTES USED AS FUELS OR INGREDIENTS IN COMBUSTION UNITS

■ 1. The authority citation for part 241 continues to read as follows:

Authority: 42 U.S.C. 6903, 6912, 7429.

■ 2. Amend § 241.2 by revising the definition of ''paper recycling residuals'' to read as follows:

§ 241.2 Definitions.

* * * * *

Paper recycling residuals (PRR) means the secondary material generated from the recycling of paper, paperboard and corrugated containers composed primarily of fibers that are too small or weak to be used to make new paper and paperboard products. PRR that contain more than 2% by weight of non-fiber materials, including polystyrene foam, polyethlene film, other plastics, waxes, adhesives, dyes and inks, clays, starches and other coating and filler material are not PRR under this definition.

* * * * *

[FR Doc. 2022–01074 Filed 1–27–22; 8:45 am]

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 227, 237, 239, and 252

[Docket DARS–2019–0067]

RIN 0750–AK87

Defense Federal Acquisition Regulation Supplement: Noncommercial Computer Software (DFARS Case 2018–D018)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 that requires DoD to consider all noncommercial computer software and related materials necessary to meet the needs of the agency. In addition to the request for written comments on this proposed rule, DoD will hold a public meeting to hear the views of interested parties.

DATES:

Submission of Comments: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 29, 2022, to be considered in the formation of a final rule.

Public Meeting: A virtual public meeting will be held on March 3, 2022, from 11:00 a.m. to 2:30 p.m. Eastern time. DoD will also reserve 2:30 p.m. to 5:00 p.m. Eastern time on the same day,

if DoD determines additional discussion is necessary. The public meeting will end at the stated time, or when the discussion ends, whichever comes first.

Registration: Registration to attend the public meeting must be received no later than close of business on February 24, 2022. Information on how to register for the public meeting may be found under the heading **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES:

Public Meeting: A virtual public meeting will be held using Zoom video conferencing software.

Submission of Comments: Submit written comments identified by DFARS Case 2018–D018, using any of the following methods:

○ *Federal eRulemaking Portal: https://www.regulations.gov.* Search for ''DFARS Case 2018–D018.'' Select ''Comment'' and follow the instructions to submit a comment. Please include ''DFARS Case 2018–D018'' on any attached documents.

○ *Email: osd.dfars@mail.mil.* Include DFARS Case 2018–D018 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. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. David E. Johnson, telephone 571–372–6115.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to amend the DFARS to implement section 871 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 871 established new direction at 10 U.S.C. 2322a, Requirement for consideration of certain matters during acquisition of noncommercial computer software. The statute requires that DoD, as part of any negotiation for such software, consider all noncommercial computer software and related materials necessary to meet the needs of the agency. This rule provides direction to DoD both to improve acquisition planning and to identify and negotiate for software deliverables and license rights at a fair and reasonable price before contract award. DoD published an advance notice of proposed rulemaking (ANPR) on January 14, 2020, at 85 FR 2101 and hosted a public meeting on February 18, 2020, to obtain the views of interested parties. DoD accepted public comments through March 16, 2020. Two respondents submitted public comments in response to the ANPR.

II. Public Meeting

DoD is interested in continuing a dialogue with experts and interested parties in Government and the private sector regarding amending the DFARS to implement section 871 of the NDAA for FY 2018, which requires DoD to consider all noncommercial computer software and related materials necessary to meet the needs of the agency.

Registration: Individuals wishing to participate in the virtual meeting must register by February 24, 2022, to facilitate entry to the meeting. Registration for the virtual meeting will be valid also for the additional discussion time, if DoD determines additional time is needed (see the **DATES** section of this preamble). Interested parties may register for the meeting by sending the following information via email to *osd.dfars@mail.mil* and include ''Public Meeting, DFARS Case 2018–D018'' in the subject line of the message:

- Full name.
- Valid email address, which will be used for admittance to the meeting.
- Valid telephone number, which will serve as a secondary connection method. Registrants must provide the telephone number they plan on using to connect to the virtual meeting.
- Company or organization name.
- Whether the individual desires to make a presentation.

Pre-registered individuals will receive instructions for connecting using the Zoom video conferencing software not more than one week before the meeting is scheduled to commence.

Presentations: Presentations will be limited to 5 minutes per company or organization. This limit may be subject to adjustment, depending on the number of entities requesting to present, in order to ensure adequate time for discussion. If you wish to make a presentation, please submit an electronic copy of your presentation via email to *osd.dfars@mail.mil* no later than the registration date for the specific meeting. Each presentation should be in PowerPoint to facilitate projection during the public meeting and should include the presenter's name, title, organization affiliation, telephone number, and email address on the cover page.

Correspondence, Comments, and Presentations: Please cite ''Public Meeting, DFARS Case 2018–D018'' in all correspondence related to the public meeting. There will be no transcription at the meeting. The submitted presentations will be the only record of the public meeting and will be posted to the following website at the conclusion of the public meeting: *https://www.acq.osd.mil/dpap/dars/technical_data_rights.html.*

III. Discussion and Analysis

DoD reviewed the public comments submitted in response to the ANPR in the development of the proposed rule. One respondent provided a comment that indicated concurrence with the rule. A discussion of the remaining comments and the changes made to the rule as a result of those comments are provided as follows:

A. Summary of Significant Changes From the ANPR

DFARS 227.7202–1 and 227.7203–2 were clarified in response to public comments. New text was added to DFARS 227.7203–2 to provide additional guidance on assessing life-cycle needs. Several changes were made to terms in the proposed rule as follows:

- The term ''related data'' was replaced with related recorded information;
- The description of required software libraries was revised to further clarify its scope; and
- The Government's minimum needs in DFARS 227.7103–2(b)(1) and 227.7203–2(b)(1) were clarified.

The proposed definition of data at DFARS 227.001 was deleted. DFARS 227.7203–2(b)(1) was revised to align with the text in DFARS 227.7103–2(b)(1). The definition of restricted rights was revised to permit the Government to make and use a reasonable number of copies of computer software for the purposes described in the contract clauses at DFARS 252.227–7014, Rights in Technical Data—Noncommercial Items, and 252.227–7018, Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

B. Analysis of Public Comments

1. Proposed Rule Applies Program Management Elements to Contracting Personnel

Comment: The respondent expresses concern that the rule addresses functions that are normally performed by program managers, engineers, configuration managers, and other program personnel and places those responsibilities on contracting personnel. The respondent recommends that these requirements would be best addressed within a program's intellectual property (IP) strategy.

Response: DoD acknowledges that the requirements for program personnel are currently addressed in DoD instructions (DoDIs), such as DoDI 5000.87, Operation of the Software Acquisition Pathway, and DoDI 5010.44, Intellectual Property (IP) Acquisition and Licensing. DFARS 227.7203–2(a) currently provides for contracting officers to work closely with program personnel when developing requirements to meet the Government's needs. Currently, DFARS 227.7203–2(b) delineates the responsibilities of data managers in assessing life-cycle needs, and 227.7203–2(c) requires contracting officers to ensure that solicitations and contracts include certain requirements for software deliverables. The rule proposes to revise this language because the statute impacts the direction related to assessments of life-cycle needs, solicitations, and contracts.

2. Application to Commercial Computer Software

Comment: The respondent asserts that the plain language in paragraphs (a) and (b) of 10 U.S.C. 2322a make it clear that Congress intended for the provision to only apply to noncommercial computer software.

Response: Although the statute relates to the acquisition of noncommercial computer software, the statute also discourages reliance on ''external or additional computer software or technical data'' with no limitations with respect to commerciality. DoD revised DFARS 227.7203–2(c)(6) to clarify that the proposed rule is limited to noncommercial computer software, except in cases where the software relies on additional internal or external commercial computer software or technical data. The proposed rule permits reliance on additional internal or external computer software when such software is commercially available with the necessary license rights. DFARS 227.7202–1 and 227.7203–2 have been revised to address the relationship between noncommercial software and commercial software while maintaining the policies set forth in DFARS 227.7202–1(c).

3. Proposed Changes to DFARS 227.7203–2 Encourage Acquisition of All Forms of Noncommercial Computer Software in All Instances

Comment: The respondent expresses concern that the proposed rule could be interpreted as requiring the contracting officer to acquire all forms of noncommercial computer software in all instances, rather than tailoring acquisitions to meet DoD's actual needs. The respondent recommends an emphasis on the life-cycle needs for a program or system, including software maintenance.

Response: DFARS 227.7203–1(a) provides that DoD may acquire only the computer software and computer software documentation, and the rights in such software or documentation, necessary to satisfy agency needs. This direction remains unchanged. The proposed rule does require the assessment of life-cycle needs to address acquisition of software at appropriate times in the life cycle of a product, program, or system.

4. DFARS 227.7203–2 Should Consider Whether the Software Was Developed at Private Expense

Comment: The respondent recommends that the rule consider whether the software was developed at private expense to incentivize investment of private funds into noncommercial software development to meet DoD needs. The respondent also recommends DoD consider alternatives to the delivery of source code and related software design details.

Response: DoD concurs with the comment and revised DFARS 227.7203–2(b)(2)(ii) to include consideration of alternatives to the delivery of source code and related software design details for privately developed noncommercial computer software.

5. References to Necessary or Associated License Rights May Be Subject to Misinterpretation

Comment: The respondent states that the proposed DFARS 227.7203–2 should not refer to ''necessary'' or ''associated'' license rights when discussing the need to acquire specific types of software. There is a risk that this could be misinterpreted as requiring a separate licensing scheme that is not subject to the existing noncommercial software licensing policies in DFARS 227.7203–1.

Response: Existing policies in DFARS 227.7203–1 and 227.7203–2 address these concerns. Contracting officers must ensure consistency with DFARS 227.7203–1(c), which prohibits a contractor from being required to sell or relinquish to DoD greater rights than required under DFARS 227.7203–5(a)(3) through (6).

6. New Terms Introduced in the ANPR

Comment: The respondent states a concern that the proposed new definition for data is not needed to implement 10 U.S.C. 2322a and would ultimately cause confusion within the acquisition workforce. The respondent also expresses concerns about the new term ''related data'' and recommends ''related computer software documentation'' instead.

Response: DoD concurs and has removed the definition of data from the proposed rule. To avoid confusion about the scope of the term ''related data'' and better align with the broader scope of the term ''related materials'' in 10 U.S.C. 2322a, ''related data'' has been changed to ''related recorded information,'' which is more consistent with 10 U.S.C. 2302(4) and existing DFARS terminology.

7. Use of Terms Consistent With Other Acquisition Documents

Comment: The respondent asserts that DFARS 227.7203–2 should use terminology used in other acquisition documents, such as those contained in a Data Item Description (DID). The respondent expresses concerns with the terms ''required software libraries'' and ''software revision history.''

Response: The term ''required software libraries'' is intended to implement the term ''required libraries'' in 10 U.S.C. 2322a. DFARS 227.7203–2(b)(2)(i) and 227.7203–2(c)(6)(ii) have been revised to include examples of required software libraries. The term ''software revision history'' has been changed to ''software version history'' consistent with the term ''software version'' used in the ''Software Version Description'' DID, DI–IPSC–81442A.

8. Policy Changes to DFARS 239.101 Should Require a Written Determination by the Head of the Contracting Activity

Comment: The respondent recommends that a parenthetical should be added to ensure the policy change of DFARS 239.101 is only used where there is a written determination by the ''head of the contracting authority.''

Response: DFARS 239.101(1) currently requires a written determination by the head of the contracting activity.

9. Future Rulemaking Should Address Recommendations Presented by the 2018 Government-Industry Advisory Panel on Technical Data Rights

Comment: Although the respondent acknowledges that this recommendation is not within the scope of implementing 10 U.S.C. 2322a, the respondent recommends that DoD's future rulemaking address the specific Government-industry recommendations included in the 2018 Report submitted by the Government-Industry Advisory Panel on Technical Data Rights (the ''Section 813 Panel Final Report'').

Response: To the extent that such recommendations align with other

proposed revisions made to implement 10 U.S.C. 2322a, DoD considered recommendations in the Section 813 Panel Final Report. DoD is proposing various DFARS revisions that adopt recommendations made in the Section 813 Panel Final Report.

C. Other Changes

DFARS 227.7100 and 227.7200 were revised to remove a reference to 10 U.S.C. 2325 that was revoked in 1994 (Pub. L. 103–355) and to correct the citation to Executive Order 12591. DFARS 227.7100 and 227.7200 were also revised to emphasize the importance of assessing life-cycle needs.

DFARS 227.7203–2(b)(2)(i)(B) through (D) were revised to be consistent with acquisition policies in section 3.2 of DoDI 5000.87, which is closely aligned with the subject matter of this case. DFARS 227.7203–2(c)(6) was also revised to clarify the contracting officer's responsibilities with respect to this section. DFARS 237.102 was revised to add references to 227.7202 and 227.7203, emphasizing the need to consider this guidance in service contracts.

The definition of technical data in the contract clauses at DFARS 252.227–7013, 252.227–7015, and 252.227–7018 has been revised to clarify the types of information excluded from the definition in 10 U.S.C. 2302.

IV. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items

This proposed rule does not create any new solicitation provisions or contract clauses. It does not change the applicability of any existing provisions or clauses included in solicitations and contracts valued at or below the simplified acquisition threshold or for commercial items, including commercially available off-the-shelf items.

V. Executive Orders 12866 and 13563

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD will send a copy of the interim or final rule and the ''Submission of Federal Rules Under the Congressional Review Act'' form to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

VII. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the statutory requirements are directed at the internal processes of the Government rather than contractors. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

DoD is proposing to implement section 871 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Pub. L. 115–91). Section 871 established new direction at 10 U.S.C. 2322a, Requirement for consideration of certain matters during acquisition of noncommercial computer software. The statute requires that DoD, as part of any negotiation for such software, consider all noncommercial computer software and related materials necessary to meet the needs of the agency.

The objective of the rule is to ensure that the Government identifies and acquires all software necessary to meet its needs at appropriate times in the life cycle of a product, program, or system. The legal basis for the rule is section 871 of the NDAA for FY 2018.

The rule may impact small entities that are awarded DoD contracts for noncommercial computer software, to include contracts under the Small Business Innovation Research and Technology Transfer Programs. Based on data from the Federal Procurement Data System (FPDS) and the Electronic Data Access (EDA) for FY 2019 through FY 2020, DoD estimates that an average of 6,263 unique small entities are awarded an average of 30,146 contract actions for noncommercial software annually.

This proposed rule does not impose any new reporting, recordkeeping or other compliance requirements.

This proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known alternatives which would accomplish the stated objectives of the applicable statute.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2018–D018), in correspondence.

VIII. Paperwork Reduction Act

Although the Paperwork Reduction Act (44 U.S.C. chapter 35) applies to this rule, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under Office of Management and Budget (OMB) Control Number 0704–0369, entitled ''DFARS Subpart 227.71, Rights in Technical Data; and Subpart 227.72, Rights in Computer Software and Computer Software Documentation, and related provisions and clauses.''

List of Subjects in 48 CFR Parts 227, 237, 239, and 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 227, 237, 239, and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 227, 237, 239, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 227—PATENTS, DATA, AND COPYRIGHTS

■ 2. Revise the heading for subpart 227.71 to read as follows:

Subpart 227.71—Technical Data and Associated Rights

■ 3. Amend section 227.7100 by revising paragraph (a) to read as follows:

227.7100 Scope of subpart.

* * * * *

(a) Prescribes policies and procedures for the acquisition of technical data and the rights to use, modify, reproduce,

release, perform, display, or disclose technical data. It implements the following laws and Executive order:

(1) 10 U.S.C. 2302(4).
(2) 10 U.S.C. 2305(d)(4).
(3) 10 U.S.C. 2320.
(4) 10 U.S.C. 2321.
(5) 10 U.S.C. 7317.
(6) 17 U.S.C. 1301, *et seq.*
(7) Public Law 103–355.
(8) Executive Order 12591 (subsection 1(b)(7)).

* * * * *

■ 4. Amend section 227.7103–2 by revising paragraph (b)(1) to read as follows:

227.7103–2 Acquisition of technical data.

* * * * *

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government's life-cycle needs for technical data. Technical data needs must be established giving consideration to the contractor's economic interests in technical data pertaining to items, components, or processes that have been developed at private expense; the Government's costs to acquire, maintain, store, retrieve, and protect the technical data; reprocurement needs; repair, maintenance and overhaul philosophies; spare and repair part considerations; and whether procurement of the items, components, or processes can be accomplished on a form, fit, or function basis. When it is anticipated that the Government will obtain unlimited or government purpose rights in technical data that will be required for competitive spare or repair parts procurements, such data should be identified as deliverable technical data items. Reprocurement needs may not be a sufficient reason to acquire detailed manufacturing or process data when items or components can be acquired using performance specifications, form, fit, and function data, or when there are a sufficient number of alternate sources that can reasonably be expected to provide such items on a performance specification or form, fit, or function basis.

* * * * *

■ 5. Revise the heading for subpart 227.72 to read as follows:

Subpart 227.72—Computer Software, Computer Software Documentation, and Associated Rights

■ 6. Revise section 227.7200 to read as follows:

227.7200 Scope of subpart.

(a) This subpart—

(1) Prescribes policies and procedures for the acquisition of computer software and computer software documentation, and the rights to use, modify, reproduce, release, perform, display, or disclose such software or documentation. It implements the following laws and Executive order:

(i) 10 U.S.C. 2302(4).
(ii) 10 U.S.C. 2305(d)(4).
(iii) 10 U.S.C. 2320.
(iv) 10 U.S.C. 2321.
(v) 10 U.S.C. 2322a.
(vi) Executive Order 12591 (subsection 1(b)(7)).

(2) Does not apply to—

(i) Computer software or computer software documentation acquired under GSA schedule contracts; or

(ii) Releases of computer software or computer software documentation to litigation support contractors (see subpart 204.74).

(b) See PGI 227.7200(b) for guidance and information in DoD issuances.

■ 7. Amend section 227.7202–1 by adding paragraph (d) to read as follows:

227.7202–1 Policy.

* * * * *

(d) When establishing contract requirements and negotiation objectives to meet agency needs, the Government shall consider the factors identified in 227.7203–2(b) and (c) for commercial computer software and computer software documentation, as applicable in paragraph (c) of this section.

■ 8. Amend section 227.7203–2 by—

■ a. Revising the section heading and paragraphs (b) and (c)(4) and (5); and

■ b. Adding paragraph (c)(6).

The revisions and addition read as follows:

227.7203–2 Acquisition of noncommercial computer software and computer software documentation and associated rights.

* * * * *

(b)(1) Data managers or other requirements personnel are responsible for identifying the Government's life-cycle needs for computer software and computer software documentation. See PGI 227.7203–2(b) for further guidance on assessing life-cycle needs. In addition to desired software performance, compatibility, or other technical considerations, identification of life-cycle needs should consider such factors as—

(i) The contractor's economic interests in software that has been developed at private expense;

(ii) The Government's costs to acquire, maintain, store, retrieve, and protect the computer software and computer software documentation;

(iii) Multiple site or shared use requirements;

(iv) Whether the Government's software maintenance philosophy will require the right to modify or have third parties modify the software; and

(v) Any special computer software documentation requirements.

(2)(i) *Procurement planning.* To the maximum extent practicable, when assessing the life-cycle needs, data managers or other requirements personnel will address in the procurement planning and requirements documents (*e.g.,* acquisition plans, purchase requests) the acquisition at appropriate times in the life cycle of all computer software, related recorded information, and associated license rights necessary to—

(A) Reproduce, build, or recompile the software from its source code and required software libraries (*e.g.,* software libraries called, invoked, or linked by the computer software source code that are necessary for the operation of the software);

(B) Conduct required computer software testing and evaluation;

(C) Integrate and deploy computer programs on relevant hardware including developmental, operational, diagnostic, training, or simulation environments; and

(D) Sustain and support the software over its life cycle.

(ii) *Delivery of alternatives to source code and related software design details.* The assessment of life-cycle needs should consider alternatives to the delivery of source code and related software design details for privately developed computer software as necessary to meet the Government's needs, such as—

(A) Technical data and computer software sufficient to implement a modular open system approach or a similar approach (see PGI 227.7203–2(b)(2)(ii)(A) for guidance on alternatives to source code and related software design details);

(B) Access to technical data or computer software; see PGI 227.7203–2(b)(2)(ii)(B) and (C) for guidance on use of access agreements to contractor source code and related software design details;

(C) Software support and maintenance provided directly from the contractor; or

(D) Other contracting or licensing mechanisms including priced options, specially negotiated licenses, direct licensing between contractors for qualifying second sources, data escrow agreements, deferred delivery solutions, and subscription agreements. See PGI 227.7203–2(b)(2)(ii)(D) for guidance on use of escrow agreements.

(3) When reviewing offers received in response to a solicitation or other request for computer software or computer software documentation, data

managers must balance the original assessment of the Government's needs with prices offered.

(c) * * *

(4) Include delivery schedules and acceptance criteria for each deliverable item;

(5) Specifically identify the place of delivery for each deliverable item; and

(6) Specify in the negotiated terms that any required noncommercial computer software, related recorded information, and associated license rights identified in the assessment of life-cycle needs in paragraph (b) of this section shall, to the extent appropriate—

(i) Include computer software delivered in a digital format compatible with applicable computer programs on relevant system hardware;

(ii) Not rely on additional internal or external noncommercial or commercial technical data and software, unless such technical data or software is—

(A) Included in the items to be delivered with all necessary license rights; or

(B) Commercially available with all necessary license rights; and

(iii) Include sufficient information, with all necessary license rights, to support maintenance and understanding of interfaces and software version history when the negotiated terms do not allow for the inclusion of the external or additional noncommercial or commercial technical data and software.

PART 237—SERVICE CONTRACTS

■ 9. Add section 237.102–XX to read as follows:

237.102–XX Acquisition of computer software and computer software documentation under services contracts.

(a) See 227.7202 for policy on the acquisition of commercial computer software and commercial computer software documentation for services contracts that require the development or modification of commercial computer software.

(b) See 227.7203 for policy on the acquisition of noncommercial computer software and noncommercial computer software documentation for services contracts that require the development or modification of noncommercial computer software.

PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 10. Amend section 239.101 by adding paragraph (4) to read as follows:

239.101 Policy.

* * * * *

(4) See 227.7203 for policy on the acquisition of noncommercial computer software and noncommercial computer software documentation.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 11. Amend section 252.227–7013 by revising the section heading, the date of the clause, and paragraph (a)(15) to read as follows:

252.227–7013 Rights in Technical Data—Noncommercial Items.

* * * * *

Rights in Technical Data—Noncommercial Items (DATE)

(a) * * *

(15) *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

* * * * *

■ 12. Amend section 252.227–7014 by revising the section heading, the date of the clause, and paragraph (a)(15)(iii) to read as follows:

252.227–7014 Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.

* * * * *

Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation (DATE)

(a) * * *

(15) * * *

(iii) Make and use a reasonable number of copies of the computer software for safekeeping (archive), backup, development, testing, evaluation, integration, or modification purposes, or diagnosing and correcting deficiencies or vulnerabilities in a computer program;

* * * * *

■ 13. Amend section 252.227–7015 by revising the section heading, the date of the clause, and paragraph (a)(5) to read as follows:

252.227–7015 Technical Data—Commercial Items.

* * * * *

Technical Data—Commercial Items (DATE)

(a) * * *

(5) *Technical data* means recorded information, regardless of the form or method of recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

* * * * *

■ 14. Amend section 252.227–7018 by revising the section heading, the date of the clause, and paragraphs (a)(18)(iii) and (a)(20) to read as follows:

252.227–7018 Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program.

* * * * *

Rights in Noncommercial Technical Data and Computer Software—Small Business Innovation Research (SBIR) Program (DATE)

(a) * * *

(18) * * *

(iii) Make and use a reasonable number of copies of the computer software for safekeeping (archive), backup, development, testing, evaluation, integration, or modification purposes, or diagnosing and correcting deficiencies or vulnerabilities in a computer program;

* * * * *

(20) *Technical data* means recorded information, regardless of the form or method of the recording, of a scientific or technical nature (including computer software documentation). The term does not include computer software or financial, administrative, cost or pricing, or management information, or information incidental to contract administration.

* * * * *

[FR Doc. 2022–01386 Filed 1–27–22; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register

Vol. 87, No. 19

Friday, January 28, 2022

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

Forest Service

Directive Publication Notice

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The Forest Service, U.S. Department of Agriculture, provides direction to employees through issuances in its Directive System, comprised of the Forest Service Manual and Forest Service Handbooks. The Agency must provide public notice of and opportunity to comment on any directives that formulate standards, criteria, or guidelines applicable to Forest Service programs. Once per quarter, the Agency provides advance notice of proposed and interim directives that will be made available for public comment during the next three months and notice of final directives issued in the last three months.

DATES: This notice identifies proposed and interim directives that will be published for public comment between January 1, 2022, and March 31, 2022; proposed and interim directives that were previously published for public comment but not yet finalized and issued; and final directives that have been issued since October 1, 2021.

ADDRESSES: Questions or comments may be provided by email to *SM.FS.Directives@usda.gov* or in writing to 201 14th Street SW, Washington, DC 20250, Attn: Directives and Regulations staff, Mailstop 1132.

FOR FURTHER INFORMATION CONTACT: Ann Goode at 202–740–6286 or *ann.goode@usda.gov*.

Individuals who use telecommunications devices for the deaf or hard of hearing (TDD) may call the Federal Relay Service (FRS) at 800–877–8339 24 hours a day, every day of the year, including holidays.

You may register to receive email alerts at *https://www.fs.usda.gov/about-agency/regulations-policies.*

SUPPLEMENTARY INFORMATION:

Proposed and Interim Directives

Consistent with 16 U.S.C. 1612(a) and 36 CFR part 216, Public Notice and Comment for Standards, Criteria and Guidance Applicable to Forest Service Programs, the Forest Service publishes for public comment Agency directives that formulate standards, criteria, and guidelines applicable to Forest Service programs. Agency procedures for providing public notice and opportunity to comment are specified in Forest Service Handbook (FSH) 1109.12, Chapter 30, Providing Public Notice and Opportunity to Comment on Directives.

The following proposed directive is planned for publication for public comment from January 1, 2022, to March 31, 2022:

Forest Service Manual (FSM) 2300, Chapter 55—Climbing Management

The primary method of public outreach for this proposed directive is publication on the Forest Service website at *https://www.fs.usda.gov/about-agency/regulations-policies,* publication in the **Federal Register**, use of the GovDelivery email service, and other Agency communications resources, which may include a press release, blog post, or social media.

Previously Published Directives That Have Not Been Finalized

The following proposed and interim directives have been published for public comment but have not yet been finalized:

1. FSM 2200, Rangeland Management, Chapters Zero Code; 2210, Rangeland Management Planning; 2220, Management of Rangelands (Reserved); 2230, Grazing Permit System; 2240, Rangeland Improvements; 2250, Rangeland Management Cooperation; and 2270, Information Management and Reports; FSH 2209.13, Grazing Permit Administration Handbook, Chapters 10, Term Grazing Permits; 20, Grazing Agreements; 30, Temporary Grazing and Livestock Use Permits; 40, Livestock Use Permits; 50, Tribal Treaty Authorizations and Special Use Permits; 60, Records; 70, Compensation for Permittee Interests in Rangeland Improvements; 80, Grazing Fees; and 90, Rangeland Management Decision Making; and Forest Service Handbook 2209.16, Allotment Management Handbook, Chapter 10, Allotment Management and Administration.

2. Interim FSM 2719, Special Use Authorizations Involving Storage and Use of Explosives and Magazine Security, and FSH 2709.11, Special Uses Handbook, Chapter 50, Standard Forms and Supplemental Clauses.

3. FSM 7700, Travel Management, Chapters Zero and 10, Travel Planning.

4. FSM 3800, Landscape Scale Restoration Program.

5. FSM 2700, Special Uses Management, Chapter 40, Vegetation Management Pilot Projects, and FSH 2709.11, Special Uses Handbook, Chapter 50, Standard Forms and Supplemental Clauses.

6. FSH 2709.11, Special Uses Handbook, Chapter 80, Operating Plans and Agreements for Powerline Facilities.

7. FSM 2400, Timber Management, Chapter 2420, Timber Appraisal; FSH 2409.19, Renewable Resources Handbook, Chapters 10, Knutson-Vandenberg Sale Area Program Management Handbook; 20, Knutson-Vandenberg Forest and Regional Program Management; 60, Stewardship Contracting; and 80, Good Neighbor Authority.

8. Region 10 Supplement to FSM 2720, Special Uses; Management of Strictly Point-To-Point Commercial Transportation Under Special Use Authorization to National Forest System Lands within the Visitor Center Subunit of Mendenhall Glacier Recreation Area.

Final Directives That Have Been Issued Since October 1, 2021

1. FSM 2400, Timber Management, Chapters Zero, 2430, Commercial Timber Sales; 2440, Designating, Cruising, Scaling, and Accountability; 2450, Timber Sale Contract Administration; and 2460, Uses of Timber Other Than Commercial Timber Sales; FSH 2409.15, Timber Sale Administration, Chapters Zero, 10, Fundamentals of Timber Sale Contracting; 30, Change in Status of Contracts; 50, Specified Transportation Facilities; and 70, Contract Claims and Disputes; FSH 2409.18a, Timber Sale Debarment and Suspension Procedures, Chapters Zero, 10, Non-procurement Debarment and Suspension; and 20, Debarment and Export Violations. Fifty-five FSM and FSH chapters were identified for revision in the Forest Products Modernization initiative, a strategic effort to align Agency culture, policies, and procedures with current and future forest restoration needs, that increase the pace and scale of restoration, improve forest conditions and the efficiency of forest products delivery. The chapters were divided into three batches to address the large quantity of documents. The first batch includes these 13 directives which have been revised to better align with current legislation, policies, and practices. Many of these directives had not been updated since the 1990s. These 13 directives, all subject to public comment, were designated as non-significant by the Office of Management and

Budget. The 30-day comment period for these directives began October 15, 2020, and closed November 15, 2020. A total of 269 comments were received and can be viewed at *https://cara.ecosystem-management.org/Public/ReadingRoom?project=ORMS-2688.* The final directives were issued October 29, 2021, and can be viewed at the following websites:

https://www.fs.fed.us/im/directives/fsm/2400/wo_2400_Amend%202021-1-508.docx.

https://www.fs.fed.us/im/directives/fsm/2400/wo_2430_Amend%202021-2-508.docx.

https://www.fs.fed.us/im/directives/fsm/2400/wo_2440_Amend%202021-3-508.docx.

https://www.fs.fed.us/im/directives/fsm/2400/wo_2450_Amend%202021-4-508.docx.

https://www.fs.fed.us/im/directives/fsm/2400/wo_2460_Amend%202021-5-508.docx.

https://www.fs.fed.us/im/directives/fsh/2409.15/wo_2409.15_Zero_Amend%202021-5-508x.docx.

https://www.fs.fed.us/im/directives/fsh/2409.15/wo_2409.15_10_Amend%202021-1-508.docx.

https://www.fs.fed.us/im/directives/fsh/2409.15/wo_2409.15_30_Amend%202021-2-508.docx.

https://www.fs.fed.us/im/directives/fsh/2409.15/wo_2409.15_50_Amend%202021-3-508.docx.

https://www.fs.fed.us/im/directives/fsh/2409.15/wo_2409.15_70_Amend%202021-4-508.docx.

https://www.fs.fed.us/im/directives/fsh/2409.18a/wo_2409.18a_0_Amend%202021-1-508.docx.

https://www.fs.fed.us/im/directives/fsh/2409.18a/wo_2409.18a_10_Amend%202021-2-508.docx.

https://www.fs.fed.us/im/directives/fsh/2409.18a/wo_2409.18a_20_Amend%202021-3-508.docx.

2. FSH 5509.11, Chapter 20, Section 21, Small Tracts Act Adjustments. The Forest Service revised this directive to implement the Small Tracts Act, as required by the 2018 Farm Bill. These revisions implement the intent of the 2018 Farm Bill and related regulatory changes that updated land values established in the original Small Tracts Act, which dates to 1983, increasing the value of lands the Agency can sell or exchange to keep up with increasing land values. Proceeds generated from eligible sales made under the Small Tracts Act may be deposited in a Sisk Act account, allowing the Agency to acquire lands that improve the health and productivity of National Forests while simultaneously disposing small, problematic parcels. The 30-day comment period for this directive began June 4, 2021, and closed July 6, 2021. Four comments were received, three from members of the public and one from a State government, which can be viewed at *https://cara.ecosystem-management.org/Public/ReadingRoom?project=ORMS-2755.* The final directive was issued November 19, 2021, and can be viewed at *https://www.fs.fed.us/im/directives/fsh/5509.11/FSH%205509.11,%2020_Amend%202021-1.docx.*

3. FSM 1820, Public Lands Corps and Resource Assistants Program. The Forest Service has updated the Public Lands Corps and Resource Assistants Program, which utilizes partnerships to employ America's youth, young adults, emerging professionals, and others in paid work on public lands, research, and natural resources projects. Upon meeting certain requirements, participants achieve eligibility for pathways to federal employment. The proposal reflects changes in legislation and policy and incorporates new requirements, streamlined administration, programming, and reporting, and improves customer service. The 30-day comment period for this directive began June 4, 2021, and closed July 6, 2021. Six comments were received, which can be viewed at *https://cara.ecosystem-management.org/Public/ReadingRoom?project=ORMS-2661.* The final directive was issued December 7, 2021, and can be viewed at *https://www.fs.fed.us/im/directives/fsm/1800/wo_1820_Amend%202021-1.docx.*

Dated: January 25, 2022.

Ann Goode,

Branch Chief, Directives and Regulations, Strategic Planning, Budget, & Accountability.

[FR Doc. 2022–01772 Filed 1–27–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Final Record of Decision for the Custer Gallatin National Forest

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of approval for the Revised Land Management Plan for the Custer Gallatin National Forest.

SUMMARY: Mary Erickson, the Forest Supervisor for the Custer Gallatin National Forest, Northern Region, signed the record of decision (ROD) for the Revised Land Management Plan (Land Management Plan) for the Custer Gallatin National Forest. The ROD documents the rationale for approving the Land Management Plan and is consistent with the Reviewing Official's response to objections and instructions.

DATES: The Revised Land Management Plan for the Custer Gallatin National Forest will become effective 30 days after the publication of this notice of approval in the **Federal Register** (36 CFR 219.17(a)(1)).

ADDRESSES: To view the final ROD, final environmental impact statement (FEIS), Land Management Plan, and other related documents, please visit the Custer Gallatin National Forest Plan Revision website at: *https://www.fs.usda.gov/detail/custergallatin/landmanagement/planning/?cid=FSEPRD897383.* A legal notice of approval is also being published in the Custer Gallatin National Forest's newspapers of record: *Bozeman Daily Chronicle, Billings Gazette,* and *Rapid City Journal.* A copy of this legal notice will be posted on the website listed above.

FOR FURTHER INFORMATION CONTACT: Virginia Kelly, Project Leader, weekdays, 8:00 a.m. to 4:30 p.m. Mountain Standard Time, at 406–587–6701. Written requests for information may be sent to Custer Gallatin National Forest, Attn: Plan Revision, P.O. Box 130, Bozeman, MT 59771.

Individuals who use telecommunication devices for the deaf/hard-of-hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The Land Management Plan describes the Custer Gallatin National Forest's distinctive roles and contributions within the broader landscape and details forestwide and geographic area desired conditions, objectives, standards, and guidelines. It identifies suitable uses of National Forest System lands and provides estimates of the planned timber sale quantity. The Land Management Plan identifies priority watersheds for restoration and includes recommended wilderness areas and eligible wild and scenic rivers. This Land Management Plan provides for efficient and effective management of the Custer Gallatin National Forest with desired conditions for coordination, partnerships, and shared stewardship with State, local, and Tribal governments, other federal agencies, adjacent landowners, and stakeholders. The development of the Land Management Plan was shaped by the best available scientific information, current laws, and public input.

The Custer Gallatin National Forest initiated plan revision in winter 2016 with public meetings held at multiple locations across the planning area. The Forest invited Tribal governments, State, local and other federal agencies from around the region to participate in the process to revise the Land Management Plan. An interagency working group met regularly throughout the plan revision effort. After two years of public engagement the Forest released the Proposed Action in January 2018. Comments received on the Proposed Action were used in development of the draft Land Management Plan and draft environmental impact statement (EIS) which were released in March 2019. The Forest received over 21,000 public comments on the draft Land Management Plan. The Land Management Plan, FEIS, and draft ROD were released in July 2020, initiating a 60-day opportunity to object. The Forest

Service received 677 eligible objections. The Regional Forester, Reviewing Official, issued a written response to the objection issues on April 15, 2021.

The final ROD to approve the Revised Land Management Plan has now been signed by the Responsible Official and is available at the website listed above.

Responsible Official

The Responsible Official for approving the Land Management Plan is Mary Erickson, Forest Supervisor, Custer Gallatin National Forest.

Dated: January 21, 2022.

Barnie Gyant,

Associate Deputy Chief, National Forest System.

[FR Doc. 2022–01727 Filed 1–27–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket # RBS–21–BUSINESS–0026]

Notice of Funding Opportunity for the Biofuel Producer Program for Fiscal Year 2021; Amendment

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice; amendment.

SUMMARY: The Rural Business-Cooperative Service (RBCS or Agency), an agency of the United States Department of Agriculture (USDA), published a Notice of Funding Opportunity (NOFO) in the **Federal Register** on December 13, 2021, entitled Notice of Funding Opportunity for the Biofuel Producer Program for Fiscal Year 2021, to announce the application window, application requirements and the availability of up to $700 million in payments to eligible biofuel producers for unexpected market losses as a result of COVID–19 in order to maintain a viable and significant biofuels market for agricultural producers that supply biofuel producers. This notice will amend Sections A, D and E of the NOFO to include production to meet marketing obligations or fulfill or maintain essential markets in the calculations of a biofuel producer's market losses as a result of COVID–19.

DATES: Applications for the Biofuel Producer Program must be received by 11:59 p.m. EST on February 11, 2022.

FOR FURTHER INFORMATION CONTACT: Lisa Noty, USDA Rural Development, Rural Business-Cooperative Service. Telephone: (712) 254–4366, email: *lisa.noty@usda.gov.* Persons with disabilities that require alternative means for communication should contact the U.S. Department of Agriculture (USDA) Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Amendments

In FR Doc 2021–26876 of December 13, 2021 (86 FR 70818), the following amendments are being made to include production to meet marketing obligations or fulfill or maintain essential markets in the calculations of a biofuel producer's market losses as a result of COVID–19.

1. On page 70818, column 2, under Section A. ''Program Description,'' subsection 1. ''Purpose of the program,'' the first paragraph should be amended to read as follows:

The Biofuel Producer Program will make payments to eligible producers of eligible biofuel for unexpected market losses as a result of COVID–19. These payments to biofuel producers support the maintenance and viability of a significant market for agricultural producers of products such as corn, soybean or biomass that supply biofuel production. Payment to a biofuel producer will be based upon the volume of market loss the biofuel producer experienced in calendar year 2020. The producer's volume of market loss will be calculated by comparing the amount of fuel (gallons of eligible biofuel) they produced in calendar year 2020 to the amount of fuel (gallons of eligible biofuel) produced in calendar year 2019. Eligible biofuel (gallons of biofuel) produced by the eligible producer in 2020 to meet required contractual commitments, marketing obligations, or fulfill or maintain essential markets, resulting in a gross profit loss will be deducted from 2020 production by the Agency's calculation of program payments. Gross profit loss related to required production can be based on either the entire 2020 year, or a period in 2020 specified by the applicant. Quantities of gaseous biofuel will be converted into gallons based on the British Thermal Unit (BTU) equivalent of one gallon of biodiesel using factors published by the Energy Information Administration (EIA).

2. On page 70818, column 3, under Section A. ''Program Description,'' subsection 3. ''Definitions,'' a definition for essential market should be added in alphabetical order as follows:

Essential market means markets for biofuel, co-products, and byproducts where there are limited alternative replacement buyers and a biofuel producer's failure to maintain supply has the potential to result in current buyers moving to other suppliers. Essential markets also include critical supply markets to the buyer and local and regional markets are dependent on the supply of products provided by the biofuel producer. Limited alternative near-term supply markets exist and the loss of supply has the potential to have an adverse impact on buyers' viability.

3. On page 70820, column 1, under Section D ''Application Submission Information,'' subsection 4.i.g. ''Contracts and Financial Information,'' the heading and subsection should be amended to read as follows:

g. Contracts, Evidence of Market Obligations, or Evidence of Fulfilling Essential Markets, and Financial Information. Include copies of contracts, description, and documentation of marketing obligations or essential markets, as appropriate, and financial statements and supporting documentation for payment requests that include production in 2020 that was required to meet contractual commitments, marketing obligations, or fulfill or maintain essential markets, and resulted in a gross profit loss. The financial information submitted must be sufficient to support the gross profit loss for the period of the related production. For example, if an applicant is requesting assistance for required production for April and May 2020 that resulted in a gross profit loss, the related financial information must be in sufficient detail to demonstrate the gross profit loss for such period.

4. On page 70821, column 1, under section E. ''Application Review Information,'' subsection 3.i.c. should be amended to read as follows:

c. Amount of eligible biofuel (gallons of biofuel) reported under (b), above, produced by the eligible producer in 2020 to meet required contractual commitments, marketing obligations, or fulfill or maintain essential markets, resulting in a gross profit loss.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2022–01797 Filed 1–27–22; 8:45 am]

BILLING CODE 3410–XY–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the New York Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules

and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the New York Advisory Committee (Committee) will hold a web meeting via WebEx at 1:00 p.m. ET on Friday, March 18, 2022, for the purpose of debriefing the project process of the Committee's recent project on eviction policies and enforcement in New York and discussing future civil rights topics.

DATES: The meeting will be held on Friday, March 18, 2022, at 1:00 p.m. ET.

—To join the meeting, please click the link below; password is USCCR: *https://bit.ly/3ofBcGH*

—To join by phone only, dial: 1–800–360–9505; Access Code: 1993 34 6768#

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 202–809–9618.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number. To request additional accommodations, please email *mtrachtenberg@usccr.gov* at least 7 days prior to the meeting for which accommodations are requested.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit at 202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at *www.facadatase.gov* under the Commission on Civil Rights, New York Advisory Committee. Persons interested in the work of this Committee are also directed to the Commission's website, *www.usccr.gov;* persons may also contact the Regional Programs Unit office at the above email or phone number.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Discussion of Project Process
IV. Discussion of Future Civil Rights Topics
V. Public Comment
VI. Next Steps
VII. Adjournment

Dated: January 25, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–01783 Filed 1–27–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Kentucky Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Kentucky Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a web briefing via WebEx at 1:00 p.m. ET on Wednesday, February 23, 2022, for the purpose of hearing testimony on Civil Asset Forfeiture.

DATES: The meeting will take place on Wednesday, February 23, 2022, at 1:00 p.m. ET.

Online (Audio/Visual): https://tinyurl.com/2p8tmhx9.

Telephone (Audio Only): Dial: 1–800–360–9505 Toll Free. Access Code: 2760 646 9244.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, DFO, at *ero@usccr.gov* or (202) 376–8473.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the meeting link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1 (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *ero@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (310) 464–7102.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Kentucky Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above email or street address.

Agenda

I. Roll Call
II. Opening Statement
III. Briefing
IV. Question and Answer
V. Public Comment
VI. Adjournment

Dated: January 24, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–01678 Filed 1–27–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Maryland Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of planning meetings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission

on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that meetings of the Maryland Advisory Committee to the Commission will convene by WebEx virtual platform and conference call on the following Mondays: February 7, March 7, April 4, May 2, and June 6, 2022, at 11:00 a.m. ET, to continue its work drafting a report on water accessibility and affordability in Maryland.

DATES: Mondays: February 7, March 7, April 4, May 2 and June 6, 2022; 11:00 a.m. ET.

Public WEBEX Conference Link (video and audio): https://bit.ly/3pWSaKV

If Phone Only: 1–800–360–9505; Access code: 2764 591 5438#

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez at *ero@usccr.gov* or by phone at 202–381–8915.

SUPPLEMENTARY INFORMATION: The meeting is available to the public through the web link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with conference details found through registering at the web link above. To request additional accommodations, please email *bdelaviez@usccr.gov* at least 10 days prior to the meeting.

Members of the public are invited to make statements during the open comment period of the meeting or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov*. Persons who desire additional information may contact Barbara Delaviez at 202–539–8246.

Records and documents discussed during the meeting will be available for public viewing as they become available at *www.facadatabase.gov*. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number or email address.

Agenda

February 7, March 7 and April 4, 2022 (Mondays); 11:00 a.m. ET

- Rollcall
- Review/Edit Water Affordability/ Accessibility draft report
- Open Comment
- Adjournment

Dated: January 25, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–01809 Filed 1–27–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0027]

RIN 0691–XC129

BE–185: Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons (BE–185). The data collected on the BE–185 survey are needed to measure U.S. trade in financial services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act and by Section 5408 of the Omnibus Trade and Competitiveness Act of 1988.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–185 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 45 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801, and by section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418, 15 U.S.C. 4908(b)). Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–185 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person who had combined reportable sales of financial services to foreign persons that exceeded $20 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year; or had combined reportable purchases of financial services from foreign persons that exceeded $15 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both. See BE–185 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions in financial services between U.S. financial services providers and foreign persons.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–185 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-185help@bea.gov.*

When To Report: Reports are due to BEA 30 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 45 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0065. 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. Public reporting burden for this collection of information is estimated to average 10 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0065, via email at *OIRA_Submission@omb.eop.gov*.

Authority: 22 U.S.C. 3101–3108 and 15 U.S.C. 4908(b).

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01668 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0026]

RIN 0691–XC128

BE–125: Quarterly Survey of Transactions in Selected Services and Intellectual Property With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons (BE–125). The data collected on the BE–125 survey are needed to measure U.S. trade in services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–125 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 45 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–125 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person who had combined reportable sales of services or intellectual property to foreign persons that exceeded $6 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year; or had combined reportable purchases of services or intellectual property from foreign persons that exceeded $4 million during the previous fiscal year, or are expected to exceed that amount during the current fiscal year. Because the thresholds are applied separately to sales and purchases, the reporting requirements may apply only to sales, only to purchases, or to both. See BE–125 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. international trade in selected services and intellectual property.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–125 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-125help@bea.gov.*

When To Report: Reports are due to BEA 30 days after the end of each fiscal quarter, except for the final quarter of the entity's fiscal year when reports must be filed within 45 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0067. 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. Public reporting burden for this collection of information is estimated to average 21 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0067, via email at *OIRA_OIRASubmission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01665 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0021]

RIN 0691–XC125

BE–30: Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers (BE–30). The data collected on the BE–30 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–30 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–30 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. ocean carriers that had total reportable revenues or total reportable expenses that were $500,000 or more during the previous year, or are expected to be $500,000 or more during the current year. See BE–30 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. ocean freight carriers' foreign revenues and expenses.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–30 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-30help@bea.gov.*

When To Report: Reports are due to BEA 30 days after the end of each quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. 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. Public reporting burden for this collection of information is estimated to average 4 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, via email at *OIRA_Submission@omb.eop.gov*.

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01672 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0029]

RIN 0691–XC131

BE–605: Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate With Foreign Parent

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Direct Investment in the United States—Transactions of U.S. Affiliate with Foreign Parent (BE–605). The data collected on the BE–605 survey are needed to measure the size and economic significance of foreign direct investment in the United States and its impact on the U.S. economy. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Ricardo Limes, Chief, Direct Transactions and Positions Branch (BE–49), via phone (301) 278–9659 or via email at *Ricardo.Limes@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–605 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each calendar or fiscal quarter, or within 45 days if the report is for the final quarter of the financial reporting year. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International

Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–605 survey forms and instructions are available at *www.bea.gov/fdi.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. business enterprise in which a foreign person has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated business enterprise, or an equivalent interest in an unincorporated business enterprise, and that meets the additional conditions detailed in Form BE–605.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey form and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/fdi* and submitted through mail or fax. Form BE–605 inquiries can be made by phone to BEA at (301) 278–9422 or by sending an email to *be605@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter, or 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0009. 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. Public reporting burden for this collection of information is estimated to average 1 hour per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Ricardo Limes, Chief, Direct Transactions and Positions Branch (BE–49), via email at *Ricardo.Limes@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0009, via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01676 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0020]

RIN 0691–XC124

BE–29: Annual Survey of Foreign Ocean Carriers' Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of Foreign Ocean Carriers' Expenses in the United States (BE–29). The data collected on the BE–29 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–29 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 45 days after the end of each calendar year. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–29 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. agents of foreign carriers who handled 40 or more foreign ocean carrier port calls in the reporting period, or had covered expenses of $250,000 or more in the reporting period for all foreign ocean vessels handled by the U.S. Agent. See BE–29 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on foreign ocean carriers' expenses in the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–29 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-29help@bea.gov.*

When To Report: Reports are due to BEA 45 days after the end of each calendar year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0012. 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. Public reporting burden for this collection of information is estimated to average 3 hours per

response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0012, via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01669 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0018]

RIN 0691–XC122

BE–11: Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of U.S. Direct Investment Abroad (BE–11). The data collected on the BE–11 survey are needed to measure the size and economic significance of U.S. direct investment abroad and its impact on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Kirsten Brew, Chief, Multinational Operations Branch (BE–49), via phone at (301) 278–9152 or via email at *Kirsten.Brew@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–11 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. A completed report covering the entity's fiscal year ending during the previous calendar year is due by May 31. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–11 survey forms and instructions are available at *www.bea.gov/dia.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, and that meets the additional conditions detailed in Form BE–11.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on the operations of U.S. parent companies and their foreign affiliates.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/dia* and submitted through mail or fax. Form BE–11 inquiries can be made by phone to BEA at (301) 278–9418 or by sending an email to *be10/11@bea.gov.*

When To Report: A completed report covering an entity's fiscal year ending during the previous calendar year is due by May 31.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0053. 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. A complete response includes one BE–11A form (with an estimated average reporting burden of 7 hours) for reporting domestic operations and one or more BE–11B (12 hours), BE–11C (2 hours), or BE–10D (1 hour) forms for reporting foreign operations. Public reporting burden for this collection of information is estimated to average a total of 90.5 hours per complete response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Kirsten Brew, Chief, Multinational Operations Branch (BE–49), via email at *Kirsten.Brew@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0053, via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01666 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0028]

RIN 0691–XC130

BE–577: Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter With Foreign Affiliate

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of U.S. Direct Investment Abroad—Transactions of U.S. Reporter with Foreign Affiliate (BE–577). The data collected on the BE–577 survey are needed to measure the size and economic significance of U.S. direct investment abroad and its impact on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Ricardo Limes, Chief, Direct Transactions and Positions Branch (BE–49), via phone at (301) 278–9659 or via email at *Ricardo.Limes@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–577 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each calendar or fiscal quarter, or within 45 days if the report is for the final quarter of the financial reporting year. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–577 survey forms and instructions are available at *www.bea.gov/dia.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, and that meets the additional conditions detailed in Form BE–577.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on transactions between parent companies and their affiliates and on direct investment positions (stocks).

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey form and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/dia* and submitted through mail or fax. Form BE–577 inquiries can be made by phone to BEA at (301) 278–9261 or by sending an email to *be577@bea.gov.*

When To Report: Reports are due to BEA 30 days after the close of each calendar or fiscal quarter, or 45 days if the report is for the final quarter of the financial reporting year.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0004. 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. Public reporting burden for this collection of information is estimated to average 1 hour per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Ricardo Limes, Chief, Direct Transactions and Positions Branch (BE–49), via email at *Ricardo.Limes@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0004, via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01675 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0018]

RIN 0691–XC122

BE–11: Annual Survey of U.S. Direct Investment Abroad

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Annual Survey of U.S. Direct Investment Abroad (BE–11). The data collected on the BE–11 survey are needed to measure the size and economic significance of U.S. direct investment abroad and its impact on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Kirsten Brew, Chief, Multinational Operations Branch (BE–49), via phone at (301) 278–9152 or via email at *Kirsten.Brew@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–11 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. A completed report covering the entity's fiscal year ending during the previous calendar year is due by May 31. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–11 survey forms and instructions are available at *www.bea.gov/dia.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from each U.S. person that has a direct and/or indirect ownership interest of at least 10 percent of the voting stock in an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise, and that meets the additional conditions detailed in Form BE–11.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on the operations of U.S. parent companies and their foreign affiliates.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/dia* and submitted through mail or fax. Form BE–11 inquiries can be made by phone to BEA at (301) 278–9418 or by sending an email to *be10/11@bea.gov.*

When To Report: A completed report covering an entity's fiscal year ending during the previous calendar year is due by May 31.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0053. 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. A complete response includes one BE–11A form (with an estimated average reporting burden of 7 hours) for reporting domestic operations and one or more BE–11B (12 hours), BE–11C (2 hours), or BE–10D (1 hour) forms for reporting foreign operations. Public reporting burden for this collection of information is estimated to average a total of 90.5 hours per complete response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov*; under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Kirsten Brew, Chief, Multinational Operations Branch (BE–49), via email at *Kirsten.Brew@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0053, via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01749 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0023]

RIN 0691–XC127

BE–45: Quarterly Survey of Insurance Transactions by U.S. Insurance Companies With Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons (BE–45). The data collected on the BE–45 survey are needed to measure U.S. trade in insurance services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–45 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each calendar quarter, except for the final quarter of the calendar year when reports must be filed within 45 days. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–45 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. persons whose combined reportable insurance transactions with foreign persons exceeded $8 million (based on absolute value) during the previous calendar year, or are expected to exceed that amount during the current calendar year. See BE–45 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on cross-border insurance transactions between U.S. insurance companies and foreign persons.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–45 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-45help@bea.gov.*

When To Report: Reports are due to BEA 30 days after the end of each calendar quarter, except for the final quarter of the calendar year when reports must be filed within 45 days.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0066. 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. Public reporting burden for this collection of information is estimated to average 9 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov*; and to the

Office of Management and Budget, Paperwork Reduction Project 0608–0066, via email at *OIRA_Submission@omb.eop.gov*.

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01664 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0017]

RIN 0691–XC121

BE–9: Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States (BE–9). The data collected on the BE–9 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov.*

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–9 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373), establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–9 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. offices, agents, or other representatives of foreign airline operators that transport passengers or freight and express to or from the United States, whose total covered revenues or total covered expenses were $5 million or more during the previous year, or are expected to meet or exceed that amount during the current year. See BE–9 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on foreign airline operators' revenues and expenses in the United States, and count of passengers transported to, or from, the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–9 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-9help@bea.gov.*

When To Report: Reports are due to BEA 30 days after the end of each quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0068. 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. Public reporting burden for this collection of information is estimated to average 6 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0068, via email at *OIRA_Submission@omb.eop.gov*.

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01748 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

[Docket No. 220119–0022]

RIN 0691–XC126

BE–37: Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of reporting requirements.

SUMMARY: By this Notice, the Bureau of Economic Analysis (BEA), Department of Commerce, is informing the public that it is conducting the mandatory survey titled Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE–37). The data collected on the BE–37 survey are needed to measure U.S. trade in transport services and to analyze the impact of U.S. trade on the U.S. and foreign economies. This survey is authorized by the International Investment and Trade in Services Survey Act.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via phone at (301) 278–9189 or via email at *Christopher.Stein@bea.gov*.

SUPPLEMENTARY INFORMATION: Through this Notice, BEA publishes the reporting requirements for the BE–37 survey form. As noted below, all entities required to respond to this mandatory survey will be contacted by BEA. Entities must submit the completed survey forms within 30 days after the end of each quarter. This Notice is being issued in conformance with the rule BEA issued on April 24, 2012 (77 FR 24373),

establishing guidelines for collecting data on international trade in services and direct investment through notices, rather than through rulemaking. Additional information about BEA's collection of data on international trade in services and direct investment can be found in the 2012 rule, the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*), and 15 CFR part 801. Survey data on international trade in services and direct investment that are not collected pursuant to the 2012 rule are described separately in 15 CFR part 801. The BE–37 survey form and instructions are available at *www.bea.gov/ssb.*

Reporting

Notice of specific reporting requirements, including who is to report, the information to be reported, the manner of reporting, and the time and place of filing reports, will be mailed to those required to complete this survey.

Who Must Report: (a) Reports are required from U.S. airline operators engaged in the international transportation of passengers, or of U.S. export freight, or the transportation of freight or passengers between two foreign ports, if total covered revenues or total covered expenses were $500,000 or more in the previous year, or are expected to be $500,000 or more during the current year. See BE–37 survey form for more details.

(b) Entities required to report will be contacted individually by BEA. Entities not contacted by BEA have no reporting responsibilities.

What To Report: The survey collects information on U.S. airline operators' foreign revenues and expenses, and count of passengers transported to, or from, the United States.

How To Report: Reports can be filed using BEA's electronic reporting system at *www.bea.gov/efile.* Copies of the survey forms and instructions, which contain complete information on reporting procedures and definitions, can be downloaded from *www.bea.gov/ssb* and submitted through mail or fax. Form BE–37 inquiries can be made by phone to BEA at (301) 278–9303 or by sending an email to *be-37help@bea.gov.*

When To Report: Reports are due to BEA 30 days after the end of each quarter.

Paperwork Reduction Act Notice

This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 0608–0011. 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. Public reporting burden for this collection of information is estimated to average 5 hours per response. Additional information regarding this burden estimate may be viewed at *www.reginfo.gov;* under the Information Collection Review tab, click on ''Search'' and use the above OMB control number to search for the current survey instrument. Send comments regarding this burden estimate to Christopher Stein, Chief, Services Surveys Branch, Balance of Payments Division, via email at *Christopher.Stein@bea.gov;* and to the Office of Management and Budget, Paperwork Reduction Project 0608–0011, via email at *OIRA_Submission@omb.eop.gov.*

Authority: 22 U.S.C. 3101–3108.

Paul W. Farello,

Associate Director for International Economics, Bureau of Economic Analysis.

[FR Doc. 2022–01673 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–67–2021]

Foreign-Trade Zone (FTZ) 7—Mayaguez, Puerto Rico; Authorization of Production Activity; AbbVie Ltd.; (Pharmaceutical Products); Barceloneta, Puerto Rico

On September 24, 2021, AbbVie Ltd., submitted a notification of proposed production activity to the FTZ Board for its facility within Subzone 7I, in Barceloneta, Puerto Rico.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (86 FR 54923, October 5, 2021). On January 24, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: January 24, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–01729 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 211116–0234]

Study To Advance a More Productive Tech Economy

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; extension of comment period.

SUMMARY: The National Institute of Standards and Technology (NIST) is extending the period for submitting comments relating to the Study to Advance a More Productive Tech Economy to February 15, 2022. In a Request for Information (RFI) that published in the **Federal Register** on November 22, 2021. NIST requested information about the public and private sector marketplace trends, supply chain risks, legislative, policy, and the future investment needs of eight emerging technology areas, including: Artificial Intelligence, Internet of Things in Manufacturing, Quantum Computing, Blockchain Technology, New and Advanced Materials, Unmanned Delivery Services, Internet of Things, and Three-dimensional Printing. This RFI is seeking comments to help identify, understand, refine, and guide the development of the current and future state of technology in the eight emerging technology areas named above. The information will inform a final report that will be submitted to Congress. NIST is extending the comment period announced in the November 22, 2021 RFI from January 31, 2022 to February 15, 2022 in response to stakeholder requests for more time to respond to this important issue.

DATES: Comments in response to this notice must be received by 5:00 p.m. Eastern time on February 15, 2022. Submissions received after that date may not be considered. Those who have already submitted comments need not resubmit.

Comments may be submitted by any of the following methods:

Electronic submission: Submit electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov* and enter NIST–2021–0007 in the search field,

2. Click the ''Comment Now!'' icon, complete the required fields, and

3. Enter or attach your comments.

Electronic submissions may also be sent as an attachment to *acastudy@nist.gov* and may be in any of the following unlocked formats: Word or

PDF. Please cite ''COMPETE ACT'' and the topic area in all correspondence. If the input is provided for more than one topic area, please submit separate documents for each topic area. Comments received by the deadline may be posted at *www.regulations.gov.* Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. All submissions, including attachments and other supporting materials, may become part of the public record and may be subject to public disclosure. NIST reserves the right to publish relevant comments publicly, unedited and in their entirety. Personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Do not submit confidential business information, or otherwise sensitive or protected information. Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

FOR FURTHER INFORMATION CONTACT: For questions about this RFI contact: Kevin Kimball, U.S. Department of Commerce, *kevin.kimball@nist.gov,* (301) 975–3070.

Please direct media inquiries to NIST's Public Affairs Office at (301) 975–2762 or *Jennifer.Huergo@nist.gov.*

SUPPLEMENTARY INFORMATION: On November 22, 2021, NIST published a Request for Information (RFI) in the **Federal Register** (86 FR 66287) on a Study to Advance a More Productive Tech Economy. Interested parties have requested an extension to the comment submission deadline and in response; NIST extends the public comment period to February 15, 2022.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–01528 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB266]

Pacific Island Fisheries; Garapan Fishing Base Shoreline Revetment

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

ACTION: Notice of availability of a draft environmental assessment; request for comments.

SUMMARY: NMFS announces the availability of a draft environmental assessment (EA) evaluating the potential effects of constructing a rock revetment along Garapan Fishing Base, Saipan, Commonwealth of the Northern Mariana Islands (CNMI). Garapan Fishing Base supports sustainable fishing infrastructure including a boat ramp, trailer parking, and other community activities such as shore fishing, community markets and recreation. Stabilizing the shoreline would protect public land and infrastructure and reduce erosion resulting in improved water quality in Saipan Lagoon along shore.

DATES: NMFS must receive comments by February 28, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–0132, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov/docket/NOAA-NMFS-0132,* in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

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 *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: Phyllis Ha, NMFS PIRO, Sustainable Fisheries, 808–725–5174.

SUPPLEMENTARY INFORMATION: NMFS proposes to provide Western Pacific Sustainable Fisheries Funds (SFF) to the Western Pacific Fishery Management Council (Council) to support construction of a rock revetment along Garapan Fishing Base, Saipan, CNMI. The Council would in turn, provide funds to the CNMI Department of Lands and Natural Resources (DLNR) to construct the revetment to stabilize 380 feet of shoreline. DLNR would use locally mined limestone rock to build the revetment and construction would proceed in three phases in accordance with engineering specifications. Phase I would begin in the area immediately adjacent to and south of the storm drain that is south of Garapan boat ramp and extend south along the coast for approximately 100 feet. Phase II would continue south for another 100 feet. Phase III would continue south for the remaining 180 feet. All together, the rock revetment would extend approximately 380 feet south along the coast, with the final 40 feet consisting of a gradual grade of flanking rocks. The revetment crest will be generally 4 to 5 feet above sea level and cemented for stability. The toe will be set at 4.5 feet below sea level and buried in sand and gravel to sea level. The revetment will extend approximately 15 feet offshore. However, the bottom of the revetment and toe is to be buried in sand, so it will appear to extend between 5 and 8 feet offshore at low tide along most of its length.

NMFS has produced a draft EA to evaluate the environmental effects of constructing the rock revetment. The draft EA shows that the construction includes several provisions intended to protect air and water quality and prevent large adverse effects on marine benthic habitats and wildlife, historic resources, and other features of the coastal and marine environment. NMFS is seeking public comments on the draft EA.

Dated: January 21, 2022.

Ngagne Jafnar Gueye,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–01694 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB761]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Mackerel, Squid, and Butterfish Committee will hold a public webinar meeting. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Monday, February 14, 2022, from 11:30 a.m. until 2:30 p.m.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar prior to the meeting at *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Council's Mackerel, Squid, and Butterfish (MSB) Committee will meet via webinar. The purpose of this meeting is to review public input from two informational webinars in January 2022, and further develop alternatives for the action considering revisions to the rebuilding plan for Atlantic mackerel. Additional information on the action is available at *https://www.mafmc.org/actions/atlantic-mackerel-rebuilding-amendment.*

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: January 25, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–01750 Filed 1–27–22; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds and service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* February 27, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 7/27/2021 and 10/19/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are added to the Procurement List:

Service(s)

Service Type: Contractor Operated Civil Engineer Supply Store
Mandatory for: U.S. Air Force, 9th Civil Engineering Squadron, Beale AFB, CA
Designated Source of Supply: Industries for the Blind and Visually Impaired, Inc., West Allis, WI
Contracting Activity: DEPT OF THE AIR FORCE, FA4686 9 CONS LGC
Service Type: Administrative Support Service
Mandatory for: USCIS, Corbin Production Facility, Corbin, KY
Designated Source of Supply: PRIDE Industries, Roseville, CA
Contracting Activity: U.S. CITIZENSHIP AND IMMIGRATION SERVICES, USCIS CONTRACTING OFFICE(ERBUR)

Deletions

On 8/10/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):
MR 13025—Set, Disc, Christmas
MR 13049—Set, Disc, Springtime
MR 13009—Salad Chopper with Bowl
MR 13004—Greensaver Crisper Insert
Designated Source of Supply: CINCINNATI ASSOCIATION FOR THE BLIND AND VISUALLY IMPAIRED, Cincinnati, OH
Contracting Activity: Military Resale-Defense Commissary Agency

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–01782 Filed 1–27–22; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) previously furnished by such agencies.

DATES: Comments must be received on or before: February 27, 2022.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Custodial and Related Services
Mandatory for: GSA PBS Region 4, Carroll A. Campbell Jr. U.S. Courthouse, Greenville, SC
Designated Source of Supply: SC Vocations & Individual Advancement, Inc., Greenville, SC
Contracting Activity: PUBLIC BUILDINGS SERVICE, PBS R4 CAROLINAS CONTRACTS

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)–Product Name(s):
4240–00–NSH–0019—Hearing Protection, Behind-the-Head Earmuff, NRR 29Db, PR
4240–00–SAM–0026—Hearing Protection, Behind-the-Head Earmuff, NRR 29Db, CS/10
4240–00–SAM–0025—Hearing Protection, Over-the-Head Earmuff, NRR 30dB, CS/10
4240–00–NSH–0021—Hearing Protection, Behind-the-Head Earmuff, NRR 26Db
4240–00–NSH–0023—Hearing Protection, Behind-the-Head Earmuff, NRR 21Db
Designated Source of Supply: Access: Supports for Living Inc., Middletown, NY
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

NSN(s)—Product Name(s):
6645–01–584–0892—Clock, Mini Desk, Rosewood
8115–01–499–0898—Shipping Box, Type II, Style D, Brown, XD–4, 6′ x 9′ x 4–½′
Designated Source of Supply: Tarrant County Association for the Blind, Fort Worth, TX
Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–01781 Filed 1–27–22; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Extend Collection 3038–0084: Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the proposed renewal of a collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on the collection of information mandated by Commission regulations 23.600 (Risk Management Program), 23.601 (Monitoring of Position Limits), 23.602 (Diligent Supervision), 23.603 (Business Continuity and Disaster Recovery), 23.606 (General Information: Availability for Disclosure and Inspection), and 23.607 (Antitrust Considerations).

DATES: Comments must be submitted on or before March 29, 2022.

ADDRESSES: You may submit comments, identified by ''OMB Control No. 3038–0084'' by any of the following methods:

- The Agency's website, at *https://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *https://www.cftc.gov.*

FOR FURTHER INFORMATION CONTACT: Jacob Chachkin, Associate Chief Counsel, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581; (202) 418–5496; email: *jchachkin@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the Commission is publishing notice of the proposed extension of the existing collection of information listed below. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Title: Regulations Establishing and Governing the Duties of Swap Dealers and Major Swap Participants (OMB Control No. 3038–0084). This is a

request for an extension of a currently approved information collection.

Abstract: On April 3, 2012 the Commission adopted Commission regulations 23.600 (Risk Management Program), 23.601 (Monitoring of Position Limits), 23.602 (Diligent Supervision), 23.603 (Business Continuity and Disaster Recovery), 23.606 (General Information: Availability for Disclosure and Inspection), and 23.607 (Antitrust Considerations) [1] pursuant to section 4s(j) [2] of the Commodity Exchange Act (''CEA''). The above regulations adopted by the Commission require, among other things, swap dealers (''SD'') [3] and major swap participants (''MSP'') [4] to develop a risk management program (including a plan for business continuity and disaster recovery and policies and procedures designed to ensure compliance with applicable position limits). The Commission believes that the information collection obligations imposed by the above regulations are essential to ensuring that swap dealers and major swap participants maintain adequate and effective risk management programs and policies and procedures to ensure compliance with position limits.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

You should submit only information that you wish to make available publicly. If you wish for the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[5]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the Information Collection Request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement: The Commission is revising its estimate of the burden for this collection to reflect the current number of respondents and estimated burden hours. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 107.

Estimated Average Burden Hours per Respondent: 1,148.5 hours.

Estimated Total Annual Burden Hours: 122,889.5 hours.

Frequency of Collection: As applicable.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: January 25, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–01716 Filed 1–27–22; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 23.600, 23.601, 23.602, 23.603, 23.606, and 23.607.

[2] 7 U.S.C. 6s(j).

[3] For the definition of SD, see section 1a(49) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(49) and 17 CFR 1.3.

[4] For the definitions of MSP, see section 1a(33) of the CEA and Commission regulation 1.3. 7 U.S.C. 1a(33) and 17 CFR 1.3.

[5] 17 CFR 145.9.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (''PRA''), this notice announces that the Information Collection Request (''ICR'') abstracted below has been forwarded to the Office of Information and Regulatory Affairs (''OIRA''), of the Office of Management and Budget (''OMB''), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before February 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0104, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to

[1] 17 CFR 145.9.

be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Melissa A. D'Arcy, Special Counsel, Division of Clearing and Risk, Commodity Futures Trading Commission, (202) 418–5086; email: *mdarcy@cftc.gov,* and refer to OMB Control No. 3038–0104.

SUPPLEMENTARY INFORMATION:

Title: Clearing Exemption for Swaps Between Certain Affiliated Entities (OMB Control No. 3038–0104). This is a request for an extension of a currently approved information collection.

Abstract: Section 2(h)(1)(A) of the Commodity Exchange Act requires certain entities to submit for clearing certain swaps if they are required to be cleared by the Commission. Commission regulation 50.52 permits certain affiliated entities to elect not to clear inter-affiliate swaps that otherwise would be required to be cleared, provided that they meet certain conditions. The rule further requires the reporting of certain information if the inter-affiliate exemption from clearing is elected. The Commission will use the information described in this collection and reported pursuant to Commission regulation 50.52 to monitor the use of the inter-affiliate exemption from the Commission's swap clearing requirement and to assess any potential market risks associated with such exemption.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. On November 23, 2021, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 86 FR 66537 (''60-Day Notice'') The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is revising its estimate of the burden for this collection for counterparties to swaps between certain affiliated entities that elect the inter-affiliate exemption under Commission regulation 50.52. The respondent burden for this collection is estimated to be as follows:

Estimated Number of Respondents: 200.

Estimated Average Burden Hours per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 200 hours.

Frequency of Collection: Annually; on occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: January 25, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–01715 Filed 1–27–22; 8:45 am]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0006]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) is requesting to extend the Office of Management and Budget's (OMB's) approval for an existing information collection titled ''Consumer Response Government and Congressional Portal Boarding Forms.''

DATES: Written comments are encouraged and must be received on or before March 29, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2022–0006 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Response Government and Congressional Portal Boarding Forms.

OMB Control Number: 3170–0057.

Type of Review: Extension of a currently approved collection.

Affected Public: State, Local, and Tribal Governments; Federal Government.

Estimated Number of Respondents: 60.

Estimated Total Annual Burden Hours: 14.

Abstract: Section 1013(b)(3)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act or Act) requires the Bureau to ''facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services.'' [1] The Act also requires the Bureau to ''share consumer complaint information with prudential regulators, the Federal Trade Commission, other Federal agencies, and State agencies.'' [2] To facilitate the collection of complaints, the Bureau accepts consumer complaints submitted by members of Congress on behalf of their constituents with the consumer's express written authorization for the release of their personal information. In furtherance of its statutory mandates related to consumer complaints, the Bureau uses Government and Congressional Portal Boarding Forms (*i.e.* Boarding Forms) to register users for access to secure, web-based portals. The Bureau has developed separate portals for congressional users and other government users as part of its secure web portal offerings (the ''Government

[1] Codified at 12 U.S.C. 5493(b)(3)(A).

[2] Dodd-Frank Act section 1013(b)(3)(D), codified at 12 U.S.C. 5493(b)(3)(D).

Portal'' and the ''Congressional Portal,'' respectively).[3]

Through the Government Portal, government users can view consumer complaint information in a user-friendly format that allows easy review of complaints currently active in the Bureau process, complaints referred to a prudential Federal regulator, and other closed/archived complaints.

Through the Congressional Portal, members of Congress and authorized congressional office staff can view data associated with consumer complaints they submit on behalf of their constituents with the consumer's express written authorization for the release of their personal information. The Congressional Portal only displays information about complaints submitted by the individual congressional office.

This is a routine request for OMB to extend its approval of the information collection currently approved under this OMB control number. For this renewal, the Bureau has updated the Privacy Act Statement to the form and is not proposing any other revised updates to the collection.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–01803 Filed 1–27–22; 8:45 am]

BILLING CODE 4810–AM–P

[3] In addition to the boarding forms for congressional and government users, the Bureau utilizes a separate OMB-approved form to board companies onto their own distinct portal to access complaints submitted against them, through OMB Control Number 3170–0054 (Consumer Complaint Intake System Company Portal Boarding Form Information Collection System).

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0005]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau or CFPB) is requesting to extend the Office of Management and Budget's (OMB's) approval for an existing information collection titled ''Consumer Complaint Intake System Company Portal Boarding Form.''

DATES: Written comments are encouraged and must be received on or before March 29, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2022–0005 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–7278, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Consumer Complaint Intake System Company Portal Boarding Form.

OMB Control Number: 3170–0054.

Type of Review: Extension of a currently approved information collection.

Affected Public: Private sector.

Estimated Number of Respondents: 400.

Estimated Total Annual Burden Hours: 85.

Abstract: Section 1013(b)(3)(A) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, requires the Bureau to ''facilitate the centralized collection of, monitoring of, and response to consumer complaints regarding consumer financial products or services.'' [1] In furtherance of its statutory mandates related to consumer complaints, the Bureau utilizes a Consumer Complaint Intake System Company Portal Boarding Form (Boarding Form) to sign up companies for access to the secure, web-based Company Portal (Company Portal). The Company Portal allows companies to view and respond to complaints submitted to the Bureau, supports the efficient routing of consumer complaints to companies, and enables a timely and secure response by companies to the Bureau and consumers.[2]

This is a routine request for OMB to extend its approval of the information collection currently approved under OMB Control Number 3170–0054. For this extension, the Bureau is proposing to decrease the annual number of unboarded companies who will complete this form for the first time from 550 to 400. The Bureau is also updating the Privacy Act Statement on the form.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection

[1] Codified at 12 U.S.C. 5493(b)(3)(A). *See also* Dodd-Frank Act, section 1034 (discussing responses to consumer complaints), codified at 12 U.S.C. 5534; section 1021(c)(2) (noting that one of the Bureau's primary functions is ''collecting, investigating, and responding to consumer complaints''), codified at 12 U.S.C. 5511(c)(2).

[2] In addition to the Boarding Form for companies, the Bureau utilizes separate OMB-approved forms to board government agencies and congressional offices onto their own distinct portals to access certain complaint information through OMB Control Number 3170–0057 (Consumer Response Government and Congressional Boarding Forms; expires 6/30/2022).

of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–01758 Filed 1–27–22; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

CPSC Artificial Intelligence and Machine Learning Test and Evaluation Forum

AGENCY: Consumer Product Safety Commission.

ACTION: Announcement of forum.

SUMMARY: Consumer Product Safety Commission (CPSC) staff is hosting a test and evaluation (TE) forum on consumer products employing artificial intelligence-related (AI) technologies, such as Machine Learning (ML). This forum will identify current TE of AI and ML capabilities. CPSC staff invites interested parties to attend or participate in this forum via webinar.

DATES: The forum will take place from 9 a.m. to 4 p.m., Eastern Standard Time (EST) on Thursday, March 31, 2022. Individuals interested in serving on panels or presenting information at the forum should register by February 25, 2022, submit abstracts for consideration by February 28, 2022, and if selected, provide final presentation slides by March 14, 2022. All other individuals who wish to attend the forum should register by March 21, 2022.

ADDRESSES: The forum will be held via webinar. Attendance is free of charge. Persons interested in attending the forum should register online at: *https://attendee.gotowebinar.com/register/1626522265242906123.* After registering, you will receive a confirmation email containing information about joining the webinar.

FOR FURTHER INFORMATION CONTACT: Nevin Taylor, Chief Technologist, 4330 East-West Highway, Bethesda, MD 20814; telephone: 301–509–0264; email: *ntaylor@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC is hosting a technical forum to collect information on the TE, certification, and product specification efforts associated with products employing AI/ML-related technologies.[1] The information collected from the forum will assist staff in making recommendations for improving TE capabilities associated with the safety of consumer products.

I. Background

With the growing use of AI/ML-related technologies to increase capabilities and mitigate potential harms, assessing the functionality and reliability of these technologies is important to ensure they do not present unreasonable risks of injury associated with consumer products. Methods for testing and evaluating AI/ML-related technologies are important in determining whether these capabilities contribute to creating an unreasonable risk of injury to consumers.

As AI/ML-related technologies dramatically change the nature of consumer products, their abilities to act and react automatically, and, in some cases, to learn and evolve, have brought to the forefront significant concerns for potential impacts to product safety. The inherent learning abilities of some ML presents unique product testing challenges. CPSC seeks to understand existing and future testing capabilities for evaluating AI/ML-related components, such as sensors, data, software, networks, and related hardware, as well as their integration for AI/ML-enabled products. CPSC seeks information on foreseeable interactions between these components and features with users and the environment in addition to information on testing how these features and components contribute to machine learning-based evolution of products.

II. Forum Topics

Manufacturers and test laboratories may already employ in-product development testing and evaluation capabilities to ensure safety is built into products with AI/ML-related technologies. There may also be test capabilities used to evaluate changes to products after purchase, to monitor and measure the potential impact on consumers, given the evolution of AI/ML-related technologies within products. These evaluations may or may not use existing standards, which are evolving, but they are needed to determine whether AI/ML-related technologies are to contribute to consumer product hazards throughout their lifecycle and to inform standard development. This forum will focus on existing testing and evaluation capabilities and the need to establish an adequate methodology to determine if AI/ML-related technologies contribute to an unreasonable risk that could injure consumers. It will explore existing and future testing and evaluation capabilities related to the following four topics:

- *Components:* Identify and test components of AI in isolation, including sensors/data, algorithms, connectivity (including communications and actuation), and computational capabilities.
- *Products:* Evaluate AI-enabled consumer products as a system, by monitoring, measuring, and modeling their characteristics.
- *Assessment:* Leverage current risk-assessment methodologies to identify the potential for AI and ML to contribute to an unreasonable risk of harm in consumer products.
- *SYNOPSIS and Q&A:* Round-table discussion with subject matter experts interacting with the participants regarding the previously presented panels.

III. Forum Details

A. Forum Time and Place

CPSC staff will hold the forum via webinar from 9 a.m. to 4 p.m., EST on Thursday, March 31, 2022.

B. Forum Registration

If you would like to attend the forum, but you do not wish to make a presentation or participate on a panel, please register online by March 21, 2022. (*See* the **ADDRESSES** portion of this document for the website link and instructions to register.)

If you would like to present at the TE Forum, or you wish to be considered as a panel member for a specific topic or topics, please register by February 25, 2022, and email an electronic version of your abstract to Nevin Taylor, *ntaylor@cpsc.gov,* by February 28, 2022. (*See* the **ADDRESSES** portion of this document for the website link and instructions to register.) Abstracts should be relevant to the forum topic and no longer than two pages. Staff will select panelists and individuals to make presentations at the forum, based on considerations such as:

- Submitted abstract information
- Individual's demonstrated familiarity or expertise with the topic to be discussed
- Practical application of the information to be presented

[1] The Commission voted 4–0 to approve this notice.

- Individual's viewpoint or ability to represent certain interests (such as large manufacturers, small manufacturers, consumer advocates, and consumers)

Staff would like the presentations to represent and address a wide variety of stakeholders and interests. Staff will notify those who are selected to make a presentation or participate in a panel by March 2, 2022, so that you can prepare and provide your final presentation by March 14, 2022.

Although staff will try to accommodate all persons who wish to make a presentation, the time allotted for presentations will depend on the agenda and the number of persons who wish to speak on a given topic. Staff recommends that individuals and organizations with common interests consolidate or coordinate their presentations, and request time for a joint presentation. If you have any questions regarding participating in the forum, please contact Nevin Taylor, by email at: *ntaylor@cpsc.gov,* or telephone at: 301–509–0264.

Detailed instructions for the webinar participants and other interested parties will be made available on the CPSC's Public Calendar: *https://cpsc.gov/newsroom/public-calendar.*

Alberta E. Mills,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2022–01721 Filed 1–27–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

[Docket Number DARS–2021–0022; 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.

SUMMARY: The Defense Acquisition Regulations System has submitted to OMB, for clearance, the following proposed revision and extension of a collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by February 28, 2022.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, 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 and other for-profit and not-for profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Type of Request: Revision of a currently approved collection.

Number of Respondents: 6,405.

Responses per Respondent: 2.63, approximately.

Annual Responses: 16,828.

Average Burden per Response: 1.06, approximately.

Annual Burden Hours: 17,847.

Frequency: On occasion.

Needs and Uses: This information collection is used for the following purposes—

a. DFARS 237.270(d)(1) prescribes the use of the provision at DFARS 252.237–7000, Notice of Special Standards, in solicitations for the acquisition of audit services. The provision requires the apparently successful offeror to submit evidence that it is properly licensed in the state or political jurisdiction it operates its professional practice.

b. DFARS 237.7003(a)(8) prescribes the use of the clause at 252.237–7011, Preparation History, in all mortuary service solicitations and contracts. The information collected is used to verify that the remains have been properly cared for. The related DD Forms 2062 and 2063 are generally used for this purpose.

c. DFARS 237.7603(b) prescribes the use of the provision at 252.237–7024, Notice of Continuation of Essential Contractor Services, in solicitations for the acquisition of services that support mission-essential functions and that include the clause at 252.237–7023. The provision requires the offeror to submit a written plan demonstrating its capability to continue to provide the contractually required services to support a DoD component's mission-essential functions during crisis situations.

d. DFARS 237.7603(a) prescribes the use of the clause at DFARS 252.237–7023, Continuation of Essential Contractor Services, in solicitations and contracts for services in support of mission-essential functions. The clause requires the contractor to maintain and update its written plan as necessary to ensure that it can continue to provide services to support the DoD component's required mission-essential functions during crisis situations.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

DoD Clearance Officer: Ms. Angela Duncan. Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

[FR Doc. 2022–01640 Filed 1–27–22; 8:45 am]

BILLING CODE 6820–ep–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0015]

Privacy Act of 1974; System of Records

AGENCY: Defense Media Activity, Department of Defense (DoD).

ACTION: Notice of a modified system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the DoD is modifying the system of records entitled, AFNConnect (AFNC) and AFN Now, DPA 02. The American Forces Network (AFN) services consists of two web-based automated information systems. The systems are used to document the eligibility and continued validation of authorized individuals who register an AFN-capable satellite decoder and/or access AFN Over the Top (OTT) Live Streaming and Video on Demand (VOD) Services via the AFNC and AFN Now applications. The AFN provides U.S. military commanders worldwide with a means to communicate internal information to DoD and other Federal agency audiences stationed outside of the United States, its territories or possessions. Records may also be used as a management tool for statistical analysis, tracking, reporting, and evaluating program effectiveness.

DATES: This system of records is effective upon publication; however, comments on the Routine Uses will be

accepted on or before February 28, 2022. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

** Federal Rulemaking Portal: https://www.regulations.gov.*

Follow the instructions for submitting comments.

* *Mail:* DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name and docket number 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 *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Jones, Defense Media Activity, Privacy Officer, 6700 Taylor Avenue, Fort Meade, MD 20755–2253, or by phone at (301) 222–6040.

SUPPLEMENTARY INFORMATION:

I. Background

This modification incorporates the AFN Now platform, the new AFN OTT service, into the document and codifies the audience member authentication requirement for both the AFN Connect and AFN Now platforms. This change will authorize AFN to extend eligibility authentication procedures and processes to both fielded platforms. If the change is not implemented the AFN Now OTT service cannot operate as there would be no means to verify the eligibility of the individuals attempting to access the content residing on the platform. Subject to public comment, the DoD proposes to update this SORN to add the standard DoD routine uses (routine uses A through J) and to allow for additional disclosures outside DoD related to the purpose of this system of records. Additionally, the following sections of this SORN are being modified as follows: (1) System Name in order to combine AFNConnect and AFN Now under one system of records notice (SORN); (2) System Location to add a phone number and to account for one system location; (3) Purpose of the System to improve clarity; (4) Categories of Individuals Covered by the System and Categories of Records to clarify how the records relate to the revised Category of Individuals; (5) Record Source Categories to improve clarity; (6) Routine Uses to align with DoD's standard routine uses; (7) Policies and Practices for Storage of Records to improve clarity; (8) Administrative, Technical, and Physical Safeguards to update the individual safeguards protecting the personal information; and (9) Record Access, Notification, and Contesting Record Procedures, to reflect the need for individuals to identify the appropriate DoD office or component to which their request should be directed and to update the appropriate citation for contesting records. Furthermore, this notice includes non-substantive changes to simplify the formatting and text of the previously published notice.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency (OATSD(PCLT)) Privacy, Civil Liberties, and FOIA Directorate website at *https://dpcld.defense.gov/privacy.*

II. Privacy Act

Under the Privacy Act, a ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A–108, OATSD(PCLT) has provided a report of this system of records to the OMB and to Congress.

Dated: January 25, 2022.

Kayyonne T. Marston,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

SYSTEM NAME AND NUMBER:

AFNConnect (AFNC) and AFN Now, DPA 02.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

A. Defense Media Activity Riverside, 23755 Z Street, Riverside, CA 92518–2077.

B. Verizon, 22001 Loudoun County Parkway, Ashburn, VA 20147–6105.

SYSTEM MANAGER(S):

Director, Media Production Line of Business, Defense Media Activity, 6700 Taylor Avenue, Fort Meade, MD 20755–7061, telephone number: (301) 222–6526.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C 113, Secretary of Defense; DoD Directive (DoDD) 5122.05, Assistant to The Secretary of Defense for Public Affairs (ATSD (PA)); DoDD 5105.74, Defense Media Activity (DMA); and DoD Instruction 5120.20, American Forces Radio and Television Service (AFRTS).

PURPOSE(S) OF THE SYSTEM:

A. To document the eligibility and continued validation of authorized individuals who register an American Forces Network (AFN)-capable satellite decoder and/or access to AFN online media services, for example the AFN Over the Top (OTT) Live Streaming and Video on Demand (VOD) Services via the AFN Now platform.

B. Provide U.S. military commanders worldwide with a means to communicate internal information to DoD audiences stationed outside of the United States, its territories or possessions.

C. Records may also be used as a management tool for statistical analysis, tracking, reporting, evaluating program effectiveness, and conducting research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

A. Eligible United States military personnel, Department of Defense (DoD) civilian employees, DoD contractors, and full-time direct-hire American citizen United States Government (USG) employees, excluding contractors, serving in direct support of the Chief of Mission at American diplomatic missions outside of the United States, its territories or possessions and their immediate family members operating an AFN satellite decoder and/or accessing AFN online media services.

B. Non-DoD-affiliated American citizen USG employees serving at American diplomatic posts overseas.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, DoD ID number, home mailing address, date of birth, address, email, phone, and other contact information for work and home locations, gender, marital status, spouse information, child information, branch of service, unit identification code (UIC), disability information, rank/grade, military status and unique device identification numbers, i.e., decoder serial numbers, employment information.

RECORD SOURCE CATEGORIES:

Individual, Defense Enrollment Eligibility Reporting System (DEERS), and other personnel data systems

maintained by the General Services Administration or the U.S. Office of Personnel Management and used to verify eligibility for non-DoD personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

I. To another Federal, State or local agency for the purpose of comparing to the agency's system of records or to non-Federal records, in coordination with an Office of Inspector General in conducting an audit, investigation, inspection, evaluation, or some other review as authorized by the Inspector General Act.

J. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

K. To the Department of State to verify authorized personnel's use of an AFN satellite decoder and/or AFN online media services.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic storage media. Electronic records may be stored in agency-owned cloud environments or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP).

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by various combinations of first and last name, email address, location (duty station address/residence, country and locality), date of birth, and/or decoder serial number, DoD ID number, branch of service, and category of individual (Military, DoD Civilian, Department of State Civilian, Retiree, or Family Member).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Temporary. Cutoff after system is superseded by a new iteration, or is terminated, defunded or when, no longer needed for administrative, legal, audit or other operational purposes. Destroy 5 years after cutoff.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Administrative control measures are off-site secured backups, which are encrypted and accessible only by authorized individuals with a valid 'need to know' and regular monitoring of users' security practices. Physical control measures are security guards, identification badges, key cards, cipher locks, closed-circuit television. Technical control measures are user identification, password, intrusion detection system, external certificate authority certificate, firewall, virtual private network, DoD public key infrastructure certificates, common access card, biometrics, encryption of data at rest and in transit, role-based access controls, intrusion detection system, used only for privileged (elevated roles), least privilege access.

RECORD ACCESS PROCEDURES:

Individuals seeking access to their records should follow the procedures in 32 CFR part 310. Individuals should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155. Signed, written requests should contain first and last name, home address, phone number, DoD ID Number, and/or employee ID number, for positive identification of requester and the name and number of this system of records notice. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The DoD rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 32 CFR part 310.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

June 06, 2016, 81 FR 36279; October 27, 2015, 80 FR 65722.

[FR Doc. 2022–01780 Filed 1–27–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3472–024]

Aspinook Hydro, LLC; Notice of Waiver Period for Water Quality Certification Application

On December 3, 2021, Aspinook Hydro, LLC. submitted to the Federal Energy Regulatory Commission (Commission) evidence of its application for a Clean Water Act section 401(a)(1) water quality certification filed with Connecticut Department of Energy and Environmental Protection (Connecticut DEEP), in conjunction with the above captioned project. Pursuant to section 401 of the Clean Water Act [1] and section 4.34(b)(5), 5.23(b), 153.4, or 157.22 of the Commission's regulations,[2] a state certifying agency is deemed to have waived its certifying authority if it fails or refuses to act on a certification request within a reasonable period of time, which is one year after the date the certification request was received. Accordingly, we hereby notify the Connecticut DEEP of the following:

Date that Connecticut DEEP Received the Certification Request: December 3, 2021.

If Connecticut DEEP fails or refuses to act on the water quality certification request on or before December 3, 2022, then the agency certifying authority is deemed waived pursuant to section 401(a)(1) of the Clean Water Act, 33 U.S.C. 1341(a)(1).

Dated: January 24, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01753 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 33 U.S.C. 1341(a)(1).

[2] 18 CFR 4.34(b)(5)/5.23(b)/153.4/157.22.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–39–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on January 11, 2022, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and Northern's blanket certificate issued in Docket No. CP83–4–000, for authorization to abandon four storage wells and associated well lines in its Boone Mountain Storage Field located in Horton Township, Elk County, Pennsylvania. National Fuel proposes to plug and abandon four (4) injection/withdrawal storage Wells 4759, 4762, 4765, and 4820, and abandon in place the associated Well Lines FW4759, FW4762S, FW4765, FW4763, and FW4820S. National Fuel states that there will be no abandonment or decrease in service to customers as a result of the proposed abandonment, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this prior notice request should be directed to Alice A. Curtiss, Deputy General Counsel for National Fuel, 6363 Main Street, Williamsville, New York 14221, at 716–857–7075, or by email to *curtissa@natfuel.com.*

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on March 22, 2022. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[1] any person [2] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[3] and must be submitted by the protest deadline, which is March 22, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is March 22, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding

[1] 18 CFR 157.205.

[2] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[3] 18 CFR 157.205(e).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before March 22, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22–39–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to *Documents and Filings.* New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; first select General'' and then select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [6]

(2) You can file a paper copy of your submission by mailing it to the address below.[7] Your submission must reference the Project docket number CP22–39–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail at: 6363 Main Street, Williamsville, New York 14221, or by email to (with a link to the document) at: *curtissa@natfuel.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: January 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01681 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

[6] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

[7] Hand-delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–867–000]

Long Ridge Retail Electric Supplier LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Long Ridge Retail Electric Supplier LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is February 14, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link.

Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: January 24, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01752 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN17–4–000]

Rover Pipeline, LLC; Energy Transfer Partners, L.P.; Updated Notice of Designation of Commission Staff as Non-Decisional

With respect to an order issued by the Commission on December 16, 2021, in the above-captioned docket, with the exceptions noted below, the staff of the Office of Enforcement are designated as non-decisional in deliberations by the Commission in this docket.[1] Accordingly, pursuant to 18 CFR 385.2202 (2021), they will not serve as advisors to the Commission or take part in the Commission's review of any offer of settlement. Likewise, as non-decisional staff, pursuant to 18 CFR 385.2201 (2021), they are prohibited from communicating with advisory staff concerning any deliberations in this docket.

Exceptions to this designation as non-decisional are:

Serrita Hill

Seema K. Jain

Grace Kwon

Gabriel Sterling

Dated: January 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01679 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

[1] *Rover Pipeline, LLC and Energy Transfer Partners, L.P.,* 177 FERC ¶ 61,182 (2021).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 349–166]

Alabama Power Company; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 349–166.

c. *Date Filed:* December 8, 2021.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Hydroelectric Project.

f. *Location:* The Martin Dam Hydroelectric Project is located on the Tallapoosa River (Lake Martin), in Tallapoosa, Elmore, and Coosa counties, Alabama, and occupies federal land administered by the U.S. Bureau of Land Management; the non-project use is located in Tallapoosa County.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Unzell Kelley, Alabama Power Company at (205) 517–0885 or *ukelley@southernco.com.*

i. *FERC Contact:* Shana High at (202) 502–8674 or *shana.high@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* February 23, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–349–166. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* Alabama Power Company is requesting Commission approval to permit Harbor Pointe Marina to dredge approximately 1,492 cubic yards at its existing commercial marina.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing

responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 24, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01756 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11132–029]

KEI (USA) Power Management (I), LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 11132–029.

c. *Date Filed:* November 22, 2021.

d. *Submitted By:* KEI (USA) Power Management (I), LLC (KEI).

e. *Name of Project:* Eustis Hydroelectric Project (project).

f. *Location:* On the North Branch of the Dead River in Franklin County, Maine. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 and 5.5 of the Commission's regulations.

h. *Potential Applicant Contact:* Mr. Lewis C. Loon, KEI (USA) Power Management (III) LLC.; 423 Brunswick Avenue, Gardiner, ME 04345; (207) 203–3027; or email at *LewisC.Loon@kruger.com.*

i. *FERC Contact:* Erin Kimsey at (202) 502–8621; or email at *erin.kimsey@ferc.gov.*

j. KEI filed its request to use the Traditional Licensing Process on November 22, 2021, and provided public notice of its request on November 16, 2021. In a letter dated January 21, 2022, the Director of the Division of Hydropower Licensing approved KEI's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Maine State Historic Preservation Officer, as required by section 106 of the National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating KEI as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. On November 22, 2021, KEI filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

o. The licensee states its unequivocal intent to submit an application for a subsequent license for Project No. 11132. Pursuant to 18 CFR 16.20, each application for a subsequent license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 30, 2024.

p. Register online at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: January 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01682 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–2–000]

Gas Transmission Northwest LLC; Notice of Intent To Prepare an Environmental Impact Statement for The Proposed GTN Xpress Project Request for Comments on Environmental Issues, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the GTN XPress Project (Project) involving the modification and operation of existing compression facilities by Gas Transmission Northwest LLC (GTN) in Idaho, Washington, and Oregon. The Commission will use this EIS in its decision-making process to determine whether the Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and the EIS* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document, including comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment.

To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m.

Eastern Time on February 22, 2022. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

If you are a landowner receiving this notice, a GTN representative may contact you about the acquisition of workspace needed to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable acquisition agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an acquisition agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

GTN provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are three methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–2–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project, the Project Purpose and Need, and Expected Impacts

GTN proposes to modify and operate three existing compressor stations in Idaho, Washington, and Oregon. The Project would increase the capacity of GTN's existing natural gas transmission system by about 150,000 dekatherms per day between its Kingsgate Meter Station in Idaho and its Malin Meter Station in Oregon. According to GTN, its Project would increase its ability to meet growing market demand, benefiting local communities, and providing operational flexibility. The Project would consist of the following:

- Uprating, by means of a software upgrade only, three existing Solar Turbine Titan 130 gas-fired, turbine compressors from 14,300 horsepower (HP) to 23,470 HP at the existing Athol Compressor Station in Kootenai County, Idaho, at the existing Starbuck Compressor Station in Walla Walla County, Washington; and at the existing Kent Compressor Station in Sherman County, Oregon;
- Installing a new 23,470 HP Solar Turbine Titan 130 gas-fired turbine compressor and associated piping, and 3 new gas cooling bays and associated piping; at the Starbuck Compressor Station; and
- expanding the compressor station and installing 4 new gas cooling bays and associated piping at the Kent Compressor Station.

The general location of the Project facilities is shown in appendix 1.[1]

Based on the environmental information provided by GTN, modifications to the existing compressor stations would require the disturbance of about 46.9 acres of land. GTN would maintain about 1.2 acres of land for operation of the Project facilities; the remaining acreage would be restored.

Based on an initial review of GTN's proposal, Commission staff has identified several expected impacts that deserve attention in the EIS. For example, the Project would generate additional air emissions that could impact air quality and the Project would increase noise levels.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss impacts that could occur as a result of the modification and operation of the proposed Project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/*

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

natural-gas/environment/environmental-documents). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Alternatives Under Consideration

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[3] Alternatives that will be evaluated to determine if they are feasible and meet the purpose and need for the Project include the no-action alternative, meaning the Project is not implemented; system alternatives; natural gas compression alternatives; pipeline alternatives; and aboveground facility site layout alternatives.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate section 106 consultation for the Project with the applicable State Historic Preservation Office(s), and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the Project's potential effects on historic properties.[4] The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Schedule for Environmental Review

On October 19, 2021, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. This notice identifies the Commission staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in June 2022.

Issuance of Notice of Availability of the final EIS: October 14, 2022

90-day Federal Authorization Decision Deadline:[5] January 12, 2023

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

TABLE OF FEDERAL AND FEDERALLY DELEGATED PERMITS

Permit	Agency
Certificate of Public Convenience and Necessity	FERC.
Endangered Species Act Consultation	U.S. Fish and Wildlife Service.
Migratory Bird Treaty Act and Bald Eagle Consultation	U.S. Fish and Wildlife Service.
National Historic Preservation Act	ID, WA, OR Historic Preservation Offices, and Tribal Historic Preservation Offices.

Environmental Mailing List

This notice is being sent to the Commission's current environmental mailing list for the Project which includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to *GasProjectAddressChange@ferc.gov* stating your request. You must include the docket number CP22–2–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (Appendix 2).

[3] 40 CFR 1508.1(z).

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

[5] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP22–2–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: January 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01680 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–2–000]

Commission Information Collection Activities (Ferc–546) Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–546, (Certificated Rate Filings: Gas Pipeline Rates), which will be submitted to the Office of Management and Budget (OMB) for review.

DATES: Comments on the collection of information are due February 28, 2022.

ADDRESSES: Send written comments on FERC–546 to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0155) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC22–2–000) by one of the following methods: Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

1. FERC–546

Title: FERC–546, Certificated Rate Filings: Gas Pipeline Rates.

OMB Control No.: 1902–0155.

Type of Request: Three-year extension of the FERC–546 information collection requirements with no changes to the current reporting requirements. There were no comments received on the 60-day comment period (86 FR 63010).

Abstract: The Commission reviews the FERC–546 materials to decide whether to approve rates and tariff changes associated with an application for a certificate under Natural Gas Act (NGA) section 7(c) (15 U.S.C. 717f(c)). Additionally, FERC reviews FERC–546 materials in storage applications under NGA section 4(f) (15 U.S.C. 717c(f)), to evaluate an applicant's market power and determine whether to grant market-based rate authority to the applicant. The Commission uses the information in FERC–546 to monitor jurisdictional transportation, natural gas storage, and unbundled sales activities of interstate natural gas pipelines and Hinshaw [1] pipelines. In addition to fulfilling the Commission's obligations under the NGA, the FERC–546 enables the Commission to monitor the activities and evaluate transactions of the natural gas industry, ensure competitiveness, and improve efficiency of the industry's operations. In summary, the Commission uses the information to:

- Ensure adequate customer protections under NGA section 4(f);
- review rate and tariff changes filed under NGA section 7(c) for certification of natural gas pipeline transportation and storage services;
- provide general industry oversight; and
- supplement documentation during the pipeline audits process.

Failure to collect this information would prevent the Commission from monitoring and evaluating transactions and operations of jurisdictional pipelines and performing its regulatory functions.

Type of Respondents: Jurisdictional pipeline companies and storage operators.

Estimate of Annual Burden: [2] The Commission estimates the burden and cost for this information collection as follows:

[1] Hinshaw pipelines are those that receive all out-of-state gas from entities within or at the boundary of a state if all the natural gas so received is ultimately consumed within the state in which it is received, 15 U.S.C. 717(c). Congress concluded that Hinshaw pipelines are ''matters primarily of local concern,'' and so are more appropriately regulated by pertinent state agencies rather than by FERC. The Natural Gas Act section 1(c) exempts Hinshaw pipelines from FERC jurisdiction. A Hinshaw pipeline, however, may apply for a FERC certificate to transport gas outside of state lines.

[2] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 Code of Federal Regulations 1320.3.

FERC–546 (CERTIFICATED RATE FILINGS: GAS PIPELINE RATES)

	Annual number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (rounded) (1) * (2) = (3)	Average burden & cost per response [3] (rounded) (4)	Total annual burden hours & total annual cost (rounded) (3) * (4) = (5)	Cost per respondent ($) (rounded) (5) ÷ (1)
Pipeline Certificate Filings and Storage Applications.	47	[4] 1.595	74.965	500 hrs.; $41,652	37,482.50 hrs.; $3,122,442.18	$66,434.94

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden 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.

Dated: January 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01684 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

[3] The hourly cost (for salary plus benefits) uses the figures from the Bureau of Labor Statistics, June 2021, for positions involved in the reporting and recordkeeping requirements. These figures include salary (*https://www.bls.gov/oes/current/naics2_22.htm*) and benefits *http://www.bls.gov/news.release/ecec.nr0.htm*) and are:

Electrical Engineer (Occupation Code: 17–2071; $72.15/hour)

Management Analyst (Occupation Code: 13–1111; $68.39/hour)

Accounting (Occupation Code: 13–2011; $57.41/hours)

Computer and Mathematical (Occupation Code: 15–0000; $65.73/hour)

Legal (Occupation Code: 23–0000; $142.25/hour)

The average hourly cost (salary plus benefits) is calculated weighting each of the previously mentioned wage categories as follows: $72.15/hour (0.4) + $68.39/hour (0.2) + $57.41/hour (0.1) + $65.73/hour (0.1) + $142.25/hour (0.2) = $83.304/hour. The Commission rounds this figure to $83/hour.

[4] This figure was calculated by dividing the total number of responses (1.595) by the total number of respondents (47). The resulting figure was then rounded to the nearest thousandth place.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2188–263]

Northwestern Corporation; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Temporary Variance of Article 420.

b. *Project No:* 2188–263.

c. *Date Filed:* January 7, 2022.

d. *Applicant:* Northwestern Corporation (licensee).

e. *Name of Project:* Missouri-Madison Hydroelectric Project.

f. *Location:* The project consists of nine hydroelectric developments located on the Madison and Missouri Rivers in Gallatin, Madison, Lewis and Clark, and Cascade counties, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mary Gail Sullivan, Director, Environmental and Lands; Northwestern Corporation; 11 East Park Street; Butte, Montana 59701; (406) 497–3382; *marygail.sullivan@northwestern.com.*

i. *FERC Contact:* Joy Kurtz, (202) 502–6760, *Joy.Kurtz@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* February 10, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2188–263. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee requests a temporary variance from the its River Flow Restoration Plan (Plan), required by Article 420 of the project license and approved by the Commission on February 7, 2014. The proposed variance would occur from March 1, 2022 to November 30, 2022 in support of the initial phase of a spill gate replacement project at Morony Dam. The replacement project in its entirety entails replacing the dam's nine radial spill gates with vertical slide gates over a three-year period. During the proposed variance period, the licensee would replace spill gates 4–7, and would therefore be unable to use them to restore flows during full plant trips, as required by the Plan. The licensee proposes to use a combination of spill gates 1–3 for flow restoration during any full plant trips while spill gates 4–7 are out of service. Consistent with the Plan, during the variance period, the licensee will provide a 7-minute long warning siren to alert the public that the spill gates are opening

and to allow the public time to relocate to a safe location.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: January 21, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–01683 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–494–000.

Applicants: Gulf States Transmission LLC.

Description: Tariff Amendment: Cancellation of Tariff to be effective 1/21/2022.

Filed Date: 1/21/22.

Accession Number: 20220121–5067.

Comment Date: 5 pm ET 2/2/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 24, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01762 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–39–000.

Applicants: Long Ridge Energy Generation LLC, Long Ridge Retail Electric Supplier LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Long Ridge Energy Generation LLC, et al.

Filed Date: 1/21/22.

Accession Number: 20220121–5205.

Comment Date: 5 p.m. ET 2/11/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–45–000.

Applicants: Jicarilla Solar 2 LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Jicarilla Solar 2 LLC.

Filed Date: 1/24/22.

Accession Number: 20220124–5070.

Comment Date: 5 p.m. ET 2/14/22.

Docket Numbers: EG22–46–000.

Applicants: Brazoria West Solar Project, LLC.

Description: Exempt Wholesale Generator Filing for Brazoria West Solar Project, LLC.

Filed Date: 1/24/22.

Accession Number: 20220124–5076.

Comment Date: 5 p.m. ET 2/14/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2912–008.

Applicants: Alliance For Cooperative Energy Services Power Marketing LLC.

Description: Notice of Non-Material Change in Status of Alliance For Cooperative Energy Services Power Marketing LLC.

Filed Date: 1/21/22.

Accession Number: 20220121–5216.

Comment Date: 5 p.m. ET 2/11/22.

Docket Numbers: ER19–668–002.

Applicants: Energy Center Dover LLC.

Description: Energy Center Dover LLC submits a Request for Limited One-Time Prospective Waiver of Tariff Provisions with Expedited Consideration.

Filed Date: 1/21/22.

Accession Number: 20220121–5220.

Comment Date: 5 p.m. ET 2/11/22.

Docket Numbers: ER20–1954–001.

Applicants: ITC Great Plains, LLC, Southwest Power Pool, Inc.

Description: Compliance filing: ITC Great Plains, LLC submits tariff filing per 35: ITC Great Plains, LLC Revised Order No. 864 Compliance Filing to be effective N/A.

Filed Date: 1/24/22.

Accession Number: 20220124–5036.

Comment Date: 5 p.m. ET 2/14/22.

Docket Numbers: ER22–516–001.

Applicants: Arizona Public Service Company.

Description: Tariff Amendment: Service Agreement No. 396 Deferral of Action to be effective 12/31/9998.

Filed Date: 1/24/22.
Accession Number: 20220124–5135.
Comment Date: 5 p.m. ET 2/14/22.
Docket Numbers: ER22–868–000.
Applicants: ITC Midwest LLC.
Description: Tariff Amendment: Notice of Cancellation of CIAC Agreement with NSPM to be effective 3/23/2022.
Filed Date: 1/21/22.
Accession Number: 20220121–5181.
Comment Date: 5 p.m. ET 2/11/22.
Docket Numbers: ER22–869–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2022–01–21 Amendment to Implement EIM Sub-Entity and EIM Sub-Entity SC Roles to be effective 4/1/2022.
Filed Date: 1/21/22.
Accession Number: 20220121–5189.
Comment Date: 5 p.m. ET 2/11/22.
Docket Numbers: ER22–870–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) Rate Filing: Rate Schedule No. 217 Exhibit B Revisions to be effective 3/27/2022.
Filed Date: 1/24/22.
Accession Number: 20220124–5054.
Comment Date: 5 p.m. ET 2/14/22.
Docket Numbers: ER22–871–000.
Applicants: Jicarilla Solar 2 LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 2/7/2022.
Filed Date: 1/24/22.
Accession Number: 20220124–5062.
Comment Date: 5 p.m. ET 2/14/22.
Docket Numbers: ER22–872–000.
Applicants: Jicarilla Solar 2 LLC.
Description: Initial rate filing: Filing of Shared Facilities Agreement and Request for Waivers to be effective 3/26/2022.
Filed Date: 1/24/22.
Accession Number: 20220124–5066.
Comment Date: 5 p.m. ET 2/14/22.
Docket Numbers: ER22–873–000.
Applicants: Florida Power & Light Company.
Description: § 205(d) Rate Filing: FPL and DEF Facility Construction Agreement for Affected System Project to be effective 1/25/2022.
Filed Date: 1/24/22.
Accession Number: 20220124–5086.
Comment Date: 5 p.m. ET 2/14/22.
Docket Numbers: ER22–874–000.
Applicants: Graphite Solar 1, LLC.
Description: Baseline eTariff Filing: Baseline Market Rate Based Filing to be effective 1/24/2022.
Filed Date: 1/24/22.
Accession Number: 20220124–5126.
Comment Date: 5 p.m. ET 2/14/22.
Docket Numbers: ER22–875–000.
Applicants: California Independent System Operator Corporation.
Description: § 205(d) Rate Filing: 2022–01–24 Certificate of Concurrence—LGIA McFarland to be effective 11/29/2021.
Filed Date: 1/24/22.
Accession Number: 20220124–5136.
Comment Date: 5 p.m. ET 2/14/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 24, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–01761 Filed 1–27–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0093; FRL–9517–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NESHAP for Ferroalloys Production: Ferromanganese and Silicomanganese (EPA ICR Number 1831.08, OMB Control Number 2060–0391), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0093, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of ferromanganese and silicomanganese production facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 63, subpart A), as well as for the applicable specific standards in 40 CFR part 63 Subpart XXX. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Ferroalloy production facilities that manufacture ferromanganese and silicomanganese.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart XXX).

Estimated number of respondents: 2 (total).

Frequency of response: Quarterly, semiannually, and annually.

Total estimated burden: 1,610 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $609,000 (per year), which includes $424,000 for annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is a change in burden from the most-recently approved ICR (ICR Number 1831.07) as currently identified in the OMB Inventory of Approved Burdens. This is due to several considerations. The regulations are not anticipated to change over the next three years. The growth rate for this industry is either very low or non-existent, so there is no change in the number of respondents. The 2015 Risk and Technology Review final rule, issued June 30, 2015 (80 FR 37366), and the 2017 reconsideration, issued January 18, 2017 (82 FR 5408), revised the rule significantly, resulting in changes in the labor burden, capital/startup costs, and operation and maintenance (O&M) costs. However, these changes were not included in the previously-approved ICR (ICR Number 1831.07: Issued March 8, 2019). Instead, the burden for the rule revision was included in ICR Number 2448.02, issued March 16, 2015, which showed only the increase in burden due to the rule changes. This ICR (1831.08) combines and incorporates the 'burden' from the 2015 and 2017 rule revisions, as shown in ICR Number 2448.02, with the 'burden' shown in the previously-approved ICR (1831.07). This ICR also reorganizes and clarifies the 'burden' associated with each rule requirement.

There is a decrease in the total estimated burden for capital/startup costs from that shown in ICR Number 2448.02. This decrease is not due to any program changes. The change in the burden and cost estimates occurred because the revised standard has been in effect for more than three years and the requirements are different during initial compliance. ICR Number 2448.02 reflected those burdens and costs associated with the initial activities for the two subject facilities. This includes purchasing monitoring equipment, conducting performance test(s) and establishing recordkeeping systems. This ICR reflects the on-going burden and costs for existing facilities.

There is an increase in the total estimated burden from that shown in ICR Number 2448.02. This increase is not due to any program changes. This increase is due to an omission in the burden calculations for O&M costs in ICR Number 2448.02, which failed to include costs for periodic testing (every five years) for certain equipment and processes.

The 2020 amendment to the regulation (85 FR 73902) added electronic notification requirements, but this did not add to the burden. There is a slight increase in labor costs, which is due wholly to the use of updated labor rates. This ICR uses labor rates from the most-recent Bureau of Labor Statistics report (March 2021) to calculate respondent burden costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01763 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–001]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed January 14, 2022 10 a.m. EST

Through January 24, 2022 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20220008, Draft, FTA, WA, West Seattle and Ballard Link Extensions, *Comment Period Ends:* 04/28/2022, *Contact:* Mark Assam 206–220–4465.

EIS No. 20220009, Final, FTA, OR, Southwest Corridor Light Rail Project Final Environmental Impact Statement, *Review Period Ends:* 02/28/2022, *Contact:* Mark Assam 206–220–4465.

EIS No. 20220010, Final, USFS, MT, Land Management Plan, Custer Gallatin National Forest, *Review Period Ends:* 02/28/2022, *Contact:* Mariah Leuschen-Lonergan 406–587–6735.

Dated: January 25, 2022.

Marthea Rountree,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–01768 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0091; FRL–9516–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Pesticide Active Ingredient Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Pesticide Active Ingredient Production (EPA ICR Number 1807.10, OMB Control Number 2060–0370), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently-approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0091, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Pesticide Active Ingredient Production (40 CFR part 63, subpart MMM) apply to existing and new facilities engaged in the production of pesticide active ingredients (PAIs) that emit HAPs. New facilities include those that commenced construction, modification, or reconstruction after the date of proposal. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 63, subpart MMM.

Form Numbers: None.

Respondents/affected entities: Pesticide active ingredient production facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart MMM).

Estimated number of respondents: 19 (total).

Frequency of response: Quarterly and semiannually.

Total estimated burden: 13,200 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $1,910,000 (per year), which includes $339,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: The increase in burden from the most-recently approved ICR is due to several adjustments. This increase is not due to any program changes. The adjustment increase in burden from the most-recently approved ICR is due to an increase in the number of existing respondents. The number of estimated facilities subjected to this rule has increased to 19 based on a review of EPA's Enforcement and Compliance History Online and data collected during rulemakings for related chemical sectors. Based on comments received from industry, we have also updated the 'burden' to reflect that at least one existing respondent will install a new process unit per year. This ICR adjusts the burden to reflect certain one-time activities for these sources, including submittal of an updated pre-compliance report, notifications of initial performance test or performance evaluation, updates to facility record management systems, and development of a quality assurance/quality control plan for continuous monitoring systems.

This ICR also adjusts the capital and operation and maintenance costs to reflect comments provided by industry. The ICR capital costs have been adjusted to account for at least one existing respondent that will install a new process unit per year. Additionally, this ICR adjusts the operation and maintenance costs for pressure relief device, process vent, and wastewater monitoring based on estimates provided by industry.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01757 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0114; FRL–9519–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities (EPA ICR Number 2237.06, OMB Control Number 2060–0620), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0114, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any

personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The NESHAP for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities applies to owners or operators of any existing or new gasoline distribution facilities that are an area source of hazardous air pollutants (HAP) emissions. In addition to the initial notification and notification of compliance status required by the General Provisions (40 CFR part 63, subpart A), respondents are required to submit one-time reports of start of construction, anticipated and actual startup dates, and physical or operational changes to existing facilities. Reports of initial performance tests on control devices at gasoline distribution storage tanks, loading racks, and vapor balance systems are also required and are necessary to show that the installed control devices are meeting the emission limitations required by the NESHAP. Annual reports of storage tank inspections at all affected facilities are required. In addition, respondents must submit semiannual compliance and continuous monitoring system performance reports, and semiannual reports of equipment leaks not repaired within 15 days or loadings of cargo tanks for which vapor tightness documentation is not available.

Form Numbers: None.

Respondents/affected entities: Gasoline distribution bulk terminals, bulk plants, pipeline facilities, and gasoline dispensing facilities.

Respondent's obligation to respond: Mandatory (40 CFR 63, subparts BBBBBB and CCCCCC).

Estimated number of respondents: 19,120 (total).

Frequency of response: Initially and semiannually.

Total estimated burden: 214,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $25,400,000 (per year), which includes $110,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations. First, the regulations have not changed over the past three years except to add electronic reporting for notifications that were already required under 40 CFR 63.9(b) and (j), which is not expected to increase burden. Also, the regulations are not anticipated to change over the next three years. Second, the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup and/or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01759 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0668; FRL–9520–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Emission Guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Emission Guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) Units (EPA ICR Number 2385.08, OMB Control Number 2060–0664), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on February 8, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted either on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0668, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain

in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The Emission Guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) units (40 CFR part 60, subpart DDDD) apply to any air quality program in either a state or a United States protectorate with one or more existing CISWI units that commenced construction either on or before April 29, 2010. In general, all emission guidelines require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 60, subpart DDDD.

Form Numbers: None.

Respondents/affected entities: Owners and operators of existing CISWI units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart DDDD).

Estimated number of respondents: 78 (total).

Frequency of response: Semiannual, annual.

Total estimated burden: 9,890 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $12,200,000 (per year), which includes $11,000,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is a decrease in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to several considerations. The growth rate for this industry is very low or non-existent, so there is no change in the number of respondents. The regulations have changed over the past three years; however, the amendments did not result in any changes in burden. The labor calculations for incinerators were corrected to remove one instance in the previous ICR, where labor costs for continuous parameter monitoring were double-counted. The labor calculations for incinerators were also corrected to revise the number of respondents submitting a status report, corrective action summary, and semiannual report to reflect reports submitted for 10 percent of the total number of CISWI units. The overall result is a decrease in burden hours. The costs for annual performance testing were updated from 2008 to 2020 using the CEPCI Index, resulting in an increase in O&M costs. The monitoring costs were updated from 2008 values to 2020 values using the CEPCI Index and Bureau of Labor Statistics data, resulting in an increase in monitoring costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01760 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0090; FRL–9515–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Flexible Polyurethane Foam Product (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), NESHAP for Flexible Polyurethane Foam Product (EPA ICR Number 1783.11, OMB Control Number 2060–0357), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on April 13, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0090, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Flexible Polyurethane Foam Product (40 CFR part 63, subpart III) apply to owners or operators of both new and existing facilities that engage in the manufacture of flexible polyurethane foam products which emit hazardous air pollutants (HAPs). This includes facilities making slabstock flexible polyurethane foam (slabstock foam), rebond flexible polyurethane foam (rebond foam), and/or molded flexible polyurethane foam (molded foam). In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. Owners or operators of flexible polyurethane foam production

facilities to which this rule is applicable must choose one of the compliance options described in these standards or reduce HAP emissions to below the compliance level. Specifically, the rule requirements for slabstock foam producers include an initial notification, notification of compliance status, semiannual reports and annual compliance certifications. The rule requirements for molded and rebond foam producers include a notification of compliance status report and an annual compliance certification. These notifications, reports, and records are essential in determining compliance with 40 CFR part 63, subpart III.

Form Numbers: None.

Respondents/affected entities: Slabstock foam and molded and rebond foam producers.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart III).

Estimated number of respondents: 12 (total).

Frequency of response: Semiannually and annually.

Total estimated burden: 869 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $102,000 (per year), which includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01767 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0089; FRL–9511–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (EPA ICR Number 1611.13, OMB Control Number 2060–0327), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on February 08, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0089, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40 CFR part 63, subpart N) apply to both existing and new facilities that emit chromium compounds from hard chromium electroplating, decorative chromium electroplating, and chromium anodizing tanks at major and area sources. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 63, subpart N.

Form Numbers: None.

Respondents/affected entities: Owners and operators of chromium electroplating and anodizing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart N).

Estimated number of respondents: 1,343 (total).

Frequency of response: Initially, annually, semiannually, and quarterly.

Total estimated burden: 242,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $49,000,000 (per year), which includes $20,400,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This situation is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01688 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9303–01–OMS]

Privacy Act of 1974; System of Records

AGENCY: Office of Mission Support (OMS), Environmental Protection Agency (EPA).

ACTION: Notice of a modified system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Mission Support (OMS) is giving notice that it proposes to modify a system of records pursuant to the provisions of the Privacy Act of 1974. Fleet Access (FA) is being modified to add a routine use that is related to Federal Automotive Statistical Tool (FAST) reporting and to move Fleet Access infrastructure from an externally-hosted non-Federal Risk and Authorization Management Program (FedRAMP) authorized cloud service provider to EPA's National Computing Center (NCC).

DATES: Persons wishing to comment on this system of records notice must do so by February 28, 2022. New routine uses for this modified system of records will be effective February 28, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OMS–2020–0137, by one of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the online instructions for submitting comments.

Email: docket_oms@epa.gov. Include the Docket ID number in the subject line of the message.

Fax: (202) 566–1752.

Mail: OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OMS–2020–0137. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through *https://www.regulations.gov.* The *https://www.regulations.gov* website is an ''anonymous access'' system for the EPA, which means the EPA will not know your identity or contact information. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is normally open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OMS Docket is (202) 566–1752.

Temporary Hours During COVID–19

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information about EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: General questions about the Fleet Access system should be made in writing to James Cunningham, (202) 564–7212, *Cunningham.James@epa.gov*; Jackie Brown, (202) 564–0313, *Brown.Jackie@epa.gov*; and Jonathan Barnes, (202) 564–1950, *Barnes.Jonathan@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA implemented Fleet Access (FA) in response to General Services Administration (GSA) Bulletin FMR B–15, which includes the requirement that each federal agency store and maintain vehicle asset data collected in a Fleet Management Information System (FMIS). FA stores vehicle-level data such as license plate, vehicle identification number (VIN), make, model, acquisition value/lease rates, and designations regarding alternative fuel, energy, and sustainability mandates. FA is also used to produce the yearly FAST Report. This end-of-year report is submitted to the federal agency that maintains the Federal Automotive Statistical Tool (FAST). The FAST Report summarizes each vehicle's annual data with respect to fuel, mileage, maintenance, acquisition, and disposal.

EPA is modifying FA to add a routine use that is related to FAST reporting, and to move FA information technology

infrastructure from a vendor-hosted system to an EPA-hosted system because the vendor for Fleet Access, AgileFleet, is not FedRAMP certified. In addition, moving FA to an EPA-hosted system will ensure that NIST-required security controls for a system categorized as low are in place, operating as expected, and producing the desired results. *See* National Institute of Standards and Technology (NIST) Special Publication 800–53, ''Security and Privacy Controls for Information Systems and Organizations,'' Revision 5. In addition, the vendor-hosted infrastructure is not FedRAMP compliant.

FA will continue to serve as a comprehensive standardized vehicle reservation system used by agency staff needing to reserve and utilize fleet vehicles for official agency business. FA will still require system users to register personal business information to reserve agency fleet assets. Other components of FA, including operational, functional, and day-to-day management will not change except for planned upgrades.

SYSTEM NAME AND NUMBER:

Fleet Access, EPA–85.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

FA is managed by the Office of Mission Support, Office of Administration, Environmental Protection Agency, 1301 Constitution Ave. NW, Washington, DC 20460. Electronically stored information is hosted at the EPA National Computer Center (NCC), 109 TW Alexander Drive, Research Triangle Park, Durham, NC 27711.

SYSTEM MANAGER(S):

James Cunningham, IT Project Manager, Office of Mission Support, Office of Administration, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460, Mail code 3101M, *Cunningham.James@epa.gov,* 202–564–7212.

Jonathan Barnes, Fleet Project Manager, Office of Mission Support, Office of Administration, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460, Mail code 3101M, *Barnes.Jonathan@epa.gov,* 202–564–1950.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 17502 and 17503—Federal Motor Vehicle Expenditure Control; and General Services Administration (GSA) FMR B–15.

PURPOSE(S) OF THE SYSTEM:

FA is a commercial off-the-shelf software solution installed on EPA systems and operated by EPA personnel and contractors. EPA uses FA to manage the Agency's fleet resources, and specifically to store and maintain vehicle asset data collected in the Agency's Fleet Management Information System (FMIS). The FA system serves two primary purposes: First, to store vehicle level data such as license plate, VIN, make, model, acquisition value/lease rates, designations regarding alternative fuel, energy and sustainability mandates, all of which are used to produce the FAST Report. This end-of-year report is submitted jointly to the Department of Energy (DOE), the GSA, and the Idaho National Lab (INL). The FAST Report summarizes each vehicle's annual data with respect to fuel, mileage, maintenance, acquisition, and disposal. Second, FA is used by EPA's Fleet program management, regional and local staff, and support contractors as a standardized vehicle reservation system to reserve and utilize fleet vehicles for official agency business.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered by this system include EPA employees and EPA contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personally Identifiable Information (PII) collected includes: Last Name, First Name, Work Phone Number, Work Email Address, Driver's License Expiration Date, and Profile Picture.

RECORD SOURCE CATEGORIES:

FA is a data management system that allows authorized EPA employees and contractors to store/maintain vehicle asset data and reserve agency vehicles across various programs/regions. PII information is collected directly from the user via an online registration form.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The routine uses below are both related to and compatible with the original purpose for which the information was collected. The following general routine uses apply to this system (*86FR 62527*): A, B, C, D, E, F, G, H, I, J, K, L, and M.

The following additional routine use applies to this system:

1. Per 40 CFR 102–34.335, information may be disclosed to the federal agency that maintains the Federal Automotive Statistical Tool (FAST) in connection with Federal Fleet Reporting. requirements and other required reporting.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The information collected within FA is maintained and stored in a database hosted by the EPA National Computer Center (NCC) located at 109 T.W. Alexander Drive, Research Triangle Park, NC 27711, per EPA Records Schedule 0090—Administrative Support Databases and EPA Records Schedule 1009—Motor Vehicles and Personal Property.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records for FA are retrievable by User ID and last name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

FA complies with EPA Records Schedule 0090—Administrative Support Databases and EPA Records Schedule 1009—Motor Vehicles and Personal Property. Personnel information is retained for as long as the user or administrator determines necessary; generally, as long as the individual is employed by EPA and requires vehicle reservation access. If a person no longer needs to reserve a vehicle for agency business, their user information is deleted permanently, in accordance with EPA Records Schedule 1009. Vehicle data are stored for a minimum of 3 years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security controls used to protect personal sensitive data in FA are commensurate with those required for an information system rated low for confidentiality, integrity, and availability, as prescribed in NIST Special Publication, 800–53, ''Security and Privacy Controls for Information Systems and Organizations,'' Revision 5.

1. *Administrative Safeguards:* Personnel are required to complete annual agency Information Security and Privacy training. Personnel are instructed to lock their computers when they leave their desks.

2. *Technical Safeguards:* Access to FA is restricted to authorized users via login by username and password. All application passwords are encrypted in the database. User passwords cannot be seen by the administrators. The application is web-based, and user sessions are encrypted.

3. *Physical Safeguards:* Equipment used for hosting FA is in a secure facility. Access to the secure facility is logged and restricted to employees displaying valid identification badges.

Power to the facility is insured by both battery backup and diesel generator. Fire suppression systems are in place. The facility is staffed 24 hours a day, seven days a week.

RECORD ACCESS PROCEDURES:

All requests for access to personal records should cite the Privacy Act of 1974 and reference the type of request being made (*i.e.,* access). Requests must include: (1) The name and signature of the individual making the request; (2) the name of the Privacy Act system of records to which the request relates; (3) a statement whether a personal inspection of the records or a copy of them by mail is desired; and (4) proof of identity (*e.g.,* driver's license, military identification card, employee badge or identification card). Additional identity verification procedures may be required, as warranted. Requests must meet the requirements of EPA regulations that implement the Privacy Act of 1974, at 40 CFR part 16. A full description of EPA's Privacy Act procedures for requesting access to records is available at 40 CFR part 16.

CONTESTING RECORD PROCEDURES:

Requests for correction or amendment must include: (1) The name and signature of the individual making the request; (2) the name of the Privacy Act system of records to which the request relates; (3) a description of the information sought to be corrected or amended and the specific reasons for the correction or amendment; and (4) proof of identity A full description of EPA's Privacy Act procedures for the correction or amendment of a record is included in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURES:

Individuals who wish to be informed whether a Privacy Act system of records maintained by EPA contains any record pertaining to them, should make a written request to the EPA, Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, or by email at: *privacy@epa.gov.* A full description of EPA's Privacy Act procedures is included in EPA's Privacy Act regulations at 40 CFR part 16.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

86 FR 10955 (February 23, 2021).

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2022–01733 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0657; FRL–9506–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Kraft Pulp Mills (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Kraft Pulp Mills (EPA ICR Number 1055.13, OMB Control Number 2060–0021), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through March 31, 2022. Public comments were previously requested, via the **Federal Register**, on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before February 28, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0657, online using *www.regulations.gov* (our preferred method) or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at: *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of kraft pulp mills are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 60, subpart A), as well as for the applicable specific standards in 40 CFR part 60, subpart BB. This includes submitting initial notifications, performance tests and periodic reports and results, and maintaining records of excess emissions, or any period during which the monitoring system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Kraft pulp mills.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart BB).

Estimated number of respondents: 97 (total).

Frequency of response: Semiannually.

Total estimated burden: 13,900 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $5,650,000 (per year), which includes $4,010,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This situation is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there is no significant industry growth, there are no changes in the capital/startup costs. There is an

increase in the operation and maintenance (O&M) costs due to O&M costs being updated from year 2009 to 2020 using the CEPCI Index.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–01585 Filed 1–27–22; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 2022–3002]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the United States.

ACTION: Submission for OMB review and comments request.

SUMMARY: The Export-Import Bank of the United States (EXIM), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Multi-Buyer Policy: Reasonable Spread of Risk (RSOR) Exclusions Worksheet will be used by external customers, current policyholders and portfolio managers to determine eligibility of Export-Import Bank support under the RSOR Policy. Program changes that were made in 2017 have resulted in revitalized demand of the RSOR product in the marketplace. This form will be available on EXIM's website and will standardize the collection of required information into a user friendly format that can be submitted electronically via email or as an attachment to an EXIM Online application.

DATES: Comments should be received on or before February 28, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *WWW.REGULATIONS.GOV* (EIB 18–01) or by email to Cristina Conti <*cristina.conti@exim.gov*>, or by mail to Cristina Conti, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571.

The form can be viewed at: *https://www.exim.gov/sites/default/files/pub/pending/eib18-01.pdf.*

FOR FURTHER INFORMATION CONTACT: To request additional information, please email Cristina Conti <*cristina.conti@exim.gov*>, 202–565–3804.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB18–01 Multi-Buyer Policy: Reasonable Spread of Risk (RSOR) Exclusions Worksheet.

OMB Number: XXXX–XXXX.

Type of Review: New.

Need and Use: The Multi-Buyer Policy: Reasonable Spread of Risk (RSOR) Exclusions Worksheet will be used by external customers, current policyholders and portfolio managers to determine eligibility of Export-Import Bank support under the Reasonable Spread of Risk Policy.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 60.

Estimated Time per Respondent: 15 minutes.

Annual Burden Hours: 15 hours.

Frequency of Reporting or Use: As needed.

Government Expenses:

Reviewing Time per Year: 60 hours.

Average Wages per Hour: $42.50.

Average Cost per Year: $2,550 (time*wages).

Benefits and Overhead: 20%.

Total Government Cost: $3,060.

Bassam Doughman,

IT Specialist.

[FR Doc. 2022–01674 Filed 1–27–22; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201143–021.

Agreement Name: West Coast MTO Agreement.

Parties: APM Terminals Pacific LLC; Fenix Marine Services, Ltd.; Everport Terminal Services, Inc.; International Transportation Service, LLC; LBCT LLC dba Long Beath Container Terminal LLC; Total Terminals International, LLC; West Basin Container Terminal LLC; Pacific Maritime Services, L.L.C.; SSAT (Pier A), LLC; TRAPAC LLC, Yusen Terminals LLC; and SSA Terminals, LLC.

Filing Party: Wayne Rohde; Cozen O'Connor.

Synopsis: The amendment revises Article XII of the Agreement to remove the January 31, 2022 expiration date for the temporary adjustment to the Traffic Mitigation Fee, and to provide for reversion from the temporary fee assessed under Article XII to the pre-existing fee upon not less than forty-five (45) days' notice to the Commission. The parties request expedited review.

Proposed Effective Date: 3/10/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/2090.

Dated: January 25, 2022.

William Cody,

Secretary.

[FR Doc. 2022–01725 Filed 1–27–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Application to Become a Savings and Loan Holding Company or to Acquire a Savings Association or Savings and Loan Holding Company (FR LL–10(e); OMB No. 7100–0336).

DATES: Comments must be submitted on or before March 29, 2022.

ADDRESSES: You may submit comments, identified by FR LL–10(e), by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal under OMB Delegated Authority to Extend for Three Years, With Revision, the Following Information Collection:

Report title: Application to Become a Savings and Loan Holding Company or to Acquire a Savings Association or Savings and Loan Holding Company.

Agency form number: FR LL–10(e).

OMB control number: 7100–0336.

Frequency: Event generated.

Respondents: Entities seeking prior approval to become or acquire a savings and loan holding company (SLHC).

Estimated number of respondents: 15.

Estimated average hours per response: Reporting, 60; Disclosure, 15.

Estimated annual burden hours: Reporting, 900; Disclosure, 15.

General description of report: The form collects information concerning certain proposed SLHC formations, acquisitions, and mergers. Specifically, the form collects financial and managerial information and information about the proposed transaction, the competitive effects of the proposal, and the impact of the transaction on the convenience and needs of the communities to be served. Applicants that file the FR LL–10(e) are also required to publish a notice in a newspaper of general circulation in the community(ies) in which the head office(s) of the applicant; its largest subsidiary savings association, if any; and each savings association to be directly or indirectly acquired are located.

Proposed Revisions

Standardized Form

The Board proposes to revise the FR LL–10(e) by adding a two-page standardized application and certification form. The application and certification form record identification and contact information for the applicant, whether the applicant is requesting confidential treatment for materials submitted, and a certification by a representative of the applicant that, among other things, the information provided in the application is accurate to the best of the signatory's knowledge and belief. Adding a certification page would be consistent with other similar Board application forms.

Filing Requirements for Informational Filings

The Board is also revising the FR LL–10(e) to include instructions on what information a filer must include in a notice regarding the reorganization of a newly-formed holding company pursuant to 12 CFR 238.12(a)(2). Under the Home Owners' Loan Act (HOLA) and Regulation LL, such a reorganization does not require prior approval from the Board. However, Regulation LL notes that an informational filing is required, and the revised instructions indicate that the filer must provide information regarding the Proposed Transaction and Financial and Managerial Information in such a situation.

CBLR Framework

Recent legislative and regulatory changes implemented the Community Bank Leverage Ratio (CBLR) framework in 2020, which, if utilized by a qualifying depository organizations, eliminates the requirement for the organization to track risk-weighted assets and report risk-based capital ratios.[1] In light of this change, the Board proposes to revise the FR LL–10(e) instructions to provide that applicants that have elected to utilize the CBLR framework would not be required to submit information related to risk-weighted assets or risk-based capital

[1] See Regulatory Capital Rule: Capital Simplification for Qualifying Community Banking Organizations, 84 FR 61776 (Nov. 13, 2019). See also 12 CFR 217.12.

ratios. Similarly, if the savings association subsidiary of an applicant has elected to use the CBLR framework, the applicant would no longer be required to submit the FR LL–10(e) information related to the savings association's risk-weighted assets or risk-based capital ratios. The proposed revisions would simplify the reporting requirement with regard to those savings associations and SLHCs that have elected to utilize the CBLR framework.

Filings Pursuant to Section 238.11(f) of Regulation LL and Other Clarifications

Pursuant to section 238.11(f) of Regulation LL, a director or officer of an SLHC, or any individual who owns, controls, or holds the power to vote (or holds proxies representing) more than 25 percent of the voting shares of such an SLHC, must receive the approval of the Board prior to acquiring control of any savings association that is not a subsidiary of such SLHC. The Board proposes to modify the FR LL–10(e) instructions to explicitly provide that the FR LL–10(e) must be submitted for such an application.

The Board is also proposing a minor change that would correct a cross-reference to the Board's rules regarding the availability of information and to clarify that the informational requirements of the FR LL–10(e) are mandatory for all filers.

Legal authorization and confidentiality: The FR LL–10(e) is authorized by section 10(b)(2) of HOLA.[2] The FR LL–10(e) is required to obtain a benefit.

The information contained on the FR LL–10(e) is not considered confidential unless an applicant requests confidential treatment in accordance with the Board's Rules Regarding Availability of Information.[3] Requests for confidential treatment of information are reviewed on a case-by-case basis. Information provided on the FR LL–10(e) may be nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, which is protected from disclosure pursuant to exemption 4 of the Freedom of Information Act (FOIA).[4] Submissions of the FR LL–10(e) may also contain personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, which are protected under exemption 6 of the FOIA,[5] or information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions, which are protected under exemption 8 of the FOIA.[6]

Board of Governors of the Federal Reserve System, January 24, 2022.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022–01717 Filed 1–27–22; 8:45 am]

BILLING CODE 6210–01–P

[2] 12 U.S.C. 1467a(b) (requiring SLHCs to register with the Board on such forms as it may prescribe and authorizing the Board to require reports from SLHCs containing such information concerning the operations of SLHCs and their subsidiaries as the Board may require).

[3] 12 CFR 261.17.

[4] 5 U.S.C. 552(b)(4).

[5] 5 U.S.C. 552(b)(6).

[6] 5 U.S.C. 552(b)(8).

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Notice of Proposed Declaration of Dividend (FR 1583; OMB No. 7100–0339).

DATES: Comments must be submitted on or before March 29, 2022.

ADDRESSES: You may submit comments, identified by FR 1583, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal under OMB Delegated Authority to Extend for Three Years, Without Revision, the Following Information Collection:

Report title: Notice of Proposed Declaration of Dividend.

Agency form number: FR 1583.

OMB control number: 7100–0339.

Frequency: Event-generated.

Respondents: Savings association subsidiaries of savings and loan holding companies (SLHCs).

Estimated number of respondents: 180.

Estimated average hours per response: 0.25.

Estimated annual burden hours: 90.

General description of report: A savings association subsidiary of an SLHC must provide prior notice of the proposed declaration of a dividend by filing form FR 1583, whether electronically or by hard copy, with the appropriate Reserve Bank. The FR 1583 requires information regarding the date of the filing and the nature and amount of the proposed dividend, as well as the names and signatures of the executive officer and secretary of the savings association that is providing the notice. The FR 1583 notice may include a schedule proposing dividends over a period specified by the notificant, not to exceed 12 months.

Legal authorization and confidentiality: The FR 1583 is authorized by Section 10(f) of the Home Owners' Loan Act (HOLA).[1] Section 10(f) of HOLA provides that every subsidiary savings association of an SLHC shall give the Board at least 30 days' advance notice of the proposed declaration by its directors of any dividend on its guaranty, permanent, or other nonwithdrawable stock. Additionally, Section 10(b) of HOLA authorizes the Board to require SLHCs to file ''such reports as may be required by the Board.'' [2] The FR 1583 is mandatory.

Individual respondents may request that information submitted on the FR 1583 be kept confidential on a case-by-case basis. If such a request is made, the Board will determine whether the information is entitled to confidential treatment. Requests filed pursuant to the FR 1583 may include information related to the SLHC's business operations, such as terms and sources of the funding for dividends and pro forma balance sheets. To the extent that this information constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, it may be kept confidential under exemption 4 of the Freedom of Information Act, which exempts ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' [3]

Board of Governors of the Federal Reserve System, January 24, 2022.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022–01714 Filed 1–27–22; 8:45 am]

BILLING CODE 6210–01–P

[1] 12 U.S.C. 1467a(f).

[2] 12 U.S.C. 1467a(b). *See* 12 U.S.C. 1467a(g).

[3] 5 U.S.C. 552(b)(4).

FEDERAL TRADE COMMISSION

[File No. 192 3138]

Fashion Nova, LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 28, 2022.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''Fashion Nova, LLC; File No. 192 3138'' on your comment, and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Amber Lee (202–326–2764), Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before February 28, 2022. Write ''Fashion Nova, LLC; File No. 192 3138'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''Fashion Nova, LLC; File No. 192 3138'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade

Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580. If possible, submit your paper comment to the Commission by overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *http://www.ftc.gov* to read this Notice and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before February 28, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a consent order from Fashion Nova, LLC (''Fashion Nova''). The proposed consent order (''proposed order'') has been placed on the public record for thirty days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter involves Fashion Nova's marketing of its Fashion Nova brand apparel. Fashion Nova primarily sold its apparel through its *www.fashionnova.com* website. The company invited customers to leave product reviews on its website and sent its customers emails soliciting product reviews for recent purchases. Each product web page on the website with existing reviews displayed the product's average star rating and a summary graph showing the number of reviews with each star rating, followed by individual consumers' reviews and ratings. According to the Commission's proposed complaint, from late 2015 through November 2019, Fashion Nova had four- and five-star reviews automatically posted to its website but did not approve for posting or publish lower-starred, more negative reviews.

The proposed complaint alleges that Fashion Nova violated Section 5(a) of the FTC Act by misrepresenting that the product reviews on *www.fashionnova.com* accurately reflected the views of all purchasers who submitted product reviews to the website. The proposed order contains provisions designed to prevent Fashion Nova from engaging in similar acts and practices in the future and to provide monetary relief.

Provision I prohibits Fashion Nova from misrepresenting: (1) That product reviews on its website accurately reflect the views of all purchasers who submitted reviews of its products; (2) that product reviews are unedited; (3) that product reviews are displayed regardless of the reviewer's opinion or rating; or (4) how product reviews factor into any composite or overall rating of a product.

Provision II requires Fashion Nova to display all product reviews for products currently offered for sale that are or were submitted to its website. The provision provides that Fashion Nova is not required to display reviews that are unrelated to its products and to its customer service, delivery, returns, or exchanges. The provision also provides that Fashion Nova is not required to display reviews that contain unlawful, profane, obscene, vulgar, or sexually explicit content, or content that is inappropriate with respect to race, gender, sexuality, or ethnicity, so long as the criteria for withholding reviews is applied uniformly to all reviews submitted. Finally, the company is not required to offer the opportunity to submit reviews for any or every product offered for sale on its website.

Provision III requires Fashion Nova to pay the Commission $4,200,000 within eight days of the effective date of the order. Provision IV sets out additional requirements related to the monetary relief.

Provisions V through VIII of the proposed order are reporting and compliance provisions. Provision V requires acknowledgement of the order and dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Provision VI ensures notification to the FTC of changes in corporate status and mandates that the company submit an initial compliance report to the FTC. Provision VII requires the company to create and retain certain documents relating to its compliance with the order. Provision VIII mandates that the company make available to the FTC information or subsequent compliance reports, as requested.

Provision IX states that the proposed order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order's terms.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–01775 Filed 1–27–22; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (''PRA''), the Federal Trade Commission (''FTC'' or ''Commission'') is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in its regulation ''Duties of Furnishers of Information to Consumer Reporting Agencies'' (''Information Furnishers Rule''), which applies to certain motor vehicle dealers, and its shared enforcement with the Bureau of Consumer Financial Protection (''CFPB'') of the furnisher provisions (subpart E) of the CFPB's Regulation V regarding other entities. The current clearance expires on July 31, 2022.

DATES: Comments must be filed by March 29, 2022.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Information Furnishers Rule, PRA Comment, P135407,'' on your comment and file your comment online at *https://www.regulations.gov/,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Gorana Neskovic, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–2322, 600 Pennsylvania Ave. NW, CC–8232, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Title: Duties of Furnishers of Information to Consumer Reporting Agencies.

OMB Control Number: 3084–0144.

Type of Review: Extension without change of a currently approved collection.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 17,483 hours.

Estimated Annual Labor Costs: $966,143.

Abstract: The Dodd-Frank Act [1] transferred most of the FTC's rulemaking authority for the furnisher provisions of the Fair Credit Reporting Act (''FCRA'') [2] to the CFPB. The FTC, however, retains rulemaking authority for motor vehicle dealers that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.[3] In addition, the FTC retains its authority to enforce the furnisher provisions of the FCRA and rules issued under those provisions. Accordingly, the FTC and CFPB have overlapping enforcement authority for many entities subject to CFPB's Regulation V (subpart E) and the FTC has sole enforcement authority for the motor vehicle dealers subject to the FTC rule.

Under section 660.3 of the FTC's Information Furnishers Rule [4] and section 1022.42 of the CFPB Rule,[5] furnishers must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a consumer reporting agency (''CRA'') for inclusion in a consumer report.[6] Section 660.4 of the FTC Rule and section 1022.43 of the CFPB Rule require that entities which furnish information about consumers to a CRA respond to direct disputes from consumers. These provisions also require that a furnisher notify consumers by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant (''F/I dispute'').

Burden Statement

FTC staff estimates that approximately 6,385 information furnishers are subject to the FTC's Information Furnishers Rule and its enforcement authority.[7]

Section 660.3 of FTC Rule/Section 1022.42 of CFPB Rule

A. Burden Hours

Section 660.3 of the FTC's Furnisher Rule and section 1022.42 of Regulation V (subpart E) require furnishers to establish written policies and procedures regarding the accuracy and integrity of information relating to consumers that they furnish to a CRA. Furnishers must also review these policies and procedures periodically and update them as necessary to ensure their continued effectiveness. FTC staff estimate a yearly recurring burden of 2 hours for training to help ensure continued compliance regarding written policies and procedures for the accuracy and integrity of the information furnished to a CRA about consumers.[8] This yields an annual hours burden of 12,770 hours (6,385 respondents × 2 hours for training).

B. Labor Costs

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use managerial and/or professional technical personnel to train

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 15 U.S.C. 1681 *et seq.*

[3] *See* Dodd-Frank Act, § 1029(a), (c).

[4] 16 CFR part 660.

[5] 12 CFR part 1022.

[6] The rule also provides that an entity is not a furnisher when it: Provides information to a CRA solely to obtain a consumer report for a permissible purpose under the FCRA; is acting as a CRA as defined in section 603(f) of the FCRA; is an individual consumer to whom the furnished information pertains; or is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer's character, general reputation, personal characteristics, or mode of living in response to a specific request from a CRA.

[7] The CFPB estimates that there are 16,000 furnishers, excluding motor vehicle dealers that are subject to the FTC's jurisdiction, with an allocation to that agency of 63% of the burden or 10,080 respondents. *See* CFPB Supporting Statement Part A, Fair Credit Reporting Act (Regulation V) 12 CFR 1022 (OMB Control Number: 3170–0002) (*https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202008-3170-001*). Allocating the remaining 37% of the burden to the FTC yields 5,920 respondents, excluding motor vehicle dealers that are subject to the FTC's jurisdiction. FTC staff estimate that there are approximately 46,525 motor vehicle dealers in the U.S. *See* U.S. Census Bureau, All Sectors: County Business Patterns, including ZIP Code Business Patterns, by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, *available at https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=44111%3A44112&;tid=CBP2019.CB1900CBP&hidePreview=true&nkd=EMPSZES~001,LFO~001* (listing 21,427 establishments for ''new car dealers,'' NAICS code 44111, and 25,098 establishments for ''used car dealers,'' NAICS code 44112). It is difficult to determine precisely the number of motor vehicle dealers that are subject to the FTC's jurisdiction and that are furnishers. Given the restrictions in section 1029(a) of the Dodd-Frank Act that motor vehicle dealers subject to the FTC's jurisdiction are those that routinely assign consumer contracts governing retail credit to an unaffiliated third-party finance source, Commission staff believes the number is *de minimis.* Accordingly, the FTC estimates that 1% of motor vehicle dealers subject to the FTC's jurisdiction are furnishers of information to CRAs or 465 respondents. Thus, 465 motor vehicle dealers + 5,920 other entities = 6,385 respondents for the FTC's burden calculations.

[8] 74 FR 31484, 31505 (July 1, 2009 FTC and Federal financial agencies' final rules).

company employees on continued compliance with the information furnisher requirements under the FTC and CFPB Rules. This yields estimated annual labor costs of $773,096 (12,770 hours × $60.54 [9]).

Section 660.4 of FTC Rule/Section 1022.43 of CFPB Rule

Section 660.4 of the FTC's Information Furnishers Rule and section 1022.43 of the CFPB's Regulation V (subpart E) require furnishers to respond to direct disputes from consumers and notify consumers by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant.

A. Burden Hours

FTC staff estimate that the burden necessary to prepare and distribute F/I notices is approximately 14 minutes per notice.[10] Based on the calculations below, this yields an annual hours burden of 2,635 hours.

1. 21,720 total F/I disputes [11]
2. Motor vehicle dealer-only furnisher disputes are assumed to be 4% of the total: 21,720 × .04 = 869 F/I disputes [12]
3. 20,851 respondents (21,720 − 869 FTC only) ÷ by 2 = 10,425 F/I disputes subject to FTC shared jurisdiction
4. 869 FTC only F/I disputes + 10,425 additional F/I disputes = 11,294 F/I dispute notices for the FTC's jurisdiction
5. 11,294 F/I disputes × 14 minutes each = 2,635 hours

B. Labor Costs

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use skilled administrative support personnel to provide the required F/I dispute notices to consumers. This yields estimated annual labor costs of $67,245 (2,635 hours × $25.52 [13]).

FTC staff believes that these information collection requirements impose negligible capital or other non-labor costs, as the affected entities are already likely to have the necessary supplies and equipment (*e.g.,* offices and computers) to administer the information collections described above.

Request for Comments: Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the Information Furnishers Rule.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) Whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before March 29, 2022.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 29, 2022. Write ''Paperwork Reduction Act: FTC File No. P072108'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the *https://www.regulations.gov* website.

Due to the public health emergency in response to the COVID–19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you file your comment on paper, write ''Paperwork Reduction Act: FTC File No. P072108'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at *https://www.regulations.gov,* you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your

[9] *http://www.bls.gov/news.release/ocwage.nr0.htm:* ''Occupational Employment and Wages—May 2017,'' Bureau of Labor Statistics, U.S. Department of Labor, released March 30, 2018, Table 1 (''National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2017) (hereinafter, ''BLS Table 1''). *See* mean hourly wage for ''Training and Development Managers.''

[10] 74 FR at 31505.

[11] *Id.* at 31506 n. 58.

[12] FTC staff believes that 4% is a reasonable estimate based on recent data. See ''Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation's largest credit bureaus handle consumer data,'' December 2012, pp. 14, 29, 31, 34. The CFPB report noted that almost 40% of all consumer disputes at the nationwide CRAs, on average, can be linked to collections. It stated that collection trade lines generate significantly higher numbers of consumer disputes than other types of trade lines—specifically, four times higher than auto-related dispute rates. These figures seem to suggest that almost 10% of all consumer disputes at the nationwide CRAs, on average, can be linked to auto-related disputes. When the FTC issued its final Rule, FTC staff estimated that 40% of direct disputes would result in the sending of F/I dispute notices. See 74 FR 31506 n.58. The FTC's estimate of 4% is based on taking forty percent of the 10% of all consumer disputes at the nationwide CRAs, on average, linked to auto loans.

[13] The revised figure is an average of Bureau of Labor Statistics mean hourly wages for potentially analogous employee types: First-line supervisors of office and administrative support workers ($29.81); bookkeeping, accounting, and auditing clerks ($21.10); brokerage clerks ($28.11); eligibility interviewers, government programs ($23.07). See BLS Table 1. This averages to $25.52 per hour, rounded.

comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted at *www.regulations.gov,* we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 29, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2022–01710 Filed 1–27–22; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0048; Docket No. 2021–0053; Sequence No. 12]

Submission for OMB Review; Certain Federal Acquisition Regulation Part 15 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a previously approved information collection requirement regarding certain Federal Acquisition Regulation (FAR) part 15 requirements.

DATES: Submit comments on or before February 28, 2022.

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.

Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0048, Certain Federal Acquisition Regulation Part 15 Requirements. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0048, Certain Federal Acquisition Regulation Part 15 Requirements.

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the revision of the expiration date of OMB Control No. 9000–0048 and combines it with the previously approved information collections under OMB Control No. 9000–0078, with the new title ''Certain Federal Acquisition Regulation Part 15 Requirements.'' Upon approval of this consolidated information collection, OMB Control No. 9000–0078 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000–0048.

This clearance covers the information that offerors and contractors must submit to comply with the following FAR requirements:

1. FAR 15.407–2(e), Make-or-buy programs. When prospective contractors are required to submit proposed make-or-buy program plans for negotiated acquisitions, paragraph (e) requires the following information in their proposal:

(a) A description of each major item or work effort;

(b) Categorization of each major item or work effort as ''must make,'' ''must buy,'' or ''can either make or buy'';

(c) For each item or work effort categorized as ''can either make or buy,'' a proposal either to ''make'' or to ''buy'';

(d) Reasons for categorizing items and work efforts as ''must make'' or ''must buy,'' and proposing to ''make'' or to ''buy'' those categorized as ''can either make or buy'';

(e) Designation of the plant or division proposed to make each item or perform each work effort, and a statement as to whether the existing or proposed new facility is in or near a labor surplus area;

(f) Identification of proposed subcontractors, if known, and their location and size status;

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission; and

(h) Any other information the contracting officer requires in order to evaluate the program.

2. FAR 52.215–1(c)(2)(iv)—Authorized Negotiators. This provision requires firms offering supplies or services to the Government under negotiated solicitations to provide the names, titles, and telephone and facsimile numbers (and electronic addresses if available) of authorized negotiators to assure that discussions are held with authorized individuals.

3. FAR 52.215–9, Changes or Additions to Make-or-Buy Program. This clause requires the contractor to submit, in writing, for the contracting officer's advance approval a notification and justification of any proposed change in the make-or-buy program incorporated in the contract.

4. FAR 52.215–14—Integrity of Unit Prices. This clause requires offerors and contractors under negotiated solicitations and contracts to identify those supplies which they will not manufacture or to which they will not contribute significant value, if requested by the contracting officer or when

contracting without adequate price competition.

5. FAR 52.215–19—Notification of Ownership Changes. This clause requires contractors to notify the administrative contracting officer when the contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records.

6. FAR 52.215–22, Limitations on Pass-Through Charges—Identification of Subcontract Effort. This provision requires offerors submitting a proposal for a contract, task order, or delivery order to provide the following information with their proposal:

(a) The total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor;

(b) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed, the amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s), and a description of the value added by the offeror as related to the work to be performed by the subcontractor(s); and

(c) If any subcontractor proposed intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed, the amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s) and a description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

7. FAR 52.215–23, Limitations on Pass-Through Charges. This clause requires contractors to provide a description of the value added by the contractor or subcontractor, as applicable, as related to the subcontract effort if the effort changes from the amount identified in the proposal such that it exceeds 70 percent of the total cost of work to be performed.

C. Annual Burden

Respondents: 611,075.

Total Annual Responses: 636,787.

Total Burden Hours: 68,447 (68,442 reporting hours + 5 recordkeeping hours).

D. Public Comment

A 60-day notice was published in the **Federal Register** at 86 FR 67469, on November 26, 2021. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0048, Certain Federal Acquisition Regulation Part 15 Requirements.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–01774 Filed 1–27–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0189; Docket No. 2021–0053; Sequence No. 13]

Submission for OMB Review; Certain Federal Acquisition Regulation Part 4 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a previously approved information collection requirement regarding certain Federal Acquisition Regulation (FAR) part 4 requirements.

DATES: Submit comments on or before February 28, 2022.

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.

Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0189, Certain Federal Acquisition Regulation Part 4 Requirements. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB control number, Title, and any Associated Form(s)

9000–0189, Certain Federal Acquisition Regulation Part 4 Requirements.

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the revision of the expiration date of OMB Control No. 9000–0189 and combines it with the previously approved information collections under OMB Control Nos. 9000–0097 and 9000–0197, with the new title ''Certain Federal Acquisition Regulation Part 4 Requirements''. Upon approval of this consolidated information collection, OMB Control Nos. 9000–0097 and 9000–0197 will be discontinued. The burden requirements previously approved under the discontinued numbers will be covered under OMB Control No. 9000–0189.

This clearance covers the information that offerors and contractors must submit to comply with the following FAR requirements:

1. FAR 52.204–3, and 52.212–3(l)—Taxpayer Identification Number Information. When there is not a requirement to be registered in the System for Award Management (SAM), offerors are required to submit their

Taxpayer Identification Number information by the provision at FAR 52.204–3, Taxpayer Identification, for other than commercial acquisitions, and by paragraph (l) of the provision at FAR 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, for commercial acquisitions.

2. FAR 52.204–6, 52.212–1(j), and 52.204–12—Unique Entity Identifier. When there is not a requirement to be registered in SAM, offerors are required to submit their unique entity identifier by the provision at FAR 52.204–6, Unique Entity Identifier, for other than commercial acquisitions, and by paragraph (j) of the provision at FAR 52.212–1, Instructions to Offerors—Commercial Products and Commercial Services, for commercial acquisitions. The clause at FAR 52.204–12, Unique Entity Identifier Maintenance, requires contractors to maintain their unique entity identifier with the organization designated in SAM to issue such identifiers, for the life of the contract. The clause also requires contractors to notify contracting officers of any changes to the unique entity identifier.

3. FAR 52.204–7, 52.204–13, and 52.212–3(b)—SAM Registration and Maintenance. The provision at FAR 52.204–7, System for Award Management, requires offerors to be registered in SAM when submitting an offer or quotation, except in certain limited cases, and to continue to be registered through final payment of any award that results from such offer. The clause at FAR 52.204–13, System for Award Management Maintenance, requires contractors to make sure their SAM data is kept current, accurate, and complete throughout contract performance and final payment; this maintenance is, at a minimum, to be done through an annual review and update of the contractor's SAM registration. Paragraph (b) of the provision at FAR 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, contains the equivalent of FAR 52.204–7 and 52.204–13, for commercial acquisitions.

4. FAR 52.204–14, and 52.204–15—Service Contract Reporting Requirements. The clauses at FAR 52.204–14, Service Contract Reporting Requirements, and FAR 52.204–15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts, require contractors to report the following information in SAM annually:

(a) Contract number and, as applicable, order number.

(b) The total dollar amount invoiced for services performed during the previous Government fiscal year under each contract.

(c) The number of contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(d) Data reported by each first-tier subcontractor providing services under the contract if required to do so.

5. FAR 52.204–20, Predecessor of Offeror. This provision requires offerors to identify if the offeror is, within the last three years, a successor to another entity that received a Federal Government award and, if so, to provide the Commercial and Government Entity code and legal name of the predecessor.

6. FAR 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities. This clause requires contractors to report, in writing, to the contracting officer or, in the case of DoD, to the website at *https://dibnet.dod.mil*, any instance when the contractor identifies a covered article provided to the Government during contract performance, or if contractors are notified of such an event by subcontractors at any tier or any other source.

C. Annual Burden

Respondents: 393,680.

Total Annual Responses: 843,490.

Total Burden Hours: 419,401.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 86 FR 67470, on November 26, 2021. No comments were received.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0189, Certain Federal Acquisition Regulation Part 4 Requirements.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–01773 Filed 1–27–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Grant To Fund Michigan State University (MSU)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $3.6 million funding with an expected total funding of approximately $18 million over a 5-year period to Michigan State University. The award will support activities related to the Flint Registry, a comprehensive public health registry of residents who were exposed to lead-contaminated water in Flint, Michigan.

DATES: The period for this award will be August 1, 2022, through July 31, 2023.

FOR FURTHER INFORMATION CONTACT: Alexis Pullia, M.P.H., C.P.H, National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention, 4770 Buford Highway, Atlanta, GA 30341, Telephone: 770–488–3300, Email: *leadinfo@cdc.gov.*

SUPPLEMENTARY INFORMATION: The single-source award will support activities related to the existing public health registry of residents who were exposed to lead-contaminated water from the Flint Water System during April 25, 2014, to October 15, 2015. In Fiscal Year 2022, the activities are expected to include continued community, tribal, and stakeholder outreach and training; registrant enrollment via targeted outreach to eligible individuals and high risk individuals; data collection; referral of registrants to services to reduce or control lead exposure effects; measurement of registrants' exposure, health, developmental milestones with their interventions, services, and enrichment activities; follow-up of enrolled registry participants; and evaluation and dissemination of findings to share best practices.

Michigan State university is in a unique position to conduct this work, as it successfully collaborated with community partners to establish the registry through previous CDC grants and has an established relationship with the Flint community. Progress to date has been substantial since the registry's inception, and continued forward

momentum depends on the continuity of the same team managing the registry.

Summary of the award:

Recipient: Michigan State University.

Purpose of the Award: The purpose of this award is to support activities related to the Flint Registry, a comprehensive public health registry of residents who were exposed to lead-contaminated water from the Flint water system during April 25, 2014, to October 15, 2015.

Amount of Award: $3.6 million in Federal Fiscal Year (FYY) 2022 funds, with a total estimated $18 million over the 5-year period of performance, subject to availability of funds.

Authority: This program is authorized under Section 2203(b) of Public Law 114–322, the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016; 42 U.S.C. Section 300j–27(b).

Period of Performance: August 1, 2022, through July 27, 2027.

Dated: January 25, 2022.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2022–01800 Filed 1–27–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2022–0014]

Notice of Intent To Prepare a Supplemental Environmental Impact Statement and Request for Comments

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice and request for comment.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA) as implemented by the Council on Environmental Quality (CEQ) regulations (Title 40 CFR Section 1507.3) and the Department of Health and Human Services (HHS) General Administration Manual Part 30 ''Environmental Procedures,'' dated February 25, 2000, the Centers for Disease Control and Prevention (CDC) within HHS announces its intent to prepare a Supplemental Environmental Impact Statement (SEIS) to address changes proposed since completing the 2014 *Final Environmental Impact Statement (EIS) for Centers for Disease Control and Prevention Roybal Campus 2025 Master Plan* (2014 Final EIS) and issuing the Record of Decision dated November 7, 2014. The 2014 Final EIS analyzed the potential impacts associated with implementing a new long-range Master Plan to guide the future physical development of the Roybal Campus for the planning horizon of 2015 to 2025.

DATES: Written scoping comments will be accepted through February 28, 2022.

ADDRESSES: You may submit comments, identified by Docket Number CDC–2022–0014, by either of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov/.* Follow the instructions for submitting comments.
- *U.S. Mail:* Thayra Riley, NEPA Coordinator Office of Safety, Security, and Asset Management (OSSAM), Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H20–4, Atlanta, Georgia 30329.

Instructions: All submissions received must include the Agency name and Docket Number (CDC–2022–0014). CDC will post, without change, all relevant comments to *https://www.regulations.gov,* including any personal information provided. Do not submit comments by email. CDC does not accept comments by email. For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thayra Riley, NEPA Coordinator, Office of Safety, Security, and Asset Management (OSSAM), Centers for Disease Control and Prevention, 1600 Clifton Road NE, Mailstop H20–4, Atlanta, Georgia 30329, email: *cdc-roybalga-seis@cdc.gov,* or telephone: 770–488–8170.

SUPPLEMENTARY INFORMATION: CDC intends to prepare an SEIS to analyze the potential impacts of proposed components that were not analyzed in the 2014 Final EIS. Proposed components that will be analyzed in the SEIS include the addition of a Hospital, Medical, and Infectious Waste Incinerator in a new laboratory and two emergency standby power diesel generators. The construction of a new laboratory was included in the 2014 Final EIS and will not be re-evaluated in the SEIS.

In accordance with NEPA as implemented by CEQ regulations (Title 40 CFR Section 1507.3) and HHS environmental procedures, CDC will prepare an SEIS to analyze the effects of proposed components that were not analyzed in the 2014 Final EIS. The potential impacts of construction and operation of these components on the natural and built environment will be evaluated.

Under the NEPA, federal agencies are required to evaluate the environmental effects of their proposed actions and a range of feasible alternatives to the proposed actions prior to making a final decision about what actions to take. The SEIS will incorporate the 2014 Final EIS by reference and will build upon that document to focus on specific resource areas that would have potential effects different from those analyzed in the 2014 Final EIS. Areas of anticipated concern include, but are not limited to, the following: Air quality, climate change and sustainability, environmental justice, and hazardous materials and hazardous waste.

Scoping Process

The scoping process is a requirement of NEPA and serves to identify the full range of environmental issues and inform the interested or affected parties of the proposed action. During the scoping process, CDC will actively seek input from the public, interested persons, organizations, and federal, state, and regional agencies to identify environmental concerns to be addressed in the SEIS. The purpose of this Notice is to inform interested or affected parties of CDC's plan to prepare the SEIS for component changes to a new laboratory that were not analyzed in the 2014 Final EIS, to provide information on the nature of the proposed actions, and to initiate the scoping process. NEPA does not require a public scoping meeting for an SEIS, and CDC will not conduct a public scoping meeting. CDC will conduct a virtual public meeting during the public comment period for the draft SEIS (a separate notice will be published for that comment period).

Dated: January 25, 2022.

Angela K. Oliver,

Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2022–01790 Filed 1–27–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB #0970–0531]

Proposed Information Collection Activity; Formative Data Collections for ACF Program Support

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) plans to submit a request to the Office of Management and Budget (OMB) to extend approval of the existing overarching generic clearance for Formative Data Collections for ACF Program Support (OMB #0970–0531; expiration date 7/31/2022). ACF proposes minor updates to the description of potential generic information collections under the overarching generic and to the estimated number of respondents.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The goals of the generic information collections under this approval are to obtain information about program and grantee processes or needs and to inform the following types of activities, among others:

- Delivery of targeted assistance and/or workflows related to program and grantee processes. This could include the development and refinement of recordkeeping and communication systems.
- Planning for provision of programmatic or evaluation-related training or technical assistance (T/TA).
- Obtaining input on the development of program performance measures from grantees or others with experience or vested interest.
- Obtaining feedback about processes and/or practices to inform ACF program development or support, or ACF research.
- Use of rapid-cycle testing activities to strengthen programs in preparation for summative evaluations.

ACF uses a variety of techniques such as semi-structured discussions, focus groups, surveys, templates, open-ended requests, and telephone or in-person interviews in order to reach these goals.

Information collected under this overarching generic is meant to inform ACF activities and may be incorporated into documents or presentations that are made public such as through conference presentations, websites, or social media. The following are some examples of ways in which we may share information resulting from these data collections: Technical assistance plans, presentations, infographics, project specific reports, or other documents relevant to those involved with or interested in ACF programs such as federal leadership and staff, grantees, local implementing agencies, and/or T/TA providers.

Following standard OMB requirements, the Office of Planning, Research, and Evaluation will submit a change request for each individual data collection activity under this generic clearance. Each request will include the individual instrument(s), a justification specific to the individual information collection, and any supplementary documents. OMB should review requests within 10 days of submission.

The proposed types and the purpose of generic information collections submitted under this umbrella generic remain the same. Minor revisions are based on experiences over the past 3 years. These include:

- Updated burden estimates
- Broadened the description to make clearer the intention to broadly include respondents with knowledge, experience, or interest in ACF programs to allow ACF to learn about needs and processes related to ACF programs from those not necessarily funded by ACF

Respondents: Example respondents include current or prospective service providers, training or T/TA providers, grantees, contractors, current and potential participants in ACF programs or similar comparison groups, experts in fields pertaining to ACF programs, key groups involved in ACF projects and programs, individuals engaged in program re-design or demonstration development for evaluation, state or local government officials, or others involved in or prospectively involved in ACF programs.

BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Total burden (in hours)
Semi-Structured Discussions and Focus Groups	10,000	1	2	20,000
Interviews	4,500	1	1	4,500
Questionnaires/Surveys	8,000	1.5	.5	6,000
Templates and Open-ended Requests	1,000	1	10	10,000

Estimated Total Annual Burden Hours: 40,500.

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: Social Security Act, Sec 1110 [42 U.S.C. 1310].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–01777 Filed 1–27–22; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; System of Records

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of a modified system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of Health and Human Services (HHS) is modifying an existing system of records maintained by the Administration for Children and Families (ACF), Office of Child Care (OCC): System Number 09–80–0371, OCC Federal Child Care Monthly Case Records. The system of records covers case-level information on low-income working families receiving child care financial assistance through the Child Care and Development Fund (CCDF), which is provided in aggregate, non-identifiable format to Congress for empirical assessment, and to researchers and the public. Only certain pre-October 2015, case records (*i.e.,* those that include Social Security Number (SSN) as a case identifier) are included in this system of records, because only those are retrieved by a personal identifier.

DATES: In accordance with 5 U.S.C. 552a(e)(4) and (11), this Notice is applicable January 28, 2022, subject to a 30-day period in which to comment on the new routine use, described below. Please submit any comments by February 28, 2022.

ADDRESSES: The public should address written comments by mail or email to: Anita Alford, Senior Official for Privacy, Administration for Children and Families, 330 C St. SW, Washington, DC 20201, or *anita.alford@acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: General questions about this system of records should be submitted by mail or email to Helen Papadopoulos, Information Technology Specialist, at 330 C St. SW, Washington, DC 20201, 202–205–8455 or *helen.papadopoulos@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following modifications have been made to System of Records Notice (SORN) 09–80–0371 to update and improve it:

- The Categories of Records section has been revised to limit the system of records to pre-October 2015, records that include SSN as a case identifier and to list more examples of data elements contained in the records.
- The Routine Uses section has been updated to remove the statement ''Disclosure to Consumer Reporting Agencies: None'' that was formerly included in the Routine Uses section and numbered as routine use 11 (but isn't a routine use). Routine use 3, that authorizes disclosures to members of Congress and their office staff for purposes of responding to constituent inquiries, has been revised to require that the constituent requests be ''written.'' The two-breach response-related routine uses that were revised and added February 14, 2018, (see 83 FR 6591) are now numbered as 10a.and 10b.
- The Retrieval section has been revised to clarify that SSN is the only personal identifier used for retrieval, because other unique case identifiers assigned by states and territories are not personal identifiers (other case identifiers identify a family without also identifying a particular individual).
- The Retention and Disposal section has been updated to identify the applicable records disposition authority, DAA–0292–2018–0004, item 1.

Ruth Friedman,

Director, Office of Child Care, Administration for Children and Families.

SYSTEM NAME AND NUMBER:

OCC Federal Child Care Monthly Case Records, 09–80–0371.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The component responsible for this system of records is the Office of Child Care, Administration for Children and Families, 330 C St. SW, Washington, DC 20201.

SYSTEM MANAGERS:

Information Technology Specialist, Office of Child Care, Administration for Children and Families, 330 C St. SW, Washington, DC 20201, (202) 690–6782, *occ@acf.hhs.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 9858i, 9858j.

PURPOSE(S) OF THE SYSTEM:

The system of records contains OCC federal child care monthly case-level data which states and territories regularly collect and are required to provide to OCC about families receiving CCDF services and the environments where those services are provided. The Child Care and Development Block Grant (CCDBG) Act of 1990 requires states and territories to submit specific information to OCC, so that OCC can in turn report it (in aggregate form) to Congress, to give Congress an empirical basis for assessing the program (see 42 U.S.C. 9858i, 9858j). OCC also makes non-identifiable records available to researchers and the public.

The records in this system of records are pre-October 2015, records that are not intended to be personally-identifying and are not used for any purpose that involves identifying particular individuals; however, they contain, and are retrieved by, SSN, that states and territories used as a case identifier prior to October 2015. The purpose of the case identifier is to accurately count the number of families served over time and ensure that data reported at different times about the same case (*i.e.,* the same family) is associated with the correct case for research purposes.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records in this system of records are about low-income working families receiving child care financial assistance through the CCDF whose information was reported on form ACF–801, prior to October 2015, by states and territories that used SSN as a case identifier.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records consist of pre-October 2015, case-level information about families receiving CCDF services. They contain SSN as a case identifier and data elements such as state and county, reason for receiving care, total monthly copayment, total monthly income, sources of income, date assistance began, and specific data elements about children, such as race and ethnicity, birth month and year, type of child care, total monthly amount paid to child care provider, total hours of child care provided, and characteristics of the environment where the child was served, such as accreditation status or standards met. Names are not collected, and the records are not intended to include other personal identifiers. However, prior to October 2015, case-level information reported by states and territories included Social Security Numbers (SSNs) as a state- or territory-assigned case identifier (instead of another unique but non-personally identifying case identifier), for families based on requirements of the states and territories.

RECORD SOURCE CATEGORIES:

Information in the system is obtained by the states and territories receiving funds from the Child Care and Development Fund.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to others provided by statute in subsection (b) of the Privacy Act of 1974 (5 U.S.C. 552a(b)), under which ACF may release information from this system of records without the consent of the data subject. Each proposed disclosure of information under these routine uses will be evaluated to ensure that the disclosure is legally permissible.

1. *Disclosure for Law Enforcement Purpose.* Information may be disclosed to the appropriate federal, state, local, tribal, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information is relevant to a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

2. *Disclosure for Private Relief Legislation.* Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

3. *Disclosure to Congressional Office.* Information may be disclosed to a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the written request of the individual.

4. *Disclosure to Department of Justice or in Proceedings.* Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which HHS is authorized to appear, when:

- HHS, or any component thereof; or
- Any employee of HHS in his or her official capacity; or
- Any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or
- The United States, if HHS determines that litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or HHS is deemed by HHS to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

5. *Disclosure to the National Archives and Records Administration (NARA).* Information may be disclosed to NARA in records management inspections.

6. *Disclosure to Contractors, Grantees, and Others.* Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for HHS and who have a need to have access to the information in the performance of their duties or activities for HHS.

7. *Disclosure for Administrative Claim, Complaint, and Appeal.* Information may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

8. *Disclosure to Office of Personnel Management.* Information may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

9. *Disclosure in Connection with Litigation.* Information may be disclosed in connection with litigation or settlement discussions regarding claims by or against HHS, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

10. *Disclosure in the Event of a Security Breach.*

a. Information may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

b. Information may be disclosed to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Case-level records are stored on a computer network/database. Servers for the database are currently located at the National Institutes of Health Center for Information Technology (NIHCIT) in Bethesda, MD.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

The records are retrieved by SSN.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records on families and children receiving child care subsidies funded by the Child Care and CCDF are destroyed eight years after the end of the fiscal year in which the data was reported (*e.g.,* the cutoff for Fiscal Year 2015 data is September 30, 2015), per records disposition authority DAA–0292–2018–0004, item 1 approved by the National Archives and Records Administration (NARA).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Safeguards conform to the HHS Information Security and Privacy Program, *https://www.hhs.gov/ocio/securityprivacy/index.html.* Information is safeguarded in accordance with applicable laws, rules and policies, including the HHS Information Technology Security Program Handbook, all pertinent National Institutes of Standards and Technology (NIST) publications; and OMB Circular A–130, Managing Information as a Strategic Resource.

- *Administrative Safeguards:* Access to records is limited to persons authorized to update, view, or maintain Federal Child Care Monthly Case Records. Authorized users include internal users such as government and contractor personnel and federal researchers. Federal employees and direct contractor users must attend general computer security training and sign a Rules of Behavior, that is renewed annually. Additionally, direct contractors are required to sign a non-disclosure agreement. All users are given role-based access to the system on a limited need-to-know basis. Approved users' access to system records is controlled by two factor authentications. Physical and logical access to the system is removed upon termination of employment or other change in the user's role.
- *Technical Safeguards:* Electronic records are protected from unauthorized

access by user authentication controls, intrusion detection, and firewalls. Routine system security scans are run to detect web and architecture vulnerabilities.

• *Physical Safeguards:* The facility housing OCC information systems is a secure data center and can only be accessed by authorized infrastructure staff from HHS and NIH. The facility maintains fire suppression and detection devices/systems (*e.g.,* sprinkler systems, handheld fire extinguishers, fixed fire hoses, and/or smoke detectors) that are activated in the event of a fire. Servers and other computer equipment used to process identifiable data are located in secured areas and use physical access devices (*e.g.,* keys, locks, combinations, and card readers) and/or security guards to control entries into the facility.

RECORD ACCESS PROCEDURES:

An individual seeking access to records about him or her in this system of records must submit a written request to the System Manager/Policy Coordinating Official at the address specified in the ''System Manager'' section above. The requester must verify his or her identity by providing either a notarization of the request or a written certification that the requester is who or she claims to be and understands that the knowing and willful request for access to a record pertaining to an individual from an agency under false pretenses is a criminal offense under the Privacy Act, subject to a fine of up to five thousand dollars. Requesters may also ask for an accounting of disclosures that have been made of their records, if any.

CONTESTING RECORD PROCEDURES:

An individual seeking to amend a record about him or her in this system of records must submit a written request to the System Manager indicated above, verify his or her identity in the same manner as is required for an access request, and reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with any supporting documentation. The right to contest records is limited to information that is incomplete, incorrect, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

An individual who wishes to know if this system of records contains records about him or her must submit a written request to the System Manager indicated above, and must verify his or her identity in the same manner as is required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

80 FR 17893 (Apr. 2, 2015), 83 FR 6591 (Feb. 14, 2018).

[FR Doc. 2022–01771 Filed 1–27–22; 8:45 am]

BILLING CODE 4184–81–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–D–5225]

Agency Information Collection Activities; Proposed Collection; Comment Request; Foreign Supplier Verification Programs for Food Importers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements associated with our Foreign Supplier Verification Programs for Food Importers.

DATES: Submit either electronic or written comments on the collection of information by March 29, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 29, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 29, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–2017–D–5225 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Foreign Supplier Verification Programs for Food Importers.'' 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: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Foreign Supplier Verification Programs (FSVP) for Food Importers—21 CFR Part 1, Subpart L

OMB Control Number 0910–0752—Extension

This information collection supports FDA regulations in 21 CFR part 1, subpart L (21 CFR 1.500 through 1.514), which help to implement section 805 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 384a). Section 805 authorizes the Agency's FSVP and establishes requirements applicable to imported food. Respondents to the information collection are importers, as defined in section 805(a)(1) of the FD&C Act. The regulations are intended to provide verification that imported food is produced in compliance with statutory requirements that include the implementation of appropriate risk-based preventive controls. The regulations also establish that importers of foods must develop, maintain, and follow an FSVP that provides adequate assurances a foreign supplier is producing the food in compliance with processes and procedures that provide at least the same level of public health protection as those required under section 418 of the FD&C Act (21 U.S.C. 350g) (regarding hazard analysis and risk-based preventive controls for certain foods) or 419 (21 U.S.C. 350h) (regarding standards for produce safety), if either is applicable, and the implementing regulations, and is producing the food in compliance with sections 402 (21 U.S.C. 342) (regarding adulteration) and 403(w) (21 U.S.C. 343(w)) (if applicable) (regarding misbranding with respect to labeling for the presence of major food allergens) of the FD&C Act. The regulations also provide for certain exemptions. To assist respondents with understanding the requirements we have developed Agency guidance, available at: *https://www.fda.gov/food/food-safety-modernization-act-fsma/fsma-final-rule-foreign-supplier-verification-programs-fsvp-importers-food-humans-and-animals.*

Specifically, regulations in 21 CFR 1.501 set forth the applicability of requirements for FSVP, while regulations in sections 1.502 through 1.508, prescribe specific activities for developing, maintaining, and following an FSVP; as well as for evaluating compliance and for identifying and correcting hazards. Finally, regulations in section 1.509 identify required data elements applicable to food products offered for importation into the United States, while regulations in 1.510 govern required records, providing that records be made available to FDA upon request and that records be maintained electronically. On May 10, 2021, FDA launched the FSVP Importer Portal for FSVP Records Submission as a means for importers to upload FSVP records electronically and submit them to the Agency, after receiving a request for records from FDA. The portal may be found at *https://www.access.fda.gov/,* and a user guide is available at *https://www.fda.gov/media/148312/download.*

We estimate the burden for the information collection as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Exemption for food for research; 1.501(c)	36,360	40	1,454,400	0.083 (5 minutes)	120,715
Identifier for filing with U.S. Customs and Border Protection; 1.509.	56,800	157	8,917,600	0.02 (1.2 minutes)	178,352

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total			10,372,000		299,067

[1] There are no capital costs or operating and maintenance costs associated with the information collection.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1] [2]

Information collection activity; 21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Controls for low-acid canned foods; 1.502(b)	2,443	4	9,772	1	9,772
Hazard determinations, controls, and audits; 1.504, 1.506, 1.511.	56,800	87.74	4,984,036	0.38 (23 minutes)	1,917,174
Written assurances for food produced under dietary supplement current good manufacturing practices; 1.511.	11,701	2.88	33,664	2.25	75,744
Document very small importer/certain small foreign supplier status; 1.512(b)(1).	50,450	1	50,450	1	50,450
Written assurances associated with very small importer/certain small foreign supplier; 1.512(b)(3).	50,450	2.79	141,084	2.25	317,439
Total			5,219,006		2,370,579

[1] There are no capital costs or operating and maintenance costs associated with the information collection.
[2] Figures have been rounded to the nearest one hundredth.

Upon evaluation of the information collection, we are retaining the currently approved burden estimates.

Dated: January 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01796 Filed 1–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0370]

Agency Information Collection Activities; Proposed Collection; Comment Request; Export of Medical Devices; Foreign Letters of Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting requirements for firms that intend to export certain unapproved medical devices.

DATES: Submit either electronic or written comments on the collection of information by March 29, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 29, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 29, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–2013–N–0370 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Export of Medical Devices; Foreign Letters of Approval.'' 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: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Export of Medical Devices; Foreign Letters of Approval

OMB Control Number 0910–0264—Extension

Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export. Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device. An alternative to obtaining written authorization from the foreign government is to accept a notarized certification from a responsible company official in the United States that the product is not in conflict with the foreign country's laws. This certification must include a statement acknowledging that the responsible company official making the certification is subject to the provisions of 18 U.S.C. 1001. This statutory provision makes it a criminal offense to knowingly and willingly make a false or fraudulent statement, or make or use a false document, in any manner within the jurisdiction of a department or Agency of the United States. The respondents to this collection of information are companies that seek to export medical devices. FDA's estimate of the reporting burden is based on the experience of FDA's medical device program personnel.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part and/activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours	Total operating and maintenance costs
Foreign letter of approval—801(e)(2)	36	1	36	2	72	$8,250

[1] There are no capital costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall decrease of 27 hours and a corresponding increase of three responses. We attribute this adjustment to an increase in the number of respondents and a decrease in the average burden per response.

Dated: January 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01793 Filed 1–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–0980]

Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions; Draft Guidance for Industry and Food and Drug Administration Staff; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is extending the comment period for the notice of availability that appeared in the **Federal Register** of December 23, 2021. In the notice of availability, FDA requested comments on draft guidance for industry and FDA staff entitled ''Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions.'' The Agency is taking this action in response to a request for an extension to allow interested persons additional time to submit comments.

DATES: FDA is extending the comment period on the document published December 23, 2021 (86 FR 72969). Submit either electronic or written comments on the draft guidance by March 24, 2022, to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0980 for ''Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions.'' Received comments 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions'' to the Office of Policy, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Pras Pathmanathan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1133, Silver Spring, MD 20993–0002, 301–796–3490.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 23, 2021, FDA published a notice of availability with a 60-day comment period to request comments on draft guidance for industry and FDA staff entitled ''Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions.''

The Agency has received a request for an extension of the comment period. The request conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful or thoughtful response.

FDA has considered the request and is extending the comment period for the notice of availability for 30 days, until March 24, 2022. The Agency believes that a 30-day extension allows adequate time for interested persons to submit comments without significantly

delaying guidance on these important issues.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/medical-devices/device-advice-comprehensive-regulatory-assistance/guidance-documents-medical-devices-and-radiation-emitting-products.* This draft guidance document is also available at *https://www.regulations.gov* and at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.* Persons unable to download an electronic copy of ''Assessing the Credibility of Computational Modeling and Simulation in Medical Device Submissions'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1500056 and complete title to identify the guidance you are requesting.

Dated: January 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01788 Filed 1–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–5925]

21st Century Cures Act: Annual Compilation of Notices of Updates From the Susceptibility Test Interpretive Criteria Web Page; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing the availability of the Agency's annual compilation of notices of updates to the Agency's Susceptibility Test Interpretive Criteria Web Page. The Agency established the Susceptibility Test Interpretive Criteria Web Page on December 13, 2017, and since establishment has provided updates to both the format of the web pages and to the susceptibility test interpretive criteria identified and recognized by FDA on the web pages. FDA is publishing this notice in accordance with procedures established by the 21st Century Cures Act (Cures Act).

DATES: This notice is published in the **Federal Register** on January 28, 2022.

ADDRESSES: You may submit either electronic or written comments and information as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–5925 for ''Susceptibility Test Interpretive Criteria Recognized and Listed on the Susceptibility Test Interpretive Web Page; Request for Comments.'' Received comments 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: Jacquelyn Rosenberger, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 6242, Silver Spring, MD 20993–0002, 301–

796–9179, *Jacquelyn.Rosenberger@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 511A of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360a–2), as added by section 3044 of the Cures Act (Pub. L. 114–255), was signed into law on December 13, 2016. This provision clarified FDA's authority to identify and efficiently update susceptibility test interpretive criteria, including through the recognition by FDA of standards established by standards development organizations (SDOs). It also clarified that sponsors of antimicrobial susceptibility testing devices may rely upon listed susceptibility test interpretive criteria to support premarket authorization of their devices, provided they meet certain conditions, which allows for a more streamlined process for incorporating up-to-date information into such devices.

In the **Federal Register** notice of December 13, 2017 (82 FR 58617), FDA announced the establishment of the Susceptibility Test Interpretive Criteria Web Page. This web page recognizes susceptibility test interpretive criteria established by an SDO that fulfills the requirements under section 511A(b)(2)(A) of the FD&C Act; identifies when FDA does not recognize, in whole or in part, susceptibility test interpretive criteria established by an SDO; and lists susceptibility test interpretive criteria identified by FDA outside the SDO process. The susceptibility test interpretive criteria listed by FDA on the Susceptibility Test Interpretive Criteria Web Page is deemed to be recognized as a standard under section 514(c)(1) of the FD&C Act (21 U.S.C. 360d(c)(1)). The Susceptibility Test Interpretive Criteria Web Page can be found at *https://www.fda.gov/STIC.*

On March 1, 2018, FDA published a notice in the **Federal Register** (83 FR 8883) requesting comments on FDA's initial susceptibility test interpretive criteria recognition and listing determinations on the Susceptibility Test Interpretive Criteria Web Page (*https://www.federalregister.gov/documents/2018/03/01/2018-04175/susceptibility-test-interpretive-criteria-recognized-and-listed-on-the-susceptibility-test*). FDA may consider information provided by interested third parties as a basis for evaluating new or updated interpretive criteria standards (section 511A(c)(2)(B) of the FD&C Act); third parties should submit any information they wish to convey to the Agency to Docket No. FDA–2017–N–5925. If comments are received, FDA will review those comments and will make, as appropriate, updates to the recognized standards or susceptibility test interpretive criteria.

At least every 6 months after the establishment of the Susceptibility Test Interpretive Criteria web page, FDA is required, as appropriate to: (1) Publish on that web page a notice recognizing new or updated susceptibility test interpretive criteria standards, or recognizing or declining to recognize parts of standards; (2) withdraw recognition of susceptibility test interpretive criteria standards, or parts of standards; and (3) make any other necessary updates to the lists published on the Susceptibility Test Interpretive Criteria web page (section 511A(c)(1)(A) of the FD&C Act). FDA has provided notices of updates on the Susceptibility Test Interpretive Criteria web page, which can be found here: *https://www.fda.gov/Drugs/DevelopmentApprovalProcess/DevelopmentResources/ucm593952.htm*. Interested parties may also sign up to receive emails informing them of these updates as they occur by using the link provided either on the main Susceptibility Test Interpretive Criteria web page (*https://www.fda.gov/STIC*) or on the updates page.

Once a year, FDA is required to compile the new notices published on the Susceptibility Test Interpretive Criteria web page, publish them in the **Federal Register**, and provide for public comment (see section 511A(c)(3) of the FD&C Act). This **Federal Register** notice satisfies that requirement. If comments are received, FDA will review them and make updates to the recognized standards or susceptibility test interpretive criteria as needed.

II. Annual Compilation of Notices: Susceptibility Test Interpretive Criteria Web Page

TABLE 1—NOTICES OF UPDATES TO RECOGNIZED OR UPDATED SUSCEPTIBILITY TEST INTERPRETIVE CRITERIA (STIC) BY DRUG

Drug	Route of administration	Action taken	Therapeutic category	Date
Cefiderocol	Injection	FDA has updated STIC and added STIC for *Acinetobacter baumannii complex*.	Antibacterial	9/25/20
Ceftaroline fosamil	Injection	For *Staphylococcus aureus,* FDA has reviewed STIC and concludes no changes are needed at this time. Rationale available at *https://www.fda.gov/drugs/development-resources/fda-rationale-recognition-decision-ceftaroline-fosamil*.	Antibacterial	4/16/20
Ciprofloxacin	Oral, Injection	For *Salmonella* spp., the updated standard is recognized.	Antibacterial	2/28/20
Daptomycin	Injection	FDA updated STIC (Rationale available at *https://www.fda.gov/drugs/development-resources/fda-rationale-recognition-decision-daptomycin*).	Antibacterial	8/25/20
Delafloxacin	Injection, Oral	FDA identified STIC for *Staphylococcus lugdunensis* for Acute Bacterial Skin and Skin Structure Infections.	Antibacterial	10/06/20
Imipenem-Cilastatin-Relebactam.	Injection	FDA identified STIC for *Acinetobacter calcoaceticus-baumannii complex* and *Haemophilus influenzae*.	Antibacterial	6/4/20
Levofloxacin	Oral, Injection	For *Salmonella* spp., the updated standard is recognized.	Antibacterial	2/28/20
Ofloxacin	Oral	For *Salmonella* spp., the updated standard is recognized.	Antibacterial	2/28/20

TABLE 1—NOTICES OF UPDATES TO RECOGNIZED OR UPDATED SUSCEPTIBILITY TEST INTERPRETIVE CRITERIA (STIC) BY DRUG—Continued

Drug	Route of administration	Action taken	Therapeutic category	Date
Omadacycline	Injection, Oral	FDA updated disk breakpoints for *Streptococcus pneumoniae* for community acquired bacterial pneumonia.	Antibacterial	8/25/20

Dated: January 21, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01693 Filed 1–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–1022]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Reporting Associated With Food Additive Petitions, Investigational Food Additive Files Exemptions, and Declaration of Color Additives on Animal Food Labels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) 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 February 28, 2022.

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 OMB control number for this information collection is 0910–0546. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10 a.m.–12 p.m., 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *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.

Reporting Associated With Food Additive Petitions, Investigational Food Additive Files Exemptions, and Declaration of Color Additives on Animal Food Labels—21 CFR 501.22(k), 570.17, 571.1, and 571.6

OMB Control Number 0910–0546—Extension

This information collection supports FDA regulations as discussed below. In this notice, we are combining all reporting burden associated with FDA's regulations at §§ 501.22(k), 570.17, 571.1, and 571.6 (21 CFR 501.22(k), 570.17, 571.1, and 571.6) into one collection and are consolidating the burden for OMB control numbers 0910–0546 and 0910–0721. Upon approval of the consolidated collection OMB control number 0910–0546, we will ask OMB to discontinue OMB control number 0910–0721. The information collection provisions approved under OMB control numbers 0910–0546 and 0910–0721 are similar in that they support FDA's regulations at §§ 501.22(k), 570.17, 571.1, and 571.6. Thus, with this notice, FDA proposes to consolidate these collections of information into one OMB control number for government efficiency and to allow the public to look to one OMB control number for all reporting associated with FDA's regulations at §§ 501.22(k), 570.17, 571.1, and 571.6.

Food Additive Petitions and Investigational Food Additive Files Exemptions

Section 409(a) of the Federal Food, Drug and Cosmetic Act (FD&C Act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe unless its use is permitted by a regulation which prescribes the condition(s) under which it may safely be used, or unless it is exempted by regulation for investigational use. Section 409(b) of FD&C Act specifies the information that must be submitted by a petitioner in order to establish the safety of a food additive and to secure the issuance of a regulation permitting its use.

To implement the provisions of section 409 of the FD&C Act, we issued procedural regulations under 21 CFR part 571. These procedural regulations are designed to specify more thoroughly the information that must be submitted to meet the requirement set down in broader terms by the FD&C Act. The regulations add no substantive requirements to those indicated in the FD&C Act but attempt to explain these requirements and provide a standard format for submission to speed processing of the food additive petition. Labeling requirements for food additives intended for animal consumption are also set forth in various regulations contained in parts 501, 573, and 579 (21 CFR parts 501, 573, and 579). The labeling regulations are considered by FDA to be cross-referenced to § 571.1, which is the subject of this same OMB clearance for food additive petitions.

Regarding the investigational use of food additives, section 409(j) of the FD&C Act provides that any food additive or any food bearing or containing such an additive may be exempted from the requirements of this section if intended solely for investigational use by qualified experts. Investigational use of a food additive is typically to address the safety and/or intended physical or technical effect of the additive. To implement the provisions of section 409(j) of the FD&C Act, we issued regulations under § 570.17. These regulations are designed to specify more thoroughly the information that must be submitted to meet the requirement set down in broad terms by the FD&C Act. Labeling requirements for investigational food additive files are also set forth in various regulations contained in part 501. The labeling regulations are considered by FDA to be cross-referenced to § 570.17, which is the subject of this same OMB clearance for investigational food additive files.

The information collected is necessary to protect the public health. We use the information submitted by

food manufacturers or food additive manufacturers to ascertain whether the data establish the identity of the substance, justify its intended effect in/on the food, and establish that its intended use in/on food is safe.

Animal Food Labeling; Declaration of Certified and Non-Certified Color Additives

FDA has the authority under the FD&C Act to issue regulations concerning animal food. Specifically, section 403(i) of the FD&C Act (21 U.S.C. 343(i)) requires that certified color additives used in or on a food must be declared by their common or usual names and not be designated by the collective term ''colorings.'' Our regulations in part 501 set forth the requirements for animal food labeling. Under § 501.22(k), animal food manufacturers must declare on the animal food label the presence of certified and noncertified color additives in their animal food products. Our animal food labeling regulation at § 501.22(k) is consistent with the regulations requiring the declaration of color additives on human food labels. The purpose of the labeling is to provide animal owners with information on the color additives used in animal food. Animal owners use the information to become knowledgeable about the foods they purchase for their animals.

Description of Respondents: Respondents to this collection of information are manufacturers of animal food products that contain color additives or are manufacturers of food additives.

In the **Federal Register** of October 8, 2021 (86 FR 56277), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although three comments were received, they were not responsive to the four collection of information topics solicited and therefore will not be discussed in this document.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Food Additive Petitions:					
571.1(c); Moderate Category	6	1	6	3,000	18,000
571.1(c); Complex Category	5	1	5	10,000	50,000
571.6; Amendment of Petition	5	1	5	1,300	6,500
Investigational Food Additive Files:					
570.17; Moderate Category	6	1	6	1,500	9,000
570.17; Complex Category	7	1	7	5,000	35,000
Color Additives:					
501.22(k); labeling of color additive or lake of color additive; labeling of color additives not subject to certification.	3,120	0.8292	2,587	0.25 (15 minutes)	647
Total					119,147

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

For the purpose of this consolidation, we base our estimate of the total annual responses on submissions received during fiscal years 2019 and 2020. We base our estimate of the hours per response on our experience with the labeling, food additive petition, and filing processes.

The information collection reflects a net decrease of 70,453 hours (189,600 OMB approved hours—119,147 estimated hours). We also experienced a net increase of 2,587 responses from 35 OMB approved annual responses to 2,616 estimated annual responses. These changes were due to the consolidating of the information collection covered by OMB control number 0910–0721 and due to estimated changes of the number of respondents for food additive petitions and investigational food additive files.

Section 571.1(c) Moderate Category: The estimated time requirement per food additive petition remains at approximately 3,000 hours; however, we now estimate that the number of annual respondents has decreased from 12 to 6 respondents for a total of 18,000 hours.

Section 571.1(c) Complex Category: The estimated time requirement per food additive petition remains at approximately 10,000 hours; however, we now estimate that the number of annual respondents has decreased from 12 to 5 respondents for a total of 50,000 hours.

Section 571.6 Amendment of Petition: We estimated that the number of annual respondents that will submit an amendment has increased from two to five respondents who will each submit one amendment for a total of 6,500 hours. This is an increase of three respondents and 3,900 hours from the burden approved by OMB.

Section 570.17 Moderate Category: We estimated that the number of annual respondents for investigational food additive files has increased from four to six respondents who will each submit one file for a total of 9,000 hours. This is an increase of two respondents and 3,000 hours from the burden approved by OMB.

Section 570.17 Complex Category: We estimated that the number of annual respondents for investigational food additive files has increased from five to seven respondents who will each submit one such file, for a total of 35,000 hours. This is an increase of 10,000 hours from the burden approved by OMB.

Section 501.22(k) Labeling of Color Additive or Lake of Color Additive; Labeling of Color Additives Not Subject to Certification: The information collection reflects an adjustment in burden by 647 hours and 2,587 responses. We attribute this adjustment due to the consolidation of OMB control numbers 0910–0546 and 0910–0721.

Dated: January 25, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01792 Filed 1–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0008]

Request for Nominations for Individuals and Consumer Organizations for Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is requesting that any consumer organizations interested in participating in the selection of voting and/or nonvoting consumer representatives to serve on its advisory committees or panels notify FDA in writing. FDA is also requesting nominations for voting and/or nonvoting consumer representatives to serve on advisory committees and/or panels for which vacancies currently exist or are expected to occur in the near future. Nominees recommended to serve as a voting or nonvoting consumer representative may be self-nominated or may be nominated by a consumer organization. FDA seeks to include the views of women and men, members of all racial and ethnic groups, and individuals with and without disabilities on its advisory committees and, therefore, encourages nominations of appropriately qualified candidates from these groups.

DATES: Any consumer organization interested in participating in the selection of an appropriate voting or nonvoting member to represent consumer interests on an FDA advisory committee or panel may send a letter or email stating that interest to FDA (see **ADDRESSES**) by March 14, 2022, for vacancies listed in this notice. Concurrently, nomination materials for prospective candidates should be sent to FDA (see **ADDRESSES**) by March 14, 2022. Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2022.

ADDRESSES: All statements of interest from consumer organizations interested in participating in the selection process should be submitted electronically to *ACOMSSubmissions@fda.hhs.gov* or by mail to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002.

Consumer representative nominations should be submitted electronically by logging into the FDA Advisory Committee Membership Nomination Portal: *https://www.accessdata.fda.gov/scripts/FACTRSPortal/FACTRS/index.cfm,* or by mail to Advisory Committee Oversight and Management Staff, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002. Additional information about becoming a member of an FDA advisory committee can also be obtained by visiting FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm.*

FOR FURTHER INFORMATION CONTACT: *For questions relating to participation in the selection process:* Kimberly Hamilton, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5122, Silver Spring, MD 20993–0002, 301–796–8220, *Kimberly.Hamilton@fda.hhs.gov.*

For questions relating to specific advisory committees or panels, contact the appropriate Contact Person listed in table 1.

TABLE 1—ADVISORY COMMITTEE CONTACTS

Contact person	Committee/panel
Rakesh Raghuwanshi, Office of the Chief Scientist, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 3309, Silver Spring, MD 20993–0002, 301–796–4769, *Rakesh.Raghuwanshi@fda.hhs.gov*.	FDA Science Board Advisory Committee.
Shivana Srivastava, Office of Pediatric Therapeutics, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 5157, Silver Spring, MD 20993–0002, 301–796–8695, *Shivana.Srivastava@fda.hhs.gov*.	Pediatrics Advisory Committee.
Prabhakara Atreya, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1226, Silver Spring, MD 20993–0002, 240–402–8006, *Prabhakara.Atreya@fda.hhs.gov*.	Allergenics Products Advisory Committee.
LaToya Bonner, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2428, Silver Spring, MD 20993–0002, 301–796–2855, *LaToya.Bonner@fda.hhs.gov*.	Endocrinologic and Metabolic Drugs Advisory Committee.
Moon Hee Choi, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2434, Silver Spring, MD 20993–0002, 301–796–2894, *MoonHee.Choi@fda.hhs.gov*.	Non-Prescription Drugs Advisory Committee.
Joyce Frimpong, Center for Drugs Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2462, Silver Spring, MD 20993–0002, 301–796–7973, *Joyce.Frimpong@fda.hhs.gov*.	Psychopharmacologic Drugs Advisory Committee.
Candace Nalls, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–636–0510, *Candace.Nalls@fda.hhs.gov*.	Anesthesiology and Respiratory Therapy Devices Panel, Clinical Chemistry and Clinical Toxicology Devices Panel, Gastroenterology and Urology Devices Panel, General and Plastic Surgery Devices Panel.
Akinola Awojope, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, 301–636–0512, *Akinola.Awojope@fda.hhs.gov*.	Dental Products Devices Panel, Obstetrics and Gynecology Devices Panel, Orthopaedic and Rehabilitation Devices Panel.

TABLE 1—ADVISORY COMMITTEE CONTACTS—Continued

Contact person	Committee/panel
James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5211, Silver Spring, MD 20993–0002, 301–796–6313, *James.Swink@fda.hhs.gov.*	Circulatory System Devices Panel, Immunology Devices Panel, Microbiology Devices Panel, Ophthalmic Devices Panel.
Jarrod Collier, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 1333, Silver Spring, MD 20993–0002, 240–672–5763, *Jarrod.Collier@fda.hhs.gov.*	General Hospital and Personal Use Devices Panel, Hematology and Pathology Devices Panel, Molecular and Clinical Genetics Devices Panel, National Mammography Quality Assurance Advisory Committee, Radiology Devices Panel.
Letise Williams, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5407, Silver Spring, MD 20993–0002, 301–796–8398, *Letise.Williams@fda.hhs.gov.*	Patient Engagement Advisory Committee.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and/or nonvoting consumer representatives for the vacancies listed in table 2:

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
FDA Science Board Advisory Committee—The Science Board provides advice to the Commissioner of Food and Drugs (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science; and input into the Agency's research agenda, and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.	1—Voting	Immediately.
Pediatrics Advisory Committee—Knowledgeable in pediatric research, pediatric subspecialties, statistics, and/or biomedical ethics. The core of voting members shall also include one representative from a pediatric health organization and one representative from a relevant patient or patient-family organization and may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons.	1—Voting	June 1, 2022.
Allergenics Products Advisory Committee—Knowledgeable in the fields of allergy, immunology, pediatrics, internal medicine, biochemistry, and related specialties.	1—Voting	Immediately.
Endocrinologic and Metabolic Drugs Advisory Committee—Knowledgeable in the fields of endocrinology, metabolism, epidemiology or statistics, and related specialties.	1—Voting	July 1, 2022.
Non-Prescription Drugs Advisory Committee—Knowledgeable in the fields of internal medicine, family practice, clinical toxicology, clinical pharmacology, pharmacy, dentistry, and related specialties.	1—Voting	June 1, 2022.
Psychopharmacologic Drugs Advisory Committee—Knowledgeable in the fields of psychopharmacology, psychiatry, epidemiology or statistics, and related specialties.	1—Voting	July 1, 2022.
Anesthesiology and Respiratory Therapy Devices Panel—Anesthesiologists, pulmonary medicine specialists, or other experts who have specialized interests in ventilator support, pharmacology, physiology, or the effects and complications of anesthesia.	1—Nonvoting	Immediately.
Clinical Chemistry and Clinical Toxicology Devices Panel—Doctor of Medicine or Philosophy with experience in clinical chemistry (e.g., cardiac markers), clinical toxicology, clinical pathology, clinical laboratory medicine, and endocrinology.	1—Nonvoting	Immediately.
Gastroenterology and Urology Devices Panel—Gastroenterologists, urologists, and nephrologists.	1—Nonvoting	Immediately.
General and Plastic Surgery Devices Panel—Surgeons (general, plastic, reconstructive, pediatric, thoracic, abdominal, pelvic, and endoscopic); dermatologists; experts in biomaterials, lasers, wound healing, and quality of life; and biostatisticians.	1—Nonvoting	Immediately.
Dental Products Devices Panel—Dentists, engineers, and scientists who have expertise in the areas of dental implants, dental materials, periodontology, tissue engineering, and dental anatomy.	1—Nonvoting	Immediately.
Obstetrics and Gynecology Devices Panel—Experts in perinatology, embryology, reproductive endocrinology, pediatric gynecology, gynecological oncology, operative hysteroscopy, pelviscopy, electrosurgery, laser surgery, assisted reproductive technologies, contraception, postoperative adhesions, and cervical cancer and colposcopy; biostatisticians and engineers with experience in obstetrics/gynecology devices; urogynecologists; experts in breast care; experts in gynecology in the older patient; experts in diagnostic (optical) spectroscopy; experts in midwifery; labor and delivery nursing.	1—Nonvoting	Immediately.
Orthopaedic and Rehabilitation Devices Panel—Orthopedic surgeons (joint spine, trauma, and pediatric); rheumatologists; engineers (biomedical, biomaterials, and biomechanical); experts in rehabilitation medicine, sports medicine, and connective tissue engineering; and biostatisticians.	1—Nonvoting	Immediately.
Circulatory Systems Devices Panel—Interventional cardiologists, electrophysiologists, invasive (vascular) radiologists, vascular and cardiothoracic surgeons, and cardiologists with special interest in congestive heart failure.	1—Nonvoting	Immediately.

TABLE 2—COMMITTEE DESCRIPTIONS, TYPE OF CONSUMER REPRESENTATIVE VACANCY, AND APPROXIMATE DATE NEEDED—Continued

Committee/panel/areas of expertise needed	Type of vacancy	Approximate date needed
Immunology Devices Panel—Persons with experience in medical, surgical, or clinical oncology, internal medicine, clinical immunology, allergy, molecular diagnostics, or clinical laboratory medicine.	1—Nonvoting	Immediately.
Microbiology Devices Panel—Clinicians with an expertise in infectious disease, e.g., pulmonary disease specialists, sexually transmitted disease specialists, pediatric infectious disease specialists, experts in tropical medicine and emerging infectious diseases, mycologists; clinical microbiologists and virologists; clinical virology and microbiology laboratory directors, with expertise in clinical diagnosis and in vitro diagnostic assays, e.g., hepatologists; molecular biologists.	1—Nonvoting	Immediately.
Ophthalmic Devices Panel—Ophthalmists with expertise in corneal-external disease, vitreo-retinal surgery, glaucoma, ocular immunology, ocular pathology; optometrists; vision scientists; and ophthalmic professionals with expertise in clinical trial design, quality of life assessment, electrophysiology, low vision rehabilitation, and biostatistics.	1—Nonvoting	Immediately.
General Hospital and Personal Use Devices Panel—Internists, pediatricians, neonatologists, endocrinologists, gerontologists, nurses, biomedical engineers, or microbiologists/infection control practitioners or experts.	1—Nonvoting	Immediately.
Hematology and Pathology Devices Panel—Hematologists (benign and/or malignant hematology), hematopathologists (general and special hematology, coagulation and hemostasis, and hematological oncology), gynecologists with special interests in gynecological oncology, cytopathologists, and molecular pathologists with special interests in development of predictive biomarkers.	1—Nonvoting	Immediately.
Molecular and Clinical Genetics Devices Panel—Experts in human genetics and in the clinical management of patients with genetic disorders, e.g., pediatricians, obstetricians, neonatologists. The Agency is also interested in considering candidates with training in inborn errors of metabolism, biochemical and/or molecular genetics, population genetics, epidemiology, and related statistical training. Additionally, individuals with experience in genetic counseling, medical ethics, as well as ancillary fields of study will be considered.	1—Nonvoting	Immediately.
Radiological Devices Panel—Physicians with experience in general radiology, mammography, ultrasound, magnetic resonance, computed tomography, other radiological subspecialties, and radiation oncology; scientists with experience in diagnostic devices, radiation physics, statistical analysis, digital imaging, and image analysis.	1—Nonvoting	Immediately.
National Mammography Quality Assurance Advisory Committee—Physician, practitioner, or other health professional whose clinical practice, research specialization, or professional expertise includes a significant focus on mammography.	4—Voting	Immediately.
Patient Engagement Advisory Committee—Experts who are knowledgeable in areas such as clinical research, primary care patient experience, and healthcare needs of patient groups in the United States. Selected Committee members may also be experienced in the work of patient and health professional organizations; methodologies for eliciting patient preferences; and strategies for communicating benefits, risks, and clinical outcomes to patients and research subjects.	1—Voting	Immediately.

I. Functions and General Description of the Committee Duties

A. FDA Science Board Advisory Committee

The Science Board Advisory Committee (Science Board) provides advice to the Commissioner of Food and Drugs (Commissioner) and other appropriate officials on specific complex scientific and technical issues important to FDA and its mission, including emerging issues within the scientific community. Additionally, the Science Board provides advice that supports the Agency in keeping pace with technical and scientific developments, including in regulatory science, and input into the Agency's research agenda and on upgrading its scientific and research facilities and training opportunities. It also provides, where requested, expert review of Agency-sponsored intramural and extramural scientific research programs.

B. Pediatrics Advisory Committee

The Committee advises and makes recommendations to the Commissioner regarding (1) pediatric research; (2) identification of research priorities related to pediatric therapeutics and the need for additional treatments of specific pediatric diseases or conditions; (3) the ethics, design, and analysis of clinical trials related to pediatric therapeutics; (4) pediatric labeling disputes; (5) pediatric labeling changes; (6) adverse event reports for drugs granted pediatric exclusivity and any safety issues that may occur; (7) any other pediatric issue or pediatric labeling dispute involving FDA regulated products; (8) research involving children as subjects; and (9) any other matter involving pediatrics for which FDA has regulatory responsibility. The Committee also advises and makes recommendations to the Secretary of Health and Human Services (HHS) directly or to the Secretary of HHS through the Commissioner on research involving children as subjects that is conducted or supported by the Department of Health and Human Services.

C. Allergenics Advisory Committee

Reviews and evaluates available data concerning the safety, effectiveness, and adequacy of labeling of marketed and investigational allergenic biological products or materials that are administered to humans for the diagnosis, prevention, or treatment of allergies and allergic disease as well as the affirmation or revocation of biological product licenses, on the safety, effectiveness, and labeling of the products, on clinical and laboratory studies of such products, on amendments or revisions to regulations governing the manufacture, testing, and licensing of allergenic biological products, and on the quality and relevance of FDA's research programs.

D. Endocrinologic and Metabolic Drugs Advisory Committee

Reviews and evaluates data concerning the safety and effectiveness

of marketed and investigational human drug products for use in the treatment of endocrine and metabolic disorders.

E. Nonprescription Drugs Advisory Committee

Review and evaluate available data concerning the safety and effectiveness of over-the-counter (nonprescription) human drug products, or any other FDA-regulated product, for use in the treatment of a broad spectrum of human symptoms and diseases and advise the Commissioner either on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded or on the approval of new drug applications for such drugs. The Committee will serve as a forum for the exchange of views regarding the prescription and nonprescription status, including switches from one status to another, of these various drug products and combinations thereof. The Committee may also conduct peer review of Agency-sponsored intramural and extramural scientific biomedical programs in support of FDA's mission and regulatory responsibilities.

F. Psychopharmacologic Drugs Advisory Committee

The Psychopharmacologic Drugs Advisory Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human products for use in the practice of psychiatry and related fields.

G. Certain Panels of the Medical Devices Advisory Committee

The Medical Devices Advisory Committee has established certain panels to review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area: (1) Advises on the classification or reclassification of devices into one of three regulatory categories and advises on any possible risks to health associated with the use of devices; (2) advises on formulation of product development protocols; (3) reviews premarket approval applications for medical devices; (4) reviews guidelines and guidance documents; (5) recommends exemption of certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act; (6) advises on the necessity to ban a device; and (7) responds to requests from the Agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices. With the exception of the Medical Devices Dispute Resolution Panel, each panel, according to its specialty area, may also make appropriate recommendations to the Commissioner on issues relating to the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

The Dental Products Panel also functions at times as a dental drug panel. The functions of the dental drug panel are to evaluate and recommend whether various prescription drug products should be changed to over-the-counter status and to evaluate data and make recommendations concerning the approval of new dental drug products for human use.

The Medical Devices Dispute Resolution Panel provides advice to the Commissioner on complex or contested scientific issues between FDA and medical device sponsors, applicants, or manufacturers relating to specific products, marketing applications, regulatory decisions and actions by FDA, and Agency guidance and policies. The Panel makes recommendations on issues that are lacking resolution, are highly complex in nature, or result from challenges to regular advisory panel proceedings or Agency decisions or actions.

H. National Mammography Quality Assurance Advisory Committee

The National Mammography Quality Assurance Advisory Committee advises the Agency on the following: Development of appropriate quality standards and regulations for mammography facilities; standards and regulations for bodies accrediting mammography facilities under this program; regulations with respect to sanctions; procedures for monitoring compliance with standards; establishing a mechanism to investigate consumer complaints; and reporting new developments concerning breast imaging that should be considered in the oversight of mammography facilities. The Committee also advises the Agency on determining whether there exists a shortage of mammography facilities in rural and health professional shortage areas and determining the effects of personnel on access to the services of such facilities in such areas; determining whether there exist a sufficient number of medical physicists; and determining the costs and benefits of compliance with these requirements.

I. Patient Engagement Advisory Committee

The Patient Engagement Advisory Committee advises the Agency on complex issues relating to medical devices, the regulation of devices, and their use by patients. The Committee may consider topics such as Agency guidance and policies, clinical trial or registry design, patient preference study design, benefit-risk determinations, device labeling, unmet clinical needs, available alternatives, patient reported outcomes and device-related quality of life or health status issues, and other patient-related topics. The Committee will provide relevant skills and perspectives to improve communication of benefits, risks, and clinical outcomes and increase integration of patient perspectives into the regulatory process for medical devices. The Committee will perform its duties by discussing and providing advice and recommendation in ways such as identifying new approaches, promoting innovation, recognizing unforeseen risks or barriers, and identifying unintended consequences that could result from FDA policy.

II. Criteria for Members

Persons nominated for membership as consumer representatives on committees or panels should meet the following criteria: (1) Demonstrate an affiliation with and/or active participation in consumer or community-based organizations, (2) be able to analyze technical data, (3) understand research design, (4) discuss benefits and risks, and (5) evaluate the safety and efficacy of products under review. The consumer representative should be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and public advocacy groups. These organizations recommend nominees for the Agency's selection. Representatives from the consumer health branches of Federal, State, and local governments also may participate in the selection process. Any consumer organization interested in participating in the selection of an appropriate voting

or nonvoting member to represent consumer interests should send a letter stating that interest to FDA (see **ADDRESSES**) within 30 days of publication of this document.

Within the subsequent 30 days, FDA will compile a list of consumer organizations that will participate in the selection process and will forward to each such organization a ballot listing at least two qualified nominees selected by the Agency based on the nominations received, together with each nominee's current curriculum vitae or résumé. Ballots are to be filled out and returned to FDA within 30 days. The nominee receiving the highest number of votes ordinarily will be selected to serve as the member representing consumer interests for that particular advisory committee or panel.

IV. Nomination Procedures

Any interested person or organization may nominate one or more qualified persons to represent consumer interests on the Agency's advisory committees or panels. Self-nominations are also accepted. Nominations must include a current, complete résumé or curriculum vitae for each nominee and a signed copy of the *Acknowledgement and Consent* form available at the FDA Advisory Nomination Portal (see **ADDRESSES**), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Nominations must also specify the advisory committee(s) or panel(s) for which the nominee is recommended. In addition, nominations must also acknowledge that the nominee is aware of the nomination unless self-nominated. FDA will ask potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflicts of interest. Members will be invited to serve for terms of up to 4 years.

FDA will review all nominations received within the specified timeframes and prepare a ballot containing the names of qualified nominees. Names not selected will remain on a list of eligible nominees and be reviewed periodically by FDA to determine continued interest. Upon selecting qualified nominees for the ballot, FDA will provide those consumer organizations that are participating in the selection process with the opportunity to vote on the listed nominees. Only organizations vote in the selection process. Persons who nominate themselves to serve as voting or nonvoting consumer representatives will not participate in the selection process.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: January 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01724 Filed 1–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–4428]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medicated Feed Mill License Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of medicated feed mill license reporting.

DATES: Submit either electronic or written comments on the collection of information by March 29, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 29, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 29, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–2018–N–4428 for ''Medicated Feed Mill License Application.'' 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: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medicated Feed Mill License Application—21 CFR Part 515

OMB Control Number 0910–0337—Extension

Feed manufacturers that seek to manufacture a Type B or Type C medicated feed using Category II, Type A medicated articles or manufacture certain liquid and free-choice feed using Category I, Type A medicated articles that must follow proprietary formulas or specifications, are required to obtain a facility license under section 512 of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360b). Our regulations in part 515 (21 CFR part 515) establish the procedures associated with applying for a facility license. We require that a manufacturer seeking a facility license submit a completed medicated feed mill license application using Form FDA 3448 (21 CFR 515.10(b)). We use the information submitted to establish that the applicant has made the certifications required by section 512 of the FD&C Act, to register the mill, and to schedule a preapproval inspection.

We require the submission of a supplemental medicated feed mill license application for a change in facility ownership or a change in facility address (§ 515.11(b) (21 CFR 515.11(b))). If a licensed facility is no longer manufacturing medicated animal feed under § 515.23 (21 CFR 515.23), a manufacturer may request voluntary revocation of a medicated feed mill license. An applicant also has the right to file a request for hearing under § 515.30(c) (21 CFR 515.30(c)) to give reasons why a medicated feed mill license should not be refused or revoked.

Under § 510.305 (21 CFR 510.305) we require each applicant to maintain in a single accessible location: (a) A copy of the approved medicated feed mill license (Form FDA 3448) on the premises of the manufacturing establishment; and (b) Approved or index listed labeling for each Type B and/or Type C feed being manufactured on the premises of the manufacturing establishment or the facility where the feed labels are generated.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section and activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Medicated Feed Mill License Application using Form FDA 3448 (515.10(b)).	5	1	5	0.25 (15 minutes)	1.25
Supplemental Feed Mill License Application using Form FDA 3448 (515.11(b)).	14	1	14	0.25 (15 minutes)	3.5
Voluntary Revocation of Medicated Feed Mill License (515.23)	15	1	15	0.25 (15 minutes)	3.75
Filing a Request for a Hearing on Medicated Feed Mill License (515.30(c)).	1	1	1	4	4
Total	.....	.....	.....	.....	12.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section and activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Maintenance of Records for Approved Labeling for Each ''Type B'' and ''Type C'' Feed (510.305).	795	1	795	0.03 (2 minutes)	24

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall decrease of 17 hours and a corresponding decrease of 105 responses/records. We attribute this adjustment to a decrease in the number of submissions we received over the last few years.

Dated: January 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01738 Filed 1–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0386]

Agency Information Collection Activities; Proposed Collection; Comment Request; Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products.''

DATES: Submit either electronic or written comments on the collection of information by March 29, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 29, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 29, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–2012–N–0386 for ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products.'' 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: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments and Listing of Ingredients in Tobacco Products

OMB Control Number 0910–0650—Extension

On June 22, 2009, the Family Smoking Prevention and Tobacco Control Act (Tobacco Control Act) (Pub. L. 111–31) was signed into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (FD&C Act) by adding, among other things, a chapter granting FDA important authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors. The Tobacco Control Act created new requirements for the tobacco industry. Section 101 of the Tobacco Control Act amended the FD&C Act by adding, among others, sections 905 and 904 (21 U.S.C. 387e and 387d).

Section 905 of the FD&C Act requires the annual registration of any ''establishment in any State engaged in the manufacture, preparation, compounding, or processing of a tobacco product or tobacco products.'' Section 905 requires this registration be completed by December 31 of each year. The Secretary of Health and Human Services (Secretary) has delegated to the Commissioner of Food and Drugs the responsibility for administering the FD&C Act, including section 905. Section 905 of the FD&C Act requires owners or operators of each establishment to register: (1) Their name; (2) places of business; (3) a list of all tobacco products which are manufactured by that person; (4) a copy of all labeling and a reference to the authority for the marketing of any tobacco product subject to a tobacco product standard under section 907 of the FD&C Act (21 U.S.C. 387g) or to premarket review under section 910 of the FD&C Act (21 U.S.C. 387j); (5) a copy of all consumer information and other labeling; (6) a representative sampling of advertisements; (7) upon request made by the Secretary for good cause, a copy of all advertisements for a particular tobacco product; and (8) upon request made by the Secretary, if the registrant has determined that a tobacco product contained in the product list is not subject to a tobacco product standard established under section 907 of the FD&C Act, a brief statement of the basis upon which the registrant made such determination.

FDA collects the information submitted pursuant to section 905 of the FD&C Act through an electronic portal, and through paper forms (Forms FDA 3741 *https://www.fda.gov/media/77915/download* and FDA 3741a *https://www.fda.gov/media/99863/download*) for those individuals who choose not to use the electronic portal.

FDA has also published a guidance for industry entitled ''Registration and Product Listing for Owners and Operators of Domestic Tobacco Product Establishments'' (*https://www.fda.gov/downloads/TobaccoProducts/Labeling/RulesRegulationsGuidance/UCM191940.pdf*). This guidance is intended to assist persons making tobacco product establishment registration and product listing submissions to FDA.

Section 904(a)(1) of the FD&C Act requires that each tobacco product manufacturer or importer submit ''a listing of all ingredients, including tobacco, substances, compounds, and additives that are, as of such date, added by the manufacturer to the tobacco, paper, filter, or other part of each tobacco product by brand and by quantity in each brand and subbrand'' by December 22, 2009. This section applies only to those tobacco products manufactured and distributed before June 22, 2009, and which are still manufactured as of the date of the ingredient listing submission.

Section 904(c) of the FD&C Act requires that a tobacco product manufacturer: (1) Provide all information required under section 904(a) of the FD&C Act to FDA ''at least 90 days prior to the delivery for introduction into interstate commerce of a tobacco product not on the market on the date of enactment'' of the Tobacco Control Act; (2) advise FDA in writing at least 90 days prior to adding any new tobacco additive or increasing in quantity an existing tobacco additive, except for those additives that have been designated by FDA through regulation as not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use; and (3) advise FDA in writing at least 60 days of such action of eliminating or decreasing an existing additive, or adding or increasing an additive that has been designated by FDA through regulation as not a human or animal carcinogen, or otherwise harmful to health under intended conditions of use.

FDA collects the information submitted pursuant to section 904(a)(1) and 904(c) of the FD&C Act through an electronic portal, and through a paper form (Form FDA 3742 *https://www.fda.gov/media/77661/download*) for those individuals who choose not to use the electronic portal.

In addition to the development of the electronic portal and paper form, FDA published a guidance entitled ''Listing of Ingredients in Tobacco Products'' (*https://www.fda.gov/media/101162/download*). This guidance is intended to assist persons making tobacco product ingredient listing submissions. FDA also provides a technical guide, embedded hints, and a web tutorial to the electronic portal.

The Tobacco Control Act also gave FDA the authority to issue a regulation deeming all other products that meet the statutory definition of a tobacco product to be subject to Chapter 9 of the FD&C Act (section 901(b) of the FD&C Act (21 U.S.C. 387a(b))). On May 10, 2016, FDA issued that rule, extending FDA's tobacco product authority to all products that meet the definition of tobacco product in the law (except for accessories of newly regulated tobacco products), including electronic nicotine delivery systems, cigars, hookah tobacco, pipe tobacco, nicotine gels, and dissolvables that were not already subject to the FD&C Act, and other tobacco products that may be developed in the future (81 FR 28974 at 28976) (''the final deeming rule'').

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA form; activity; tobacco control act section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per recordkeeping	Total hours
Tobacco Product Establishment Initial Registration and Listing; Form FDA 3741 Registration and Product Listing for Owners and Operators of Domestic Establishments (Electronic and Paper submissions); sections 905(b)–(d), 905(h), or 905(i).	100	1	100	1.6	160
Tobacco Product Establishment Renewal Registration and Listing; Form FDA 3741 Registration and Product Listing for Owners and Operators of Domestic Establishments (Electronic and Paper submissions); sections 905(b)–(d), 905(h), or 905(i).	2,572	1	2,572	0.16 (10 minutes)	412
Tobacco Product Listing; Form FDA 3742 Listing of Ingredients (Electronic and Paper submissions); section 904(a)(1).	1	1	1	2	2
Tobacco Product Listing; Form FDA 3742 Listing of Ingredients (Electronic and Paper submissions); section 904(c).	35	10	350	0.40 (24 minutes)	140
Obtaining a Dun and Bradstreet (D–U–N–S) Number.	100	1	100	0.5 (30 minutes)	50
Total					764

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The PRA burden estimates have been updated to fully incorporate the use of an electronic system known as Tobacco Registration & Product Listing Module Next Generation (TRLM NG) for submitting registration and product listing information to FDA. With the TRLM NG, manufacturers can enter information quickly and easily. For example, product label pictures can be uploaded directly. We anticipate that most, if not all companies, already have electronic versions of their labels for printing, sales, or marketing purposes.

Product listing information is provided at the time of registration. Currently, registration and listing requirements only apply to domestic establishments engaged in the manufacture, preparation, compounding, or processing of a tobacco product. This includes importers to the extent that they engage in the manufacture, preparation, compounding, or processing of a tobacco product, including repackaging or otherwise changing the container, wrapper, or labeling of any tobacco product package. Foreign establishments are not required to register and list until FDA issues regulations establishing such requirements in accordance with section 905(h) of the FD&C Act. To account for the foregoing, we include both domestic manufacturing establishments and importers in our estimates.

As the deadline for initial establishment registration and product listing for both statutorily regulated and deemed products has passed, FDA estimates that few (up to 100) new establishments will submit 1 initial establishment registration and product listing report each year. Such new establishments potentially include new vape shop locations that mix or assemble tobacco products on the market as of the final deeming rule effective date. The Agency estimates that up to 100 tobacco establishments will each submit 1 initial establishment registration and product listing report each year, which is expected to take 1.6 hours, for a total 160 burden hours.

FDA estimates that the confirmation or updating of establishment registration and product listing information as required by section 905 of the FD&C Act will take 10 minutes annually per confirmation or update per establishment. Based on FDA's experience with current establishment registration and product listings submitted to the Agency, the Agency estimates that on average 2,572 establishments will each submit 1 confirmation or updated report each year, which is expected to take 0.16 hours (10 minutes) for a total 412 burden hours.

FDA estimates that the submission of ingredient listings required by section 904(a)(1) of the FD&C Act for each establishment will take 2 hours initially. We expect all section 904(a)(1) tobacco ingredient submissions to have been received prior to November 8, 2018, and for small manufacturers and large manufacturers, May 8, 2018. While all manufacturers have been expected to submit 904(a)(1) tobacco ingredient submissions, there may be a small number of firms that have missed this deadline. We are estimating approximately three manufacturers may have missed their deadline. This is based on estimates of how many late submissions FDA has received after the deadline. Because this burden estimate covers 3 years, we are dividing by 3, to yield one respondent as a yearly average for this estimate. Therefore, FDA

estimates that one establishment will initially submit one report annually at 2 hours per report, for a total of 2 hours.

Submissions under section 904(c) of the FD&C Act are for any new product that is not yet on the market (*e.g.,* if on the market due to deeming compliance period), deemed product manufacturers should have submitted under section 904(a)(1) of the FD&C Act. This includes any statutorily regulated product that would receive a marketing authorization and any new deemed product not subject to the deeming compliance period. For deemed product categories, while we anticipate receiving a large number of premarket applications, there is a portion of these applicants who will have reported their ingredients under section 904(a)(1) of the FD&C Act as most of these submissions are expected to be for products subject to the deeming compliance period.

Based on FDA's experience and the number of new products authorized to be introduced or delivered for introduction into interstate commerce submitted over the past 3 years, FDA estimates that 35 establishments will each submit 10 reports (1 every 6 months). FDA also estimates that the confirmation or updating of product (ingredient) listing information (required by section 904(c) of the FD&C Act) is expected to take 0.40 hours (24 minutes) for a total 140 burden hours. FDA estimates that obtaining a data universal numbering system (DUNS) number will take 30 minutes. FDA assumes that all new establishment facilities that will be required to initially register under section 905 of the FD&C Act would obtain a DUNS number. FDA estimates that up to 100 establishments that would need to obtain this number each year. The total industry burden to obtain a DUNS number is 50 hours.

FDA estimates the total burden for this collection to be 764 hours. We have adjusted our burden estimate, which has resulted in a decrease of 66 hours to the currently approved burden. Based on data we reviewed from the past 3 years, we note a decrease in the number of establishments submitting a renewal registration listing, an increase of the number of applications received for deemed products and potential modifications to those, and by projecting the number of remaining establishments that have not registered and submitted product ingredient listings, we revised the number of respondents and burden hours in this information collection.

Dated: January 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01798 Filed 1–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–3037]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Generic Clearance for Quantitative Testing for the Development of Food and Drug Administration Communications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) 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 (PRA).

DATES: Submit written comments (including recommendations) on the collection of information by February 28, 2022.

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 OMB control number for this information collection is 0910–0865. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *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.

Generic Clearance for Quantitative Testing for the Development of FDA Communications

OMB Control Number 0910–0865—Extension

This notice requests extension of OMB approval of the FDA information collection for a generic clearance that allows FDA to use quantitative social/behavioral science data collection techniques (*i.e.,* surveys and experimental studies) to test consumers' reactions to FDA communications or educational messaging about FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed. To ensure that communications activities and educational campaigns have the highest potential to be received, understood, and accepted by those for whom they are intended, it is important to assess communications while they are under development. Understanding consumers' attitudes, motivations, and behaviors in response to potential communications and education messaging plays an important role in improving FDA's communications.

If the following conditions are not met, FDA will submit an information collection request to OMB for approval through the normal PRA process:

- The collections are voluntary;
- The collections are low burden for participants (based on considerations of total burden hours, total number of participants, or burden hours per participant) and are low cost for both the participants and the Federal Government;
- The collections are noncontroversial;
- Personally identifiable information (PII) is collected only to the extent necessary [1] and is not retained;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; [2] and
- Information gathered will yield qualitative findings; the collections will not be designed or expected to yield statistical data or used as though the results are generalizable to the population of study.

[1] For example, collections that collect PII to provide remuneration for participants of focus groups and cognitive laboratory studies will be submitted under this request. All Privacy Act requirements will be met.

[2] As defined in OMB and Agency Information Quality Guidelines, ''influential'' means that ''an agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.''

To obtain approval for an individual generic collection submission that meets the conditions of this generic clearance, an abbreviated supporting statement will be submitted to OMB along with supporting documentation (*e.g.,* a copy of the survey or experimental design and stimuli for testing).

FDA will submit individual quantitative collections under this generic clearance to OMB. Individual quantitative collections will also undergo review by FDA's Research Involving Human Subjects Committee, senior leadership in the Center for Food Safety and Applied Nutrition, and PRA specialists.

Respondents to this collection of information may include a wide range of consumers and other FDA stakeholders, such as producers and manufacturers who are regulated under FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed.

In the **Federal Register** of September 9, 2021 (86 FR 50544), FDA published a 60-day notice requesting public comment on the proposed collection of information. Although one comment was received, it was not responsive to the four collection of information topics solicited and, therefore, will not be discussed in this document.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN BY ANTICIPATED DATA COLLECTION METHODS [1]

Survey type	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per response	Total hours
Cognitive Interviews Screener	720	1	720	0.083 (5 minutes)	60
Cognitive Interviews	144	1	144	1	144
Pre-test Study Screener	2,400	1	2,400	0.083 (5 minutes)	199
Pre-test Study	480	1	480	0.25 (15 minutes)	120
Self-administered Surveys/Experimental Studies Screener.	75,000	1	75,000	0.083 (5 minutes)	6,225
Self-administered Surveys/Experimental Studies	15,000	1	15,000	0.25 (15 minutes)	3,750
Total					10,498

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate. The total estimated annual burden is 10,498 hours. Current estimates are based on both historical numbers of participants from past projects as well as estimates for projects to be conducted in the next 3 years. The number of participants to be included in each new survey will vary, depending on the nature of the compliance efforts and the target audience.

Dated: January 20, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01730 Filed 1–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0520]

Agency Information Collection Activities; Proposed Collection; Comment Request; Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the recordkeeping requirements regarding animal proteins prohibited in ruminant feed.

DATES: Submit either electronic or written comments on the collection of information by March 29, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before March 29, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of March 29, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is 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–2013–N–0520 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Substances Prohibited from Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed.'' 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: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Substances Prohibited From Use in Animal Food or Feed; Animal Proteins Prohibited in Ruminant Feed—21 CFR 589.2000(e)(1)(iv)

OMB Control Number 0910–0339—Extension

Section 701(a) (21 U.S.C. 371(a)) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) gives us the authority to issue regulations for the efficient enforcement of the FD&C Act. Our regulation at 21 CFR 589.2000 provides that animal protein derived from mammalian tissue (with some exclusions) is not generally recognized as safe (GRAS) for use in ruminant feed and is a food additive subject to certain provisions of the FD&C Act (62 FR 30936, June 5, 1997).

This information collection was established because epidemiological evidence gathered in the United Kingdom suggested that bovine spongiform encephalopathy (BSE), a progressively degenerative central nervous system disease, is spread to ruminant animals by feeding protein derived from ruminants infected with BSE. This regulation places general requirements on persons that manufacture, blend, process, and distribute products that contain, or may contain, protein derived from mammalian tissue, and feeds made from such products.

Specifically, this regulation requires renderers, feed manufacturers, and others involved in feed and feed ingredient manufacturing and distribution to maintain written procedures specifying the cleanout procedures or other means and specifying the procedures for separating products that contain or may contain protein derived from mammalian tissue from all other protein products from the time of receipt until the time of shipment. These written procedures are intended to help the firm formalize consistent processes, and then to help inspection personnel confirm that the firm is conducting these processes in compliance with the regulation. Inspection personnel will evaluate the written procedure and confirm it is being followed when they are conducting an inspection.

These written procedures must be maintained if the facility is operating in a manner that necessitates the record, and if the facility makes changes to an applicable procedure or process the record must be updated. Written procedures required by this section shall be made available for inspection and copying by FDA.

Description of Respondents: Respondents include renderers, feed manufacturers, and others involved in feed and feed ingredient manufacturing and distribution.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Written procedures; 589.2000(e)(1)(iv)	300	1	300	14	4,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We base our estimate of the number of recordkeepers on inspectional data. Based on a review of the information collection since our last request for OMB approval we have adjusted our burden estimate, which has resulted in a decrease to the currently approved burden. Review of our inspection data suggests that the number of facilities that need to conduct these separation practices is gradually decreasing, therefore we have decreased the number of facilities who must comply, as well as the total number of hours needed to comply with this burden.

Dated: January 24, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01731 Filed 1–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2011–N–0742; FDA–2018–N–0180; FDA–2019–N–2854; FDA–2021–N–0515; FDA–2014–N–1960; FDA–2017–D–6069; and FDA–2019–N–3325]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approvals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of information collections that have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The following is a list of FDA information collections recently approved by OMB under section 3507 of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OMB control number and expiration date of OMB approval for each information collection are shown in table 1. Copies of the supporting statements for the information collections are available on the internet at *https://www.reginfo.gov/public/do/PRAMain.* An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

TABLE 1—LIST OF INFORMATION COLLECTIONS APPROVED BY OMB

Title of collection	OMB control No.	Date approval expires
Registration of Producers of Drugs and Listing of Drugs in Commercial Distribution	0910–0045	12/31/2024
Generic Clearance for the Collection of Qualitative Data on Tobacco Products and Communications	0910–0810	12/31/2024
Premarket Tobacco Product Applications and Recordkeeping Requirements	0910–0879	12/31/2024
Postmarketing Adverse Experience Reporting and Recordkeeping	0910–0230	1/31/2025
MedWatch: Adverse Event and Product Experience Reporting System (Paper Based)	0910–0291	1/31/2025
De Novo Classification Process (Evaluation of Automatic Class III Designation)	0910–0844	1/31/2025
Laboratory Accreditation for Analyses of Foods	0910–0898	1/31/2025

Dated: January 20, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–01692 Filed 1–27–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Biodefense Science Board

AGENCY: Office of the Assistant Secretary for Preparedness and Response (ASPR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The National Biodefense Science Board (NBSB or the Board) is authorized under Section 319M of the Public Health Service (PHS) Act, as added by Section 402 of the Pandemic and All-Hazards Preparedness Act of 2006 and amended by Section 404 of the Pandemic and All-Hazards Preparedness Reauthorization Act. The Board is governed by the Federal Advisory Committee Act, which sets forth standards for the formation and use of advisory committees. The NBSB provides expert advice and guidance on scientific, technical, and other matters of special interest to the Department of Health and Human Services (HHS) regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate. Authority to manage and operate the NBSB, including to receive advice and recommendations from the Board, has been delegated by the Secretary of HHS to the Assistant Secretary for Preparedness and Response (ASPR). The NBSB will meet in public (virtually) on March 7, 2022, beginning at 12:30 p.m. Eastern time. ASPR invites stakeholders and the general public to attend and participate as appropriate. A detailed agenda and instructions to register to attend the meeting will be available on the NBSB meeting website *https://www.phe.gov/nbsb.*

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 meeting website *https://www.phe.gov/*

nbsb. Members of the public may provide written comments or submit questions for consideration by the NBSB at any time via email to *NBSB@hhs.gov.*

Additionally, the NBSB invites stakeholders to request up to seven minutes to address the Board in-person during the meeting. The Board is interested in hearing from anyone involved in, or who represents, a relevant biomedical, biodefense, or health security industry; serves as faculty or conducts research at an academic institution; occupies a relevant health profession or works for a hospital system or health care consumer organization; or who serves in a relevant state, Tribal, territorial, or local government agency. Requests to provide remarks to the NBSB during the public meeting must be sent to *NBSB@hhs.gov* by March 1, 2022. In that request, please provide the speaker's name, title, and position, with a brief description of the topic that they will address. The number of speakers and topics will be based on relevance to the mission of the NBSB and amount of time available on the agenda. The charter of the NBSB may be reviewed on the ASPR/NBSB website. Topics and presentations with an obvious commercial bias, to include any form of advertising, marketing, or solicitation, will not be accepted.

FOR FURTHER INFORMATION CONTACT: CAPT Christopher L. Perdue, MD, MPH, NBSB Designated Federal Official, Washington, DC, *NBSB@hhs.gov.*

Dawn O'Connell,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2022–01764 Filed 1–27–22; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2022–1 Phase I: Adjuvant Development for Vaccines and for Autoimmune and Allergic Diseases (Topic 105).

Date: February 18, 2022.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G51, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Thomas F. Conway, 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 3G51, Rockville, MD 20852, 240–507–9685, *thomas.conway@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; HHS–NIH–CDC–SBIR PHS 2022–1 Phase II: Adjuvant Development for Vaccines and for Autoimmune and Allergic Diseases (Topic 105).

Date: February 18, 2022.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G51, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Thomas F. Conway, 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 3G51, Rockville, MD 20852, 240–507–9685, *thomas.conway@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: January 25, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01746 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) 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 General Medical Sciences Special Emphasis Panel; NIGMS Review of SuRE First Applications.

Date: March 22, 2022.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

Contact Person: Tracy Koretsky, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN.12F, Bethesda, MD 20892, 301 594 2886, *tracy.koretsky@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 24, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01741 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA UE5: Research Education Course in Product

Development and Entrepreneurship for Life Science Researchers.

Date: March 3, 2022.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5702, *sindhu.kizhakkemadathil@nih.gov.*

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel; NIDA Career Development and Education SEP.

Date: March 7, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Drug Abuse, 301 North Stonestreet Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sindhu Kizhakke Madathil, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Drug Abuse, NIH, 301 North Stonestreet Avenue, MSC 6021, Bethesda, MD 20892, (301) 827–5702, *sindhu.kizhakkemadathil@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: January 25, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01747 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Emerging Imaging Technologies in Neuroscience Study Section.

Date: February 24–25, 2022.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sharon S. Low, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7846, Bethesda, MD 20892, 301–237–1487, *lowss@csr.nih.gov.*

Name of Committee: Applied Immunology and Disease Control Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: March 1–2, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Susan Daum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, Bethesda, MD 20892, 301–827–7233, *susan.boyle-vavra@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Population Sciences and Epidemiology A.

Date: March 1, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Annie Laurie McRee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 100, Bethesda, MD 20892, (301) 257–2638, *mcreeal@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–21–025: NIH Faculty Institutional Recruitment for Sustainable Transformation (FIRST) Program—FIRST Cohort.

Date: March 2, 2022.

Time: 9:30 a.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Srikanth Ranganathan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7802, Bethesda, MD 20892, (301) 435–1787, *srikanth.ranganathan@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Renal/Urological Small Business Activities.

Date: March 3, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Santanu Banerjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2106, Bethesda, MD 20892, (301) 435–5947, *banerjees5@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Bioengineering.

Date: March 4, 2022.

Time: 10:00 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Joseph D. Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 24, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01737 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Research

Education Resources for Geriatrics-Related Scientists.

Date: February 18, 2022.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Isis S. Mikhail, MD, MPH, DrPH, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, Tel: 301–402–7704, *mikhaili@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Special Emphasis Panel; REDI Entrepreneurial Small Business Transition Awards.

Date: March 9, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Birgit Neuhuber, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, 301–480–1266, *neuhuber@ninds.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 24, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01735 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel; RFA AA21–016 and AA21–017 Reviews—HIV Prevention and Alcohol.

Date: March 25, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ranga Srinivas, Ph.D., Chief Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, 6700 B Rockledge Drive, Room 2114, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: January 24, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01670 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) 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 Child Health and Human Development Special Emphasis Panel; Mapping the Gene Regulatory Networks Controlling.

Date: March 25, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2131A, Bethesda, MD 20892 (Virtual Assisted Meeting).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 24, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01671 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) 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 Child Health and Human Development Special Emphasis Panel; Neural Control of Uterine Gland Secretion.

Date: March 18, 2022.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, Room 2131A, Bethesda, MD 20892 (Virtual Assisted Meeting).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Officer, Division of

Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 25, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01743 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; DSR Member Conflict and R13 Panel.

Date: March 2, 2022.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Aiwu Cheng, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Bethesda, MD 20892, *Aiwu.cheng@nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; T32 and T90/R90 Review Meeting.

Date: March 4, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jose F. Ruiz, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–9550, *jose.ruiz@nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 25, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01806 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; NIGMS Review of SuRE First Applications.

Date: March 16, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

Contact Person: Manas Chattopadhyay, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AN12N, 45 Center Drive, Bethesda, MD 20892, 301–827–5320, *manasc@mail.nih.gov*.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; NIGMS Review of SuRE U24 Applications.

Date: March 23, 2022.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

Contact Person: Manas Chattopadhyay, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AN12N, 45 Center Drive, Bethesda, MD 20892, 301–827–5320, *manasc@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 24, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01734 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 NCBIB Review F–SEP.

Date: March 3, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dennis Hlasta, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20892, (301) 451–4794, *dennis.hlasta@nih.gov*.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 NCBIB Review B–SEP.

Date: March 14, 2022.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Plaza, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 957, Bethesda, MD 20892, (301) 496–4773, *zhour@mail.nih.gov*.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; Blueprint MedTech U54 (PAR21–314).
Date: March 21, 2022.
Time: 9:30 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Plaza, Bethesda, MD 20892 (Virtual Meeting).
Contact Person: John K. Hayes, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Blvd., Suite 959, Bethesda, MD 20892, (301) 451–3398, *hayesj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, HHS)

Dated: January 24, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01740 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Special Emphasis Panel Parkinson's Disease.
Date: February 24, 2022.
Time: 10:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Neurological Disorders and Stroke, NIH, Bethesda, MD 20892, 301–827–9087, *mooremar@mail.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Special Emphasis Panel for HEAL Initiative: Interdisciplinary Teams to Elucidate the Mechanisms of Device-Based Pain Relief.
Date: March 3, 2022.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).
Contact Person: Diana M. Cummings, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, National Institute of Neurological Disorders and Stroke, NIH, Bethesda, MD 20892, 301–496–2214, *cummingsdi@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 25, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01739 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R13 Conference Grant Applications.
Date: February 24, 2022.
Time: 10:00 a.m. to 12:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).
Contact Person: Jian Yang, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7011, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *yangj@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK RC2 Application Review.
Date: February 25, 2022.
Time: 1:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).
Contact Person: Cheryl Nordstrom, Ph.D., MPH, Scientific Review Officer, NIDDK/Scientific Review Branch, National Institutes of Health, 6707 Democracy Blvd., Room 7013, Bethesda, MD 20892, 301–402–6711, *cheryl.nordstrom@nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK RC2 Applications.
Date: March 23, 2022.
Time: 2:00 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, Room 7011, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).
Contact Person: Ryan G. Morris, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7015, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, 301–594–4721, *ryan.morris@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 24, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01736 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) 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: NIGMS Initial Review Group Training and Workforce Development Study Section—D Review of Bridges to the Baccalaureate Applications.

Date: March 3, 2022.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

Contact Person: Tracy Koretsky, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, MSC 6200, Room 3AN.12F, Bethesda, MD 20892, (301) 594–2886, *tracy.koretsky@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: January 24, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01742 Filed 1–27–22; 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 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Support for Research Excellence—First Independent Research (SuRE-First) Award (R16—Clinical Trial Not Allowed).

Date: February 25, 2022.

Time: 11:00 a.m. to 6:00 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 3F36, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Noton K. Dutta, 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 3F36, Rockville, MD 20852, 240–669–2857, *noton.dutta@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: January 25, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–01744 Filed 1–27–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 22–01]

Notice of Finding That Certain Seafood Harvested by the Taiwanese Da Wang Fishing Vessel With the Use of Convict, Forced or Indentured Labor Is Being, or Is Likely To Be, Imported Into the United States in Violation of 19 U.S.C. i307

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice of forced labor finding.

SUMMARY: This document notifies the public that U.S. Customs and Border Protection (CBP), with the approval of the Secretary of Homeland Security, has determined that certain seafood has been harvested by the *Da Wang* fishing vessel with the use of convict, forced or indentured labor, and is being, or is likely to be, imported into the United States.

DATES: This Finding applies to any merchandise described in Section II of this Notice that is imported on or after January 28, 2022. It also applies to merchandise which has already been imported and has not been released from CBP custody before January 28, 2022.

FOR FURTHER INFORMATION CONTACT: Ilissa Shefferman, Chief, Investigations Branch, Forced Labor Division, Trade Remedy Law Enforcement Directorate, Office of Trade, (202) 506–5663 or *forcedlabor@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307), ''[a]ll goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited.'' Under this section, ''forced labor'' includes ''all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily'' and includes forced or indentured child labor.

The Customs and Border Protection (CBP) regulations promulgated under the authority of 19 U.S.C. 1307 are found at sections 12.42 through 12.45 of title 19, Code of Federal Regulations (CFR) (19 CFR 12.42–12.45). Among other things, these regulations allow any person outside of CBP to communicate his or her belief that a certain ''class of merchandise . . . is being, or is likely to be, imported into the United States [in violation of 19 U.S.C. 1307].'' 19 CFR 12.42(a), (b). Upon receiving such information, the Commissioner of CBP will initiate an investigation if warranted by the circumstances. 19 CFR 12.42(d). CBP also has the authority to self-initiate an investigation. 19 CFR 12.42(a). If the Commissioner finds that the information available ''reasonably but not conclusively'' indicates that such merchandise ''is being, or is likely to be, imported'' into the United States, the Commissioner will order port directors to ''withhold release of the merchandise pending [further] instructions.'' 19 CFR 12.42(e). After issuance of a withhold release order, the

covered merchandise will be detained by CBP for an admissibility determination and will be excluded unless the importer demonstrates that the merchandise was not made using forced labor in violation of 19 U.S.C. 1307. 19 CFR 12.43–12.44. Subject to certain conditions, the importer may also export the merchandise prior to seizure. 19 CFR 12.44(a).

These regulations also set forth the procedure for the Commissioner of CBP to issue a Finding when the Commissioner determines that the merchandise is subject to the provisions of 19 U.S.C. 1307. Pursuant to 19 CFR 12.42(f), if the Commissioner finds that merchandise within the purview of 19 U.S.C. 1307 is being, or is likely to be, imported into the United States, the Commissioner will, with the approval of the Secretary of the Department of Homeland Security (DHS), publish a Finding to that effect in the **Federal Register** and in the *Customs Bulletin and Decisions.*[1] Under the authority of 19 CFR 12.44(b), CBP may seize and forfeit imported merchandise covered by a Finding.

On July 31, 2020, CBP issued a withhold release order (made effective on August 18, 2021) on ''seafood'' with reasonable evidence demonstrating that the *Da Wang* fishing vessel, which flies a Vanuatu flag but has a Taiwanese beneficiary, harvested the seafood using forced or convict labor. Through its investigation, CBP has determined that there is sufficient information to support a Finding that the *Da Wang* vessel, owned by Yong Feng Fishery Ltd., is using forced labor in its fishing operations and that such seafood harvested by the vessel is likely being imported into the United States.

II. Finding

A. General

Pursuant to 19 U.S.C. 1307 and 19 CFR 12.42(f), it is hereby determined that certain articles described in paragraph II.B., that are harvested in whole or in part with the use of convict, forced, or indentured labor by the *Da Wang* fishing vessel, which is owned by Yong Feng Fishery Ltd., are being, or are likely to be, imported into the United States. Based upon this determination, the port director may seize the covered merchandise for violation of 19 U.S.C. 1307 and commence forfeiture proceedings pursuant to 19 CFR part 162, subpart E, unless the importer establishes by satisfactory evidence that the merchandise was not produced in any part with the use of prohibited labor specified in this Finding. 19 CFR 12.42(g).

B. Articles and Entities Covered by This Finding

This Finding covers seafood, mainly tuna products, classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 0304.87.0000, 0304.99.1190, 1604.14.4000, 1604.14.3059, and any other relevant subheadings under Chapters 3 and 16, which are harvested wholly or in part by the *Da Wang* fishing vessel, which is owned and operated by Yong Feng Fishery Ltd.

The Secretary of Homeland Security has reviewed and approved this Finding.

Dated: January 25, 2022.

John P. Leonard,

Acting Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2022–01778 Filed 1–27–22; 8:45 am]

BILLING CODE 9111–14–P

[1] Although the regulation states that the Secretary of the Treasury must approve the issuance of a Finding, the Secretary of the Treasury delegated this authority to the Secretary of Homeland Security in Treasury Order No. 100–16 (68 FR 28322). *See* Appendix to 19 CFR part 0. Under Delegation Order 7010.3, Section II.A.3, the Secretary of Homeland Security delegated the authority to issue a Finding to the Commissioner of CBP, with the approval of the Secretary of Homeland Security. The Commissioner of CBP, in turn, delegated the authority to make a Finding regarding prohibited goods under 19 U.S.C. 1307 to the Executive Assistant Commissioner, Office of Trade.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 22–02]

Notice of Finding That Certain Palm Oil and Derivative Products Made Wholly or In Part With Palm Oil Produced by the Malaysian Company Sime Darby Plantation Berhad Its Subsidiaries, and Joint Ventures, With the Use of Convict, Forced or Indentured Labor Are Being, or Are Likely To Be, Imported Into the United States in Violation of 19 U.S.C. 1307

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice of forced labor finding.

SUMMARY: This document notifies the public that U.S. Customs and Border Protection (CBP), with the approval of the Secretary of Homeland Security, has determined that certain palm oil and derivative products made wholly or in part with palm oil produced by Sime Darby Plantation Berhad, its subsidiaries, and joint ventures with the use of convict, forced or indentured labor, are being, or are likely to be, imported into the United States.

DATES: This Finding applies to any merchandise described in Section II of this Notice that is imported on or after January 28, 2022. It also applies to merchandise which has already been imported and has not been released from CBP custody before January 28, 2022.

FOR FURTHER INFORMATION CONTACT: Ilissa Kabak Shefferman, Chief, Investigations Branch, Forced Labor Division, Trade Remedy Law Enforcement Directorate, Office of Trade, (202) 506–5663 or *forcedlabor@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307), ''[a]ll goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited.'' Under this section, ''forced labor'' includes ''all work or service which is exacted from any person under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily'' and includes forced or indentured child labor.

The U.S. Customs and Border Protection (CBP) regulations promulgated under the authority of 19 U.S.C. 1307 are found at sections 12.42 through 12.45 of title 19, Code of Federal Regulations (CFR) (19 CFR 12.42–12.45). Among other things, these regulations allow any person outside of CBP to communicate his or her belief that a certain ''class of merchandise . . . is being, or is likely to be, imported into the United States [in violation of 19 U.S.C. 1307].'' 19 CFR 12.42(a), (b). Upon receiving such information, the Commissioner of CBP will initiate an investigation if warranted by the circumstances. 19 CFR 12.42(d). CBP also has the authority to self-initiate an investigation. 19 CFR 12.42(a). If the Commissioner finds that the information available ''reasonably but not conclusively'' indicates that such merchandise ''is being, or is likely to be, imported'' into the United States, the Commissioner will order port directors to ''withhold release of the merchandise pending [further] instructions.'' 19 CFR 12.42(e). After issuance of such a withhold release order, the covered

merchandise will be detained by CBP for an admissibility determination and will be excluded unless the importer demonstrates that the merchandise was not made using forced labor in violation of 19 U.S.C. 1307. 19 CFR 12.43–12.44. Subject to certain conditions, the importer may also export the merchandise prior to seizure. 19 CFR 12.44(a).

These regulations also set forth the procedure for the Commissioner of CBP to issue a Finding when the Commissioner determines that the merchandise is subject to the provisions of 19 U.S.C. 1307. Pursuant to 19 CFR 12.42(f), if the Commissioner finds that merchandise within the purview of 19 U.S.C. 1307 is being, or is likely to be, imported into the United States, the Commissioner will, with the approval of the Secretary of the Department of Homeland Security (DHS), publish a Finding to that effect in the **Federal Register** and in the *Customs Bulletin and Decisions*.[1] Under the authority of 19 CFR 12.44(b), CBP may seize and forfeit imported merchandise covered by a Finding.

On December 16, 2020, CBP issued a withhold release order (made effective on December 30, 2020) on ''palm oil,'' including all crude palm oil and palm kernel oil and derivative products, made wholly or in part with palm oil traceable to Sime Darby Plantation Berhad (''Sime Darby Plantation''), with reasonable evidence demonstrating that the Sime Darby Plantation, including its subsidiaries and joint ventures, primarily located in Malaysia, harvested the fruit and produced the palm oil using forced labor. Through its investigation, CBP has determined that there is sufficient information to support a Finding that Sime Darby Plantation and its subsidiaries are using forced labor on Sime Darby's plantations in Malaysia to harvest fresh fruit bunches, which are used to extract palm oil and produce derivative products, and that such palm oil and derivative products produced by the company are likely being imported into the United States.

[1] Although the regulation states that the Secretary of the Treasury must approve the issuance of a Finding, the Secretary of the Treasury delegated this authority to the Secretary of Homeland Security in Treasury Order No. 100–16 (68 FR 28322). *See* Appendix to 19 CFR part 0. Under Delegation Order 7010.3, Section II.A.3, the Secretary of Homeland Security delegated the authority to issue a Finding to the Commissioner of CBP, with the approval of the Secretary of Homeland Security. The Commissioner of CBP, in turn, delegated the authority to make a Finding regarding prohibited goods under 19 U.S.C. 1307 to the Executive Assistant Commissioner, Office of Trade.

II. Finding

A. General

Pursuant to 19 U.S.C. 1307 and 19 CFR 12.42(f), it is hereby determined that certain articles described in paragraph II.B., that are manufactured or produced in whole or in part with the use of convict, forced, or indentured labor by Sime Darby Plantation and its subsidiaries are being, or are likely to be, imported into the United States. Based upon this determination, the port director may seize the covered merchandise for violation of 19 U.S.C. 1307 and commence forfeiture proceedings pursuant to 19 CFR part 162, subpart E, unless the importer establishes by satisfactory evidence that the merchandise was not produced in any part with the use of prohibited labor specified in this Finding. 19 CFR 12.42(g).

B. Articles and Entities Covered by This Finding

This Finding covers palm oil and derivative products made wholly or in part with palm oil classified under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 12.07.10.0000, 1511.10.0000, 1511.90.0000, 1513.21.0000, 1513.29.0000, 1517, 3401.11, 3401.20.0000, 3401.19.0000, 3823.12.0000, 3823.19.2000, 3823.70.6000, 3823.70.4000, 3824.99.41 and any other relevant subheadings under Chapters 12, 15, 23, 29 and 38, which are produced or manufactured wholly or in part by Sime Darby Plantation, its subsidiaries and joint ventures.

The Secretary of Homeland Security has reviewed and approved this Finding.

Dated: January 25, 2022.

John P. Leonard,

Acting Executive Assistant Commissioner, Office of Trade.

[FR Doc. 2022–01779 Filed 1–27–22; 8:45 am]

BILLING CODE 9111–14–P

INTER-AMERICAN FOUNDATION

Sunshine Act Meetings

TIME AND DATE: February 3, 2022, 2:00 p.m.–3:30 p.m. ET.

PLACE: Via tele-conference.

STATUS: Meeting of the IAF Board of Directors, open to the public, portion closed to the public.

MATTERS TO BE CONSIDERED:

- Call to Order from the Board Chair
- Welcome from the Interim President/CEO and Board Chair
- Candidate Review process for CEO Recruitment
- Adjournment

Portion To Be Closed to the Public

- Executive session closed to the public as provided for by 22 CFR 1004.4(b).

CONTACT PERSON FOR MORE INFORMATION: Aswathi Zachariah, General Counsel, (202) 683–7118.

For Dial-in Information Contact: Denetra McPherson, Paralegal, (202) 699–3054.

The Inter-American Foundation is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Aswathi Zachariah,

General Counsel.

[FR Doc. 2022–01945 Filed 1–26–22; 4:15 pm]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 574 Tribal entities recognized by and eligible for funding and services from the Bureau of Indian Affairs (BIA) by virtue of their status as Indian Tribes.

DATES: The list is updated from the notice published on January 29, 2021 (86 FR 7554) and from the notice published of corrections (Tribal name changes) on April 9, 2021 (86 FR 18552).

FOR FURTHER INFORMATION CONTACT: Ms. Laurel Iron Cloud, Bureau of Indian Affairs, Office of Indian Services, Division of Tribal Government Services, Mail Stop 3645–MIB, 1849 C Street NW, Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), in accordance with Section 83.6(a) of part 83 of title 25 of the Code of Federal Regulations, and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8. Published below is an updated list of federally recognized

Indian Tribes within the contiguous 48 states and Alaska. Amendments to the list include formatting edits and name changes.

To aid in identifying Tribal name changes, the Tribe's previously listed, former name, or also known as (aka) is included in parentheses after the correct current Tribal name. The BIA will continue to list the Tribe's former or previously listed name for one year after the publication of the notice of the correct current Tribal name.

The listed Indian entities are recognized to have the immunities and privileges available to federally recognized Indian Tribes by virtue of their Government-to-Government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Indian Tribes. The BIA has continued the practice of listing the Alaska Native entities separately for the purpose of facilitating identification of them.

There is a total of 347 federally recognized Indian Tribes within the contiguous 48 states and 227 federally recognized Tribal entities within the state of Alaska that comprise the 574 federally recognized Indian Tribes of the United States.

Bryan Newland,

Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs

[347 Federally Recognized Indian Tribes Within the Contiguous 48 States]

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak-Chin Indian Community [*previously* listed as Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona]
Alabama-Coushatta Tribe of Texas [*previously* listed as Alabama-Coushatta Tribes of Texas]
Alabama-Quassarte Tribal Town
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Indians, California [*previously* listed as Augustine Band of Cahuilla Mission Indians of the Augustine Reservation]
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Paiute Tribe of the Owens Valley [*previously* listed as Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California]
Big Sandy Rancheria of Western Mono Indians of California [*previously* listed as Big Sandy Rancheria of Mono Indians of California]
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Bishop Paiute Tribe [*previously* listed as Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California]
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Indian Colony [*previously* listed as Bridgeport Paiute Indian Colony of California]
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe [*previously* listed as Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon]
Cabazon Band of Mission Indians, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma
Cahto Tribe of the Laytonville Rancheria
Cahuilla Band of Indians [*previously* listed as Cahuilla Band of Mission Indians of the Cahuilla Reservation, California]
California Valley Miwok Tribe, California
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California (Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California)
Catawba Indian Nation [*previously* listed as Catawba Tribe of South Carolina]
Cayuga Nation
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation
Cheyenne and Arapaho Tribes, Oklahoma [*previously* listed as Cheyenne-Arapaho Tribes of Oklahoma]
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota
Chickahominy Indian Tribe
Chickahominy Indian Tribe—Eastern Division
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa Cree Indians of the Rocky Boy's Reservation, Montana [*previously* listed as Chippewa-Cree Indians of the Rocky Boy 's Reservation, Montana]
Chitimacha Tribe of Louisiana
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe [*previously* listed as Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho]
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma
Confederated Salish and Kootenai Tribes of the Flathead Reservation
Confederated Tribes and Bands of the Yakama Nation
Confederated Tribes of Siletz Indians of Oregon [*previously* listed as Confederated Tribes of the Siletz Reservation]
Confederated Tribes of the Chehalis Reservation
Confederated Tribes of the Colville Reservation
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Umatilla Indian Reservation [*previously* listed as Confederated Tribes of the Umatilla Reservation, Oregon]
Confederated Tribes of the Warm Springs Reservation of Oregon
Coquille Indian Tribe [*previously* listed as Coquille Tribe of Oregon]
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Tribe of Indians [*previously* listed as Cow Creek Band of Umpqua Indians of Oregon]
Cowlitz Indian Tribe
Coyote Valley Band of Pomo Indians of California
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Crow Tribe of Montana
Delaware Nation, Oklahoma
Delaware Tribe of Indians
Dry Creek Rancheria Band of Pomo Indians, California [*previously* listed as Dry Creek Rancheria of Pomo Indians of California]
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians
Eastern Shawnee Tribe of Oklahoma
Eastern Shoshone Tribe of the Wind River Reservation, Wyoming [*previously* listed as Shoshone Tribe of the Wind River Reservation, Wyoming]
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians, California
Federated Indians of Graton Rancheria, California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California

Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria [*previously* listed as Greenville Rancheria of Maidu Indians of California]
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake, California
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin
Hoh Indian Tribe [*previously* listed as Hoh Indian Tribe of the Hoh Indian Reservation, Washington]
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians, California [*previously* listed as Hopland Band of Pomo Indians of the Hopland Rancheria, California]
Houlton Band of Maliseet Indians
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Iipay Nation of Santa Ysabel, California [*previously* listed as Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation]
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Band of Miwuk Indians [*previously* listed as Jackson Rancheria of Me-Wuk Indians of California]
Jamestown S'Klallam Tribe
Jamul Indian Village of California
Jena Band of Choctaw Indians
Jicarilla Apache Nation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation
Karuk Tribe [*previously* listed as Karuk Tribe of California]
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town
Kickapoo Traditional Tribe of Texas
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kiowa Indian Tribe of Oklahoma
Klamath Tribes
Kletsel Dehe Band of Wintun Indians [*previously* listed as Cortina Indian Rancheria]
Koi Nation of Northern California [*previously* listed as Lower Lake Rancheria, California]
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Indians, California [*previously* listed as La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation]
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians of Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Shell Tribe of Chippewa Indians of Montana
Little Traverse Bay Bands of Odawa Indians, Michigan
Lone Pine Paiute-Shoshone Tribe [*previously* listed as Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California]
Los Coyotes Band of Cahuilla and Cupeno Indians, California [*previously* listed as Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation]
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community [*previously* listed as Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington]
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation
Manchester Band of Pomo Indians of the Manchester Rancheria, California [*previously* listed as Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California]
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Indian Tribe [*previously* listed as Mashantucket Pequot Tribe of Connecticut]
Mashpee Wampanoag Tribe [*previously* listed as Mashpee Wampanoag Indian Tribal Council, Inc.]
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California
Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians
Middletown Rancheria of Pomo Indians of California
Mi'kmaq Nation [*previously* listed as Aroostook Band of Micmacs]
Minnesota Chippewa Tribe, Minnesota (Six component reservations: Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Nation [*previously* listed as The Modoc Tribe of Oklahoma]
Mohegan Tribe of Indians of Connecticut [*previously* listed as Mohegan Indian Tribe of Connecticut]
Monacan Indian Nation
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Mission Indians, California [*previously* listed as Morongo Band of Cahuilla Mission Indians of the Morongo Reservation]
Muckleshoot Indian Tribe [*previously* listed as Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington]
Nansemond Indian Nation [*previously* listed as Nansemond Indian Tribe]
Narragansett Indian Tribe
Navajo Nation, Arizona, New Mexico, & Utah
Nez Perce Tribe [*previously* listed as Nez Perce Tribe of Idaho]
Nisqually Indian Tribe [*previously* listed as Nisqually Indian Tribe of the Nisqually Reservation, Washington]
Nooksack Indian Tribe
Northern Arapaho Tribe of the Wind River Reservation, Wyoming [*previously* listed as Arapaho Tribe of the Wind River Reservation, Wyoming]
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of the Shoshone Nation [*previously* listed as Northwestern Band of Shoshoni]
Nottawaseppi Huron Band of the Potawatomi, Michigan [*previously* listed as Huron Potawatomi, Inc.]
Oglala Sioux Tribe [*previously* listed as Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota]
Ohkay Owingeh, New Mexico [*previously* listed as Pueblo of San Juan]
Omaha Tribe of Nebraska
Oneida Indian Nation [*previously* listed as Oneida Nation of New York]
Oneida Nation [*previously* listed as Oneida Tribe of Indians of Wisconsin]
Onondaga Nation
Otoe-Missouria Tribe of Indians, Oklahoma
Ottawa Tribe of Oklahoma
Paiute Indian Tribe of Utah (Cedar Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes) [*previously* listed as Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)]
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Pala Band of Mission Indians [*previously* listed as Pala Band of Luiseno Mission Indians of the Pala Reservation, California]
Pamunkey Indian Tribe
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California

Pawnee Nation of Oklahoma
Pechanga Band of Indians [*previously* listed as Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California]
Penobscot Nation [*previously* listed as Penobscot Tribe of Maine]
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Pomo Nation, California [*previously* listed as Pinoleville Rancheria of Pomo Indians of California]
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek, and Roaring Creek Rancherias)
Poarch Band of Creek Indians [*previously* listed as Poarch Band of Creeks]
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble S'Klallam Tribe [*previously* listed as Port Gamble Band of S'Klallam Indians]
Potter Valley Tribe, California
Prairie Band Potawatomi Nation [*previously* listed as Prairie Band of Potawatomi Nation, Kansas]
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Nation [*previously* listed as The Quapaw Tribe of Indians]
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation
Quinault Indian Nation [*previously* listed as Quinault Tribe of the Quinault Reservation, Washington]
Ramona Band of Cahuilla, California [*previously* listed as Ramona Band or Village of Cahuilla Mission Indians of California]
Rappahannock Tribe, Inc.
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California
Redwood Valley or Little River Band of Pomo Indians of the Redwood Valley Rancheria California [*previously* listed as Redwood Valley Rancheria of Pomo Indians of California]
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California
Rincon Band of Luiseno Mission Indians of Rincon Reservation, California
Robinson Rancheria [*previously* listed as Robinson Rancheria Band of Pomo Indians, California]
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes, Round Valley Reservation, California [*previously* listed as Round Valley Indian Tribes of the Round Valley Reservation, California]
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Sac & Fox Tribe of the Mississippi in Iowa
Saginaw Chippewa Indian Tribe of Michigan
Saint Regis Mohawk Tribe [*previously* listed as St. Regis Band of Mohawk Indians or New York]
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Nation [*previously* listed as Samish Indian Tribe, Washington]
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Band of Cahuilla Indians, California [*previously* listed as Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation]
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santee Sioux Nation, Nebraska
Santo Domingo Pueblo [*previously* listed as Kewa Pueblo, New Mexico, and as Pueblo of Santo Domingo]
Sauk-Suiattle Indian Tribe
Sault Ste. Marie Tribe of Chippewa Indians, Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Tribe of Florida [*previously* listed as Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood, & Tampa Reservations)]
Seneca Nation of Indians [*previously* listed as Seneca Nation of New York]
Seneca–Cayuga Nation [*previously* listed as Seneca-Cayuga Tribe of Oklahoma]
Shakopee Mdewakanton Sioux Community of Minnesota
Shawnee Tribe
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shinnecock Indian Nation
Shoalwater Bay Indian Tribe of the Shoalwater Bay Indian Reservation [*previously* listed as Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington]
Shoshone-Bannock Tribes of the Fort Hall Reservation
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe [*previously* listed as Skokomish Indian Tribe of the Skokomish Reservation, Washington]
Skull Valley Band of Goshute Indians of Utah
Snoqualmie Indian Tribe [*previously* listed as Snoqualmie Tribe, Washington]
Soboba Band of Luiseno Indians, California
Sokaogon Chippewa Community, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation
Squaxin Island Tribe of the Squaxin Island Reservation
St. Croix Chippewa Indians of Wisconsin
Standing Rock Sioux Tribe of North & South Dakota
Stillaguamish Tribe of Indians of Washington [*previously* listed as Stillaguamish Tribe of Washington]
Stockbridge Munsee Community, Wisconsin
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation
Susanville Indian Rancheria, California
Swinomish Indian Tribal Community [*previously* listed as Swinomish Indians of the Swinomish Reservation of Washington]
Sycuan Band of the Kumeyaay Nation
Table Mountain Rancheria [*previously* listed as Table Mountain Rancheria of California]
Tejon Indian Tribe
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band; and Wells Band)
The Chickasaw Nation
The Choctaw Nation of Oklahoma
The Muscogee (Creek) Nation
The Osage Nation [*previously* listed as Osage Tribe]
The Seminole Nation of Oklahoma
Thlopthlocco Tribal Town
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Timbisha Shoshone Tribe [*previously* listed as Death Valley Timbi-sha Shoshone]
Tohono O'odham Nation of Arizona
Tolowa Dee-ni' Nation [*previously* listed as Smith River Rancheria, California]
Tonawanda Band of Seneca [*previously* listed as Tonawanda Band of Seneca Indians of New York]
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres Martinez Desert Cahuilla Indians, California [*previously* listed as Torres-Martinez Band of Cahuilla Mission Indians of California]
Tulalip Tribes of Washington [*previously* listed as Tulalip Tribes of the Tulalip Reservation, Washington]
Tule River Indian Tribe of the Tule River Reservation, California
Tunica-Biloxi Indian Tribe
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma

Upper Mattaponi Tribe
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Ute Tribe [*previously* listed as Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah]
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah)
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma
Wilton Rancheria, California
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wiyot Tribe, California [*previously* listed as Table Bluff Reservation—Wiyot Tribe]
Wyandotte Nation
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Indian Tribe [*previously* listed as Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona]
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yocha Dehe Wintun Nation, California [*previously* listed as Rumsey Indian Rancheria of Wintun Indians of California]
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta del Sur Pueblo [*previously* listed as Ysleta Del Sur Pueblo of Texas]
Yuhaaviatam of San Manuel Nation [*previously* listed as San Manuel Band of Mission Indians, California]
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs

[227 Federally Recognized Alaska Native Villages/Tribes Within the State of Alaska]

Agdaagux Tribe of King Cove
Akiachak Native Community
Akiak Native Community
Alatna Village
Algaaciq Native Village (St. Mary's)
Allakaket Village
Alutiiq Tribe of Old Harbor [*previously* listed as Native Village of Old Harbor]
Angoon Community Association
Anvik Village
Arctic Village (*See* Native Village of Venetie Tribal Government in CLARIFICATION section)
Asa'carsarmiut Tribe
Beaver Village
Birch Creek Tribe
Central Council of the Tlingit & Haida Indian Tribes
Chalkyitsik Village
Cheesh-Na Tribe [*previously* listed as Native Village of Chistochina]
Chevak Native Village
Chickaloon Native Village
Chignik Bay Tribal Council [*previously* listed as Native Village of Chignik]
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Chuloonawick Native Village
Circle Native Community
Craig Tribal Association [*previously* listed as Craig Community Association]
Curyung Tribal Council
Douglas Indian Association
Egegik Village
Eklutna Native Village
Emmonak Village
Evansville Village (aka Bettles Field)
Galena Village (aka Louden Village)
Gulkana Village Council [*previously* listed as Gulkana Village]
Healy Lake Village
Holy Cross Tribe [*previously* listed as Holy Cross Village]
Hoonah Indian Association
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Inupiat Community of the Arctic Slope
Iqugmiut Traditional Council [*previously* listed as Iqurmuit Traditional Council]
Ivanof Bay Tribe [*previously* listed as Ivanoff Bay Tribe]
Kaguyak Village
Kaktovik Village (aka Barter Island)
Kasigluk Traditional Elders Council
Kenaitze Indian Tribe
Ketchikan Indian Community [*previously* listed as Ketchikan Indian Corporation]
King Island Native Community
King Salmon Tribe
Klawock Cooperative Association
Knik Tribe
Kokhanok Village
Koyukuk Native Village
Levelock Village
Lime Village
Manley Hot Springs Village
Manokotak Village
McGrath Native Village
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Naknek Native Village
Native Village of Afognak
Native Village of Akhiok
Native Village of Akutan
Native Village of Aleknagik
Native Village of Ambler
Native Village of Atka
Native Village of Atqasuk [*previously* listed as Atqasuk Village (Atkasook)]
Native Village of Barrow Inupiat Traditional Government
Native Village of Belkofski
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chenega (aka Chanega)
Native Village of Chignik Lagoon
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Native Village of Council
Native Village of Deering
Native Village of Diomede (aka Inalik)
Native Village of Eagle
Native Village of Eek
Native Village of Ekuk
Native Village of Ekwok [*previously* listed as Ekwok Village]
Native Village of Elim
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Native Village of Hamilton
Native Village of Hooper Bay
Native Village of Kanatak
Native Village of Karluk
Native Village of Kiana
Native Village of Kipnuk
Native Village of Kivalina
Native Village of Kluti Kaah (aka Copper Center)
Native Village of Kobuk
Native Village of Kongiganak
Native Village of Kotzebue
Native Village of Koyuk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
Native Village of Mekoryuk
Native Village of Minto
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Native Village of Nightmute
Native Village of Nikolski
Native Village of Noatak
Native Village of Nuiqsut (aka Nooiksut)
Native Village of Nunam Iqua [*previously* listed as Native Village of Sheldon's Point]
Native Village of Nunapitchuk
Native Village of Ouzinkie
Native Village of Paimiut
Native Village of Perryville
Native Village of Pilot Point
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Native Village of Ruby
Native Village of Saint Michael
Native Village of Savoonga
Native Village of Scammon Bay
Native Village of Selawik
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Shungnak
Native Village of Stevens
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Native Village of Teller
Native Village of Tetlin

Native Village of Tuntutuliak
Native Village of Tununak
Native Village of Tyonek
Native Village of Unalakleet
Native Village of Unga
Native Village of Wales
Native Village of White Mountain
Nenana Native Association
New Koliganek Village Council
New Stuyahok Village
Newhalen Village
Newtok Village
Nikolai Village
Ninilchik Village
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Nulato Village
Nunakauyarmiut Tribe
Organized Village of Grayling (aka Holikachuk)
Organized Village of Kake
Organized Village of Kasaan
Organized Village of Kwethluk
Organized Village of Saxman
Orutsararmiut Traditional Native Council [*previously* listed as Orutsararmuit Native Village (aka Bethel)]
Oscarville Traditional Village
Pauloff Harbor Village
Pedro Bay Village
Petersburg Indian Association
Pilot Station Traditional Village
Pitka's Point Traditional Council [*previously* listed as Native Village of Pitka's Point]
Platinum Traditional Village
Portage Creek Village (aka Ohgsenakale)
Qagan Tayagungin Tribe of Sand Point [*previously* listed as Qagan Tayagungin Tribe of Sand Point Village]
Qawalangin Tribe of Unalaska
Rampart Village
Saint George Island (*See* Pribilof Islands Aleut Communities of St. Paul & St. George Islands in Clarification section)
Saint Paul Island (*See* Pribilof Islands Aleut Communities of St. Paul & St. George Islands in Clarification section)
Salamatof Tribe [*previously* listed as Village of Salamatoff]
Seldovia Village Tribe
Shageluk Native Village
Sitka Tribe of Alaska
Skagway Village
South Naknek Village
Stebbins Community Association
Sun'aq Tribe of Kodiak [*previously* listed as Shoonaq' Tribe of Kodiak]
Takotna Village
Tangirnaq Native Village [*previously* listed as Lesnoi Village (aka Woody Island)]
Telida Village
Traditional Village of Togiak
Tuluksak Native Community
Twin Hills Village
Ugashik Village
Umkumiut Native Village [*previously* listed as Umkumiute Native Village]
Village of Alakanuk
Village of Anaktuvuk Pass
Village of Aniak
Village of Atmautluak
Village of Bill Moore's Slough
Village of Chefornak
Village of Clarks Point
Village of Crooked Creek
Village of Dot Lake
Village of Iliamna
Village of Kalskag
Village of Kaltag
Village of Kotlik
Village of Lower Kalskag
Village of Ohogamiut
Village of Red Devil
Village of Sleetmute
Village of Solomon
Village of Stony River
Village of Venetie (*See* Native Village of Venetie Tribal Government)
Village of Wainwright
Wrangell Cooperative Association
Yakutat Tlingit Tribe
Yupiit of Andreafski

Clarification

Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)—is not included in the official count of 574 federally recognized Tribes but is recognized as an entity authorized to act on behalf of Artic Village and Village of Venetie by the BIA.
Pribilof Islands Aleut Communities of St. Paul & St. George Islands (Saint George Island and Saint Paul Island)—is not included in the official count of 574 federally recognized Tribes but is recognized as an entity authorized to act on behalf of Saint George Island and Saint Paul Island.

[FR Doc. 2022–01789 Filed 1–27–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Ponca Tribe of Nebraska Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Ponca Tribe of Nebraska's Liquor Control Ordinance. This Liquor Control Ordinance amends and supersedes the existing Liquor Control Ordinance, first enacted by the Ponca Tribe of Nebraska on July 21, 2018, and published in the **Federal Register** on September 11, 2018.

DATES: This ordinance shall become effective February 28, 2022.

FOR FURTHER INFORMATION CONTACT: Todd Gravelle, Supervisory Tribal Operations Specialist, Great Plains Regional Office, Bureau of Indian Affairs, 115 Fourth Avenue South East, Suite 400, Aberdeen, South Dakota 57401, Telephone: (605) 226–7376, Fax: (605) 226–7379.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor control laws for the purpose of regulating liquor transactions in Indian country. The Ponca Tribe of Nebraska first adopted its Liquor Control Ordinance on September 11, 2018, and this amendment supersedes the existing Liquor Control Ordinance, duly adopted by the Ponca Tribal Council on July 6, 2021. By the delegated authority contained in 3 IAM 4, the Great Plains Regional Director, Bureau of Indian Affairs, approved the amendment on January 19, 2022.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Ponca Tribe of Nebraska duly adopted this Liquor Control Ordinance by Resolution No. 21–42, on July 6, 2021.

Bryan Newland,

Assistant Secretary–Indian Affairs.

The Ponca Tribe of Nebraska's Liquor Control Ordinance shall read as follows:

Ponca Tribe of Nebraska

Title XVI

Liquor Control

Chapter 1

General Provisions

Section 16–1–1. Authority. This Title is enacted by the Tribal Council:

1. Pursuant to and in accordance with Article V, Section 1(j), (l), (o), and (p) of the Constitution;

2. Pursuant to and in accordance with federal statutes and other laws, including the Act of August 15, 1953, 67 Stat. 586, codified at 18 U.S.C. 1161, which provide a federal legal basis for the Tribe to regulate liquor on Tribal lands; and

3. In conformity with applicable state laws.

Section 16–1–2. Purpose. The Tribe wishes to exercise its sovereignty and federal delegated authority to control liquor on Tribal lands and, therefore, the purpose of this Title is:

1. To control liquor manufacturing, distribution, sale, and possession on Tribal lands;

2. To establish procedures for the licensing of the manufacture, distribution, and sale of liquor on Tribal lands; and

3. To otherwise regulate the manufacture, distribution, sale, and consumption of liquor.

Section 16–1–3. Definitions. Unless the context requires otherwise or

another definition is provided for a particular chapter or section, in this Title:

1. ''Alcohol'' means the product of distillation of any fermented liquid, whether rectified or diluted, whatever the origin, and includes synthetic ethyl alcohol and alcohol processed or sold in a gaseous form, but excludes denatured alcohol or wood alcohol.

2. ''Beer'' means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and includes, but is not limited to, beer, ale, malt liquor, stout, lager beer, porter, near beer, flavored malt beverage, and hard cider.

3. ''Board'' means the Ponca Tribe of Nebraska Liquor Control Board.

4. ''Board member'' means a member of the Board.

5. ''Brewer'' means any person engaged in the business of manufacturing beer.

6. ''Consume'' means knowingly and intentionally drinking or otherwise ingesting.

7. ''Distiller'' means any person engaged in the business of distilling or manufacturing spirits.

8. ''Distribute'' means to acquire, purchase, store, introduce, import, export, sell, offer for sale, deliver, transport, give away, offer to give away, or otherwise possess liquor for resale or further processing, or otherwise introduce, import, export, sell, resell, offer for sale or resale, deliver, transport, give away, or offer to give away liquor to a retailer.

9. ''Liquor'' means alcohol, beer, spirits, wine, all other fermented, spirituous, vinous, or malt liquors, or combinations thereof and mixed liquor, a part of which is fermented, spirituous, vinous, malt liquor, or otherwise intoxicating, and includes every liquid, solid, semi-solid, or other substance, patented or not, containing alcohol, beer, spirits, or wine and all preparations or mixtures of liquor capable of human consumption.

10. ''Manufacture'' means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any liquor and includes blending, but does not include the mixing or other preparation of drinks for serving for consumption on the premises where sold, sampled, or given away.

11. ''Manufacturer'' means any person engaged in the manufacture or other preparation of liquor in any form whatsoever, including brewers, distillers, and wineries, but does not include the mixing or other preparation of drinks for consumption on the premises where sold, sampled, or given away.

12. ''On-sale'' means the sale of liquor for consumption upon the premises where sold or given away and includes the mixing or other preparation of drinks for serving for consumption on the premises where sold or given away.

13. ''Off-sale'' means the sale of liquor for consumption off the premises where sold or given away.

14. ''Retailer'' means any person who acquires liquor from a wholesaler or otherwise sells, offers for sale, distributes, gives away, or offers to give away any liquor from any location or facility for any purpose other than resale or further processing.

15. ''Retail sale'' means any sale made for any purpose other than for resale or further processing.

16. ''Sale'' means the transfer of ownership of, title to, or possession of goods for money, other goods, services, or other valuable consideration, including bartering, trading, exchanging, renting, leasing, conditional sales, and any sales where possession of goods is given to the buyer but title is retained by the seller as security for the payment of the purchase price.

17. ''Sampling'' means consumption on the premises of a licensee of not more than five (5) samples of one (1) fluid ounce or less of liquor by the same person in a twenty-four (24) hour period.

18. ''Sell'' means to solicit or receive an order for a sale, make or consummate a sale, or keep or expose for sale and includes intending to sell and keeping with intent to sell.

19. ''Spirits'' means any beverage which contains alcohol obtained by distillation, whether mixed with water or other substance in solution, and includes brandy, rum, whiskey, gin, or other spirituous liquors and such liquors when rectified, blended, or otherwise mixed with alcohol or other substances.

20. ''Tribal lands'' means:

a. All lands held in trust by the United States for the benefit of the Tribe or its members;

b. All fee lands owned by the Tribe and located within one or more of the Tribe's service areas as defined by Public Law 101–484 and any amendments thereto; and

c. All lands of the Tribe or its members defined as Indian country by 18 U.S.C. 1151, including dependent Indian communities.

21. ''Wholesaler'' means any person who distributes or is engaged in distributing of liquor.

22. ''Wine'' means any alcoholic beverage obtained by fermentation of fruits, vegetables, or other agricultural products containing sugar, including such beverages when fortified by the addition of alcohol or spirits.

23. ''Winery'' means any person engaged in the business of producing or manufacturing wine.

Section 16–1–4. Consent to Jurisdiction.

1. This Title shall apply to any person who:

a. Resides or is located on Tribal lands;

b. Conducts business or engages in a business transaction on Tribal lands, with another person located on Tribal lands, or with the Tribe;

c. Enters into a consensual relationship with Tribe or its members;

d. Acts under Tribal authority; or

e. Enters Tribal lands.

2. Any person to whom this Title applies shall be deemed to have consented to the following:

a. To be bound by the terms of this Title;

b. To the exercise of jurisdiction of the Liquor Board over him or her; and

c. To the exercise of jurisdiction by the Tribal Court over him or her in an action arising under this Title.

Section 16–1–5. Non-Liability. There shall be no liability on the part of the Tribe, its agencies, departments, enterprises, agents, officers, officials, or employees for any damages which may occur as a result of reliance upon or conformity with the provisions of this Title.

Section 16–1–6. Severability. If any chapter, section, or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections, and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 16–1–7. Sovereign Immunity. Except where expressly waived by a section of this Title specifically referring to a waiver of sovereign immunity, nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees.

Chapter 2

Liquor Control Board

Section 16–2–1. Establishment.

1. There is hereby established a liquor control board to be known as the Ponca Tribe of Nebraska Liquor Control Board as an agency of the Tribe, under the authority of the Tribe, and delegated the powers, duties, and responsibilities set

forth in this Title and as otherwise provided by the laws of the Tribe.

2. The Board may employ such other personnel and employees as may be required for the proper discharge of its duties under this Title, provided that, to the maximum extent feasible, the Board shall first use personnel and employees of the Tribal administration as authorized in this Chapter.

Section 16–2–2. Composition. The Board shall consist of five (5) members as follows:

1. One (1) Tribal Council member designated by the Tribal Council, who shall serve as the Chairperson of the Board; and

2. Four (4) individuals who shall be appointed by the Tribal Council.

Section 16–2–3. Qualifications. To be qualified to be appointed a Board member, a person shall:

1. Be at least the age of majority;

2. Have no conflicts of interest, as defined in this Chapter;

3. Not have been convicted of any felony or any crime involving or related to alcohol or drugs in any court of any jurisdiction in the five (5) years prior to appointment unless pardoned and fully restored of his or her civil rights by the proper authorities prior to appointment;

4. Be willing and able to comply with the ethical duties of Board members, as defined in this Chapter;

5. Be willing and able to perform the Board's duties in compliance with the laws of the Tribe;

6. Have or acquire knowledge of this Title;

7. Have the time available to actively fulfill the duties of a Board member; and

8. Be willing to receive orientation and training regarding the duties of the Board.

Section 16–2–4. Term of Office.

1. The Tribal Council member designated by the Tribal Council to serve on the Board shall hold office until he or she no longer holds office on the Tribal Council regardless of whether there is a successor in the office, but a former Tribal Council member designated by the Tribal Council to serve on the Board may be appointed to another position on the Board in accordance with this Chapter.

2. Upon the selection of the initial Board members, the Tribal Council shall choose from the members other than the Tribal Council member designated by the Tribal Council to serve on the Board, by lot, one (1) Board member who will serve an initial term of one (1) year, one Board member who will serve an initial term of two (2) years, and two (2) Board members who will serve an initial term of three (3) years. Thereafter, the term of office for Board members shall be three (3) years.

3. Except as otherwise provided herein, each Board member shall serve until he or she resigns, is removed, or the Tribal Council appoints his or her successor.

Section 16–2–5. Compensation. Board members shall be compensated at a rate set by the Tribal Council. In addition, Board members shall be paid for mileage for every Board meeting attended in accordance with the rules applicable to and at the standard rate established for Tribal officers and employees.

Section 16–2–6. Resignation and Removal.

1. Any Board member may resign from his or her position by delivering a written resignation to the Tribal Council.

2. Any Board member who is a Tribal Council member designated by the Tribal Council to serve on the Board shall automatically be removed from the Board upon the Tribal Council member's resignation or removal from the Tribal Council.

3. The Tribal Council may, by majority vote, remove a Board member for any the following:

a. Violating or permitting violation of this Title;

b. Neglect of duty;

c. Malfeasance or misfeasance in the handling of liquor control matters;

d. Acceptance or solicitation of bribes;

e. Violation of the ethical duties or conflict of interest provisions of this Chapter;

f. Unexcused absence from three (3) or more consecutive Board meetings;

g. Any crime committed against the Tribe which results in a conviction or admission of guilt; or

h. Upon the happening of any event which would have made the Board member ineligible for appointment if the event had occurred prior to appointment.

4. The Tribal Council's decision to remove a Board member shall be final and not subject to challenge, review, or appeal.

Section 16–2–7. Vacancies. In the event of a vacancy on the Board, whether by removal, resignation, or otherwise, the Tribal Council shall appoint a replacement to serve the remaining term of the Board member being replaced. In the event of an emergency vacancy, the Tribal Council may hold a special meeting to fill the vacancy.

Section 16–2–8. Officers.

1. The Chairperson of the Board shall call and preside over Board meetings. The Chairperson shall report to the Tribal Council as required.

2. The Board shall elect from its members a Secretary at its first meeting in each calendar year or at the next meeting of the Board if a vacancy occurs in the office of Secretary.

3. The Secretary shall be responsible for assuring the timely and proper production, distribution, and storage of all written records of the Board, including administrative and financial documents. The Secretary shall keep minutes of all meetings of the Board and shall keep informed about the Board's expenditures and budget.

Section 16–2–9. Ethics and Conflicts.

1. No person may be appointed to the Board who:

a. Is employed by, an officer of, or has a private ownership interest, whether direct or indirect, in any entity or organization that is a retailer, wholesaler, brewer, distiller, winery, or other manufacturer;

b. Is engaged in litigation against the Tribe in a matter related to the subject matter of the Board; or

c. Has a similar interest that would necessarily conflict with the impartial performance of a Board member's duties.

2. The Tribal Council's determination whether an applicant for the Board is barred from appointment by a conflict of interest shall be final and not subject to challenge, review, or appeal.

3. Board members shall:

a. Not accept or request any gift, gratuity, compensation, employment, or other thing of value from any manufacturer, wholesaler, retailer, holder, or applicant for a liquor license, or other person subject to this Title;

b. Avoid the appearance of impropriety;

c. Not act in an official capacity when a matter before the Board directly and specifically affects a Board member's own interests or the interests of his or her immediate family;

d. Not attempt to exceed the authority granted to Board members by this Title;

e. Recognize that the authority delegated by this Title is to the Board as a whole, not to individual Board members and, accordingly, the powers of the Board may only be exercised by the Board acting through the procedures established by this Title;

f. Not take action on behalf of the Board unless authorized to do so by the Board;

g. Not involve the Board in any controversy outside the Board's duties; and

h. Hold all confidential information revealed during the course of Board business in strict confidence and discuss or disclose such information only to persons who are entitled to the information and only for the purpose of conducting official Board business.

Section 16–2–10. Recusal.

1. No Board member shall participate in any action or decision by the Board directly involving:

a. Himself or herself;

b. A member of his or her immediate family;

c. Any person, business, or other entity of which he or she or a member of his or her immediate family is an employee;

d. Any business or other entity in which he or she or a member of his or her immediate family has a substantial ownership interest; or

e. Any business or other entity with which he or she or a member of his or her immediate family has a substantial contractual relationship.

2. Nothing in this Section shall preclude a Board member from participating in any action or decision by the Board which:

a. Generally affects a class of persons, regardless of whether the Board member or a member of his or her immediate family is a member of the affected class; and

b. Affects the Tribe, an economic enterprise of the Tribe, or a person or entity in a contractual relationship with the Tribe or an economic enterprise of the Tribe, regardless of whether the Board member is also a member of the Tribe.

3. A Board member may voluntarily recuse himself or herself and decline to participate in any action or decision by the Board when the Board member, in his or her own discretion, believes:

a. That he or she cannot act fairly or without bias; or

b. That there would be an appearance that he or she could not act fairly or without bias.

Section 16–2–11. Quorum. Three (3) Board members shall constitute a quorum for conducting business.

Section 16–2–12. Meetings.

1. The Board may hold meetings as it deems necessary.

2. The Chairperson of the Board shall have the authority to call a meeting of the Board as he or she sees fit upon forty-eight (48) hours written notice. Written notice to a Board member may be dispensed with as to any Board member who is actually present at the meeting at the time it convenes.

3. The Board may conduct a meeting exclusively by telephone, video conference, or other electronic means provided that the notice of the Board meeting provides the manner in which the meeting will be conducted and includes information on how a person may attend the meeting, such as a telephone number for participation in the meeting.

4. All decisions of the Board shall be made by a majority vote of the Board members attending the meeting, provided a quorum is present, unless otherwise provided in this Title.

5. Matters dealing with personnel or other confidential matters shall be conducted in executive session and shall not be open to the public.

Section 16–2–13. Powers and Duties of Board. The power, authority, and duties of the Board shall be as follows:

1. To administer, implement, and enforce this Title;

2. To make recommendations to the Tribal Council concerning amendments to this Title;

3. To set fees for applications, licenses, and renewal of licenses as provided in this Title;

4. To receive applications for and issue to and suspend, cancel, and revoke licenses of manufacturers, wholesalers, and retailers in accordance with this Title and the rules and regulations of the Board;

5. To obtain information and conduct background investigations to determine the suitability of an applicant for a liquor license;

6. To bring legal action in the name of the Tribe to enforce this Title;

7. To inspect any premises where liquor is manufactured, distributed, or sold as provided in this Title;

8. To conduct an audit to inspect any licensee's records and books as provided in this Title;

9. To conduct hearings and hear appeals authorized by this Title, provided the Board shall have no authority to declare any portion of this Title or other law of the Tribe invalid for any reason;

10. In the conduct of any hearing or audit, to issue subpoenas, compel the attendance of witnesses, administer oaths, and require testimony under oath at any hearing conducted by the Board;

11. To examine, under oath, either orally or in writing, any person with respect to any matter subject of this Title;

12. To collaborate and cooperate with such other agencies of the Tribe, other tribes, the United States, and the states as necessary to implement and enforce this Title;

13. To develop standard forms and to require by regulation the filing of any such forms or reports necessary for implementation of this Title;

14. To utilize or adopt forms from other appropriate jurisdictions to use as its own so long as such forms meet the requirements of the laws of the Tribe for which such forms are utilized;

15. To promulgate rules and regulations, subject to approval of the Tribal Council and consistent with the laws of the Tribe, which are necessary for carrying out this Title;

16. To delegate any of its power, authority, and duties to an individual Board member or other personnel or employee of the Board, provided that the Board shall not delegate its power to promulgate rules and regulations or to conduct hearings and hear appeals; and

17. To perform all other duties delegated or assigned to the Board by this Title or other laws of the Tribe or the Tribal Council and otherwise implement this Title.

Section 16–2–14. Obtaining Information.

1. The Board may request such information relevant and material to the enforcement of this Title from any and all persons who:

a. Are engaged in the introduction, sale, distribution, or possession of liquor on Tribal lands or with the Tribe; or

b. Are otherwise subject to the jurisdiction of the Tribe.

2. Upon a written request, such persons shall provide the information requested by the Board. The Board may issue a subpoena as provided in this Chapter or request the Court to issue a subpoena or other order, including ex parte without a hearing, to obtain the information required to be provided under this Section.

Section 16–2–15. Investigative Authority.

1. For the purpose of enforcing the provisions of this Title, the Board shall have the authority to inspect property during regular business hours, to examine and require the production of any pertinent records, books, information, or evidence, and to require the presence of any person and require testimony under oath concerning the subject matter of any inquiry of the Board, and to make a permanent record of the proceeding.

2. For the purpose of accomplishing the authority granted in this Section, the Board shall have the power to issue subpoenas and summons requiring attendance and testimony of witnesses and production of papers or other things at any hearing held pursuant to this Title.

3. If a person fails to comply with a subpoena issued by the Board, the Board may apply to the Tribal Court for issuance of an order to show cause which directs that the person against whom the subpoena was issued shall comply with the subpoena within ten (10) business days or show cause why he or she should not be held in contempt of court in accordance with the laws of the Tribe. The Tribal Court

shall issue the order to show cause without notice or hearing, unless the Court finds that the subpoena was not lawfully issued or was not properly served in accordance with this Section.

4. Any subpoena, summons, or notice issued by the Board shall be served in the manner provided for service of the same in the rules of procedure governing civil actions in Tribal Court.

Section 16–2–16. Rules and Regulations. The Board shall promulgate rules and regulations, not inconsistent with this Title and subject to the approval of Tribal Council, as it deems necessary or desirable in the public interest in carrying out the duties of the Board including, but not limited to:

1. Internal operational procedures;

2. The forms to be used for purposes of this Title;

3. Procedures for conducting investigations and inspections;

4. Procedures for all hearings conducted by the Board;

5. Conditions of sanitation of premises of licensees of the Board; and

6. Protection of the due process rights of all persons subject to the enforcement of this Title by the Board.

Section 16–2–17. Board Seal.

1. The Board shall acquire an official seal which shall be used on all original and/or certified copies of all documents of the Board to evidence their authenticity.

2. The seal of the Board shall:

a. Be circular in shape;

b. Contain the words ''Ponca Tribe of Nebraska'' around the top edge;

c. Contain the words ''Liquor Control Board'' around the bottom edge; and

d. Contain the words ''Official seal'' in the center.

3. The seal shall be secured at all times to prevent unauthorized use.

Section 16–2–18. Stamps and Licenses.

1. The Board shall provide for the form, size, color, and identifying characteristics of all licenses, permits, stamps, tags, receipts, or other instruments evidencing receipt of any license or payment of any fee administered by the Board or otherwise showing compliance with this Title.

2. Any instrument developed by the Board under this Section shall contain at least the following information:

a. The words ''Ponca Tribe'' or, if space allows, ''Ponca Tribe of Nebraska;''

b. If space allows, the words ''Liquor Control Board;''

c. If the instrument is a license or permit, an indication of the type of license or permit, its effective dates, and the name and address of the person to whom it is issued; and

d. If the instrument is a receipt, an indication of what the receipt is for, any amount the receipt is for, and the name and address of the person to whom it is issued.

3. The Board shall provide for the manufacture, delivery, storage, and safeguarding of any instrument developed under this Section and shall safeguard such instruments against theft, counterfeiting, and improper use.

Section 16–2–19. Records of Board.

1. The Board shall create and maintain accurate and complete records which contain information and documents necessary for the proper and efficient operation of the Board, including, but not limited to:

a. All licenses, permits, and the like issued and any fees received for the same;

b. All fees and penalties imposed, due, and collected; and

c. Each and every official transaction, communication, or action of the Board.

2. The records of the Board shall be maintained at the office of the Board and shall not be removed from said office without the written authorization of the Board.

3. Except where provided otherwise in the laws of the Tribe, the records and other information of the Board shall be considered public records of the Board and shall be provided or made available for inspection during regular business hours upon proper written request to the Board and payment of any copying costs set by the Board, provided that confidential personal information appearing in such records is rendered unreadable prior to provision or inspection.

4. The records of the Board shall be subject to audit at any time at the direction of the Tribal Council, but not less than once each year.

Section 16–2–20. Use of Other Resources. In carrying out its duties and responsibilities:

1. The Board may use the services, information, or records of other departments and agencies of the Tribe or otherwise available to the Tribe, both from within and without the Tribe, and such departments, agencies, and others shall furnish such services, information, or records upon request of the Board; and

2. The Board may use personnel and employees of the Tribal administration as it would personnel and employees of the Board, provided the Board coordinates with and obtains approval from the Tribal administration.

Chapter 3

Liquor Licenses

Section 16–3–1. License Required. No person may sell, distribute, or manufacture liquor on or to Tribal lands except as specifically authorized by a license issued in accordance with this Chapter and compliance with all other applicable laws governing the same.

Section 16–3–2. Exemptions. The following liquor and activities shall be exempt from the provisions of this Title, including the requirement of a liquor license:

1. Any pharmaceutical preparation containing liquor which is prepared by a druggist according to a formula of the pharmacopeia or dispensatory of the United States;

2. Wine or beer manufactured in a residence for consumption therein and not for sale;

3. Alcohol used or intended for use:

a. For scientific research or manufacturing products other than liquor;

b. By a physician, medical or dental clinic, or hospital;

c. In tinctures or toilet, medicinal, or antiseptic preparations and solutions not intended for internal human use nor to be sold as beverages, and which are unfit for beverage purposes, such as cleaning compounds;

d. In food products known as flavoring extracts when manufactured and sold for cooking, culinary, or flavoring purposes, and which are unfit for use for beverage purposes; or

e. By persons exempt from regulation in accordance with the laws of the United States;

4. Ethanol or ethyl alcohol for use as fuel; and

5. Liquor used in a bona fide religious ceremony.

Section 16–3–3. Liquor Licenses.

1. Licenses issued by the Board shall be of the following types:

a. Manufacturer license;

b. Wholesale license;

c. Retail license; and

d. Special event license.

2. Except for special event licenses, a license issued by the Board shall be in force and effect for one (1) year following the date it is issued, unless sooner revoked.

3. Any person required to obtain a license under this Chapter who fails to obtain such license or who continues to manufacture, distribute, or sell liquor after such license has been revoked shall forfeit his or her right to manufacture, distribute, or sell liquor on or to Tribal lands until he or she complies with all of the provisions of this Title.

Section 16–3–4. Manufacturer License.

1. A person shall be required to first obtain a manufacturer license from the Board if such person:

a. Brews, distills, or otherwise manufactures liquor on Tribal lands; or

b. Otherwise is a manufacturer located on Tribal lands or to whom this Title applies.

2. If a person manufactures liquor at two or more separate places of business on Tribal lands, a separate manufacturer license shall be required for each place of business.

3. A manufacturer license shall allow, without the requirement of any other license under this Chapter:

a. The manufacture, distilling, brewing, and storage of liquor on Tribal lands;

b. The distribution of liquor brewed, distilled, or otherwise manufactured by the manufacturer to licensees on Tribal lands;

c. The distribution of liquor brewed, distilled, or otherwise manufactured by the manufacturer on or from the location on Tribal lands designated in the manufacturer license;

d. The purchase of liquor from licensed wholesalers and licensed manufacturers;

e. The sampling of liquor on the premises of the manufacturer, a licensed retailer, or licensed wholesaler by a licensee and his or her employees; and

f. The retail on-sale of liquor to individuals on the premises of the manufacturer.

4. The fees for a manufacturer license, including the renewal thereof, shall be set by the Board.

Section 16–3–5. Wholesale License.

1. A person shall be required to first obtain a wholesale license from the Board if such person:

a. Distributes liquor to Tribal lands or to any person on Tribal lands;

b. Distributes liquor from a location on Tribal lands;

c. Stores liquor on Tribal lands for the purpose or intent of distributing such liquor to any person; or

d. Otherwise is a wholesaler located on Tribal lands or to whom this Title applies.

2. If a person distributes liquor at two or more separate places of business on Tribal lands, a separate wholesale license shall be required for each place of business.

3. A wholesale license shall allow:

a. The distribution of liquor to licensees on Tribal lands;

b. The distribution of liquor on or from the location on Tribal lands designated in the wholesale license; and

c. The sampling of liquor on the premises of the wholesaler or a licensed retailer by a licensee and his or her employees.

4. The fees for a wholesale license, including the renewal thereof, shall be set by the Board.

Section 16–3–6. Retail License.

1. A person shall be required to first obtain a retail license from the Board if such person:

a. Engages in the retail sale of liquor on Tribal lands; or

b. Otherwise is a retailer located on Tribal lands or to whom this Title applies.

2. If a person makes sales or is a retailer at two or more separate places of business on Tribal lands, a separate retail license shall be required for each place of business.

3. A retail license shall allow:

a. The purchase of liquor for retail sale from licensed wholesalers and licensed manufacturers;

b. The sale at retail, offering for sale at retail, and giving away of liquor on the premises of the retailer specified in the retail license for use or consumption but not for resale in any form; and

c. If the license permits on-sales, the use or consumption of liquor, including sampling, on the premises of the retailer by customers of the retailer.

4. A retail license shall designate whether the licensee is permitted to make on-sales or off-sales, but shall not permit both.

5. The fees for a retail license, including the renewal thereof, shall be set by the Board.

Section 16–3–7. Special Event License.

1. A person shall be required to first obtain a special event license from the Board if such person engages in the retail sale of liquor on Tribal lands for a period of less than seven (7) consecutive days for an event.

2. If a person required to obtain a special event license makes sales at two or more separate locations or events on Tribal lands, a separate special event license shall be required for each location.

3. A special event license shall allow:

a. The purchase of liquor for retail sale from licensed wholesalers and licensed manufacturers;

b. The sale at retail, offering for sale at retail, and giving away of liquor for use or consumption on the premises of the event specified in the license, but not for resale in any form; and

c. The sampling of liquor on the premises of the event by customers of the licensee.

4. A special event license shall designate the precise day or period of days for which the license was issued and shall be valid only for such designated day or days.

5. The fees for a special event license shall be set by the Board.

6. The Board may provide by regulation for issuing special event licenses utilizing expedited applications and procedures exempt from the notice and hearing requirements of this Chapter to licensed retailers conducting on-sales, including caterers and the like, for the purpose of allowing such retailers to sell and offer for sale liquor at events on premises other than the premises designated in the retail license.

Section 16–3–8. Registration of Salesmen.

1. No person may take or solicit orders for liquor from a retailer or wholesaler on Tribal lands without first registering with the Board and providing the following:

a. His or her name and address or equivalent information to identify the person or persons taking or soliciting such orders;

b. The name and address of his or her employer or principal; and

c. Such other information the Board may require.

2. There shall be no fee for registration under this Section, but registration shall require renewal each calendar year.

Section 16–3–9. Application for License.

1. Any person or entity desiring a license pursuant to this Chapter shall complete and file an application for the appropriate license with the Board and pay such application fee as may be set by the Board to defray the costs of processing the application.

2. In addition to any other items required by the Board, all applications for a license pursuant to this Chapter shall include the following:

a. The name, address, and telephone number of the applicant;

b. Any other names used by the applicant, including trade names;

c. Whether the applicant is a partnership, corporation, limited liability company, sole proprietorship, or other entity and the jurisdiction where the applicant is organized or registered to conduct business;

d. The names, addresses, telephone numbers, and social security numbers of the applicant's principals, which shall include the applicant's officers, directors, managers, owners, partners, and stockholders that own twenty-five percent (25%) or more of the applicant's business, and the ten (10) largest owners, partners, and stockholders of applicant's business regardless of percentage of stock owned;

e. The identity of all persons, other than principals, who have an economic interest in the applicant's business;

f. The federal tax identification number or social security number of the applicant;

g. The location where the applicant intends to sell, distribute, or manufacture liquor, as the case may be;

h. The type of application desired;

i. Whether the applicant will sell, distribute, or manufacture liquor;

j. Whether the applicant is licensed to sell, distribute, or manufacture liquor, as applicable, by the appropriate state within whose boundaries the applicant is geographically located;

k. Information on each liquor license which the applicant has held in any jurisdiction;

l. Whether the applicant or any of its principals have been convicted of or plead guilty to a felony or any criminal offense regarding liquor, including driving while intoxicated or under the influence of liquor;

m. Whether the applicant or any of its principals have had a liquor license revoked or suspended in any jurisdiction; and

n. Agreement by the applicant to comply with all applicable laws and all conditions of the license issued by the Board.

Section 16–3–10. Notice of Application.

1. Upon receipt of an application for a license, the Board shall issue a notice of the application which shall include:

a. The name of the applicant;

b. The location where the applicant intends to sell, distribute, or manufacture liquor;

c. The date the Board intends to consider the application, which shall be no sooner than thirty (30) days after the notice is posted in accordance with this Section;

d. Information on submitting comments on the application to the Board by mail or electronic means; and

e. A statement that comments on the application must be received no later than the day prior to the Board considering the application.

2. The notice of the application shall be posted at all Tribal governmental offices, the applicant's location if located on Tribal lands, on the Tribe's website for at least thirty (30) days and, if an edition of the Tribal newsletter will be released prior to consideration of the application, published in the Tribal newsletter.

3. Persons may submit comments on the application in the manner prescribed by the Board any time prior to the Board considering the application.

Section 16–3–11. Processing Application.

1. Upon receipt of an application for a license, the Board shall conduct or cause to be conducted a background investigation of the applicant and each of its principals. The background investigation shall include, at a minimum:

a. Verification of the applicant's business organization and registration status;

b. Verification of the applicant's state liquor license, its status, and any enforcement history; and

c. Conducting a criminal history check of the applicant and the applicant's principals.

2. The Board shall issue a license to an applicant only if it finds, after considering the application and any comments submitted by the public:

a. The applicant did not knowingly provide any false information to the Board regarding its application;

b. The applicant is or is expected to be licensed to sell, distribute, or manufacture liquor, as applicable, by the appropriate state within whose boundaries the applicant is geographically located;

c. If the applicant is a corporation or other entity, that it is organized under the laws of the Tribe or registered to conduct business in the territory of the Tribe in accordance with the laws of the Tribe governing the same;

d. Neither the applicant nor any of its principles has been convicted of or plead guilty to a felony or any criminal offense related to liquor in any jurisdiction, other than driving while intoxicated or under the influence of liquor;

e. Neither the applicant nor any of its principals has had a liquor license revoked in any jurisdiction in the previous two (2) years;

f. The requirements of this Title and the Board's rules and regulations have been met;

g. The applicant's capability, qualifications, and reliability are satisfactory; and

h. The best interests of the Tribe, its members, and the community as a whole will be served by the issuance of the license.

3. In reviewing an applicant's capability, qualifications, and reliability, the Board shall consider:

a. The character and reputation of the applicant;

b. The suitability of the physical premises of the applicant;

c. The plan of operation of the applicant; and

d. Any other relevant consideration.

4. In reviewing the interests of the Tribe, its members, and the community as a whole, the Board shall consider:

a. The need of the area to be served by the applicant;

b. The number of existing licensed businesses covering the area;

c. The desires of the community within the area to be served;

d. Any law enforcement problems which may arise because of the sale, distribution, or manufacture of liquor by the applicant; and

e. Any other relevant consideration.

5. The Board, in its discretion and upon notice to the applicant and the public, may conduct a hearing regarding any application. Such hearing shall be open to the public and any interested persons shall be permitted to present information, including witnesses and evidence, to the Board regarding the application.

6. If an applicant has not obtained a liquor license from the appropriate state within whose boundaries the applicant is located, the Board may approve the applicant's license conditioned upon the receipt of such state liquor license. If the Board conditionally approves a license pursuant to this subsection, the Board shall not issue a license to the applicant unless and until the applicant provides satisfactory proof that it has received a state liquor license.

7. The Board shall issue a decision on the application in writing. The Board's decision shall be served on the applicant and posted at all Tribal governmental offices and on the Tribe's website for at least fifteen (15) days and published in the next edition of the Tribal newsletter.

Section 16–3–12. Form of License.

1. Each license issued pursuant to this Chapter shall specify:

a. The name and address of the licensee;

b. The type of license issued;

c. The premises to which the license applies;

d. If the license is a manufacturer license, the type of liquor the licensee is permitted to manufacture, distill, brew, store, and sell; and

e. If the license is a retail license, whether it permits on-sales or off-sales with respect to the premises to which the license applies.

2. The licensee must keep the license posted at all times in a conspicuous place on the premises for which it has been issued.

3. Licensees must pay all taxes assessed against it under the laws of the Tribe.

4. Licensees shall comply, as a condition of retaining such license, with all applicable laws of the Tribe and with

all requests of the Board for inspection, examination, and audit permitted under this Title.

5. Notwithstanding anything else in the laws of the Tribe, a license issued pursuant to this Chapter constitutes only a permit to the licensee to conduct the activities permitted by the license for the duration of the license and shall not be construed or deemed to constitute a property or other vested right of any kind or give rise to a legal entitlement to a license for any future period of time.

Section 16–3–13. Renewal of License.

1. A licensee may renew its license by filing an application for renewal with the Board and paying such renewal application fee as may be set by the Board to defray the costs of processing the application.

2. The renewal application shall identify any changes in information required on the licensee's application for a license since the issuance of the license or previous renewal, whichever is later, or the applicant shall certify that no such information has changed.

3. A license issued pursuant to this Chapter shall be automatically renewed upon submission of a renewal application and payment of the applicable annual license fee, unless:

a. Information required on the application for a license has changed in such a manner that it makes the licensee ineligible for a license under this Chapter; or

b. The Board determines in writing that renewal would not be in the best interests of the Tribe, its members, or the community as a whole.

Section 16–3–14. Transfer and Modification of License.

1. No license issued pursuant to this Chapter may be assigned or transferred to any other person or entity.

2. Any change in ownership of the licensee that constitutes more than fifty percent (50%) of the ownership interest in a licensee shall require the issuance of a new license in accordance with this Chapter.

3. A licensee may request a change in the name and/or address of the licensee or a change in location of the premises to which the license applies by applying with the Board for a modification of the license in accordance with this Section and paying such fee as may be set by the Board to defray the costs of processing the modification.

4. The Board shall approve a change in the address of the licensee upon request, provided the change in address is not a change in location. The Board shall approve a change in the name of the licensee provided that the name is not the name of an individual and the change is not the result of any change in more than fifty percent (50%) of the ownership interest in the licensee.

5. If a licensee requests a change in location, the Board shall issue and post a notice of the modification of location and permit public comment the same as an application for a new license. The Board shall approve a change in location only if it finds, after considering the application and any comments submitted by the public:

a. The applicant has obtained or is in the process of obtaining a license or modification for the new location from the appropriate state within whose boundaries the applicant is located, provided that the Board may approve the change in location conditioned upon the receipt of such state license or modification so long as the Board does not issue the modified license unless and until the applicant provides satisfactory proof that it has received a state license or modification;

b. The physical premises of the new location is suitable for the license; and

c. The best interests of the Tribe, its members, and the community as a whole will be served by the modification of the location.

6. If the Board approves a modification of a license pursuant to this Section, the Board shall issue a modified license to the licensee reflecting the modified information. The modified license shall expire on the same date as the original license.

7. Any modification of a license not provided for in this Section shall require the issuance of a new license in accordance with this Chapter.

Section 16–3–15. Appeal. An applicant or licensee may request a formal conference regarding or file an appeal of a decision of the Board denying an application for a license or any renewal or modification thereof in accordance with the provisions of this Title governing appeals before the Board.

Section 16–3–16. Sale of Stock.

1. Upon revocation, non-renewal, or other termination of a license issued pursuant to this Chapter, a former licensee may dispose of any liquor in its stock within thirty (30) days of expiration of its former license by:

a. Selling such stock in whole or in part to a wholesaler or retailer licensed pursuant to this Chapter;

b. Selling such stock in whole or in part to a wholesaler or retailer located outside Tribal lands and authorized to purchase such liquor;

c. Moving such stock in whole or in part outside Tribal lands to a location where such liquor is authorized to be stored or held; or

d. Destroying such liquor under the supervision of the Board.

2. The Board may grant a former licensee an additional twenty (20) days to sell or otherwise dispose of its stock upon the former licensee showing good cause for such extension and no failure in due diligence to make such disposal.

3. Any liquor remaining in the possession of a former licensee and not disposed of in accordance with this Section shall be treated as contraband in accordance with this Title.

4. A former licensee shall submit to the Board a complete report of the disposition of all stock pursuant to this Section.

Section 16–3–17. Duty to Keep Records. Every licensee shall keep and maintain accurate records of the purchase and sale of liquor, including books of account, invoices, and bills. Such records shall be maintained for a period of at least two (2) years.

Section 16–3–18. Operation of Licensed Premises.

1. No licensee may reseal, reuse, or refill any package that contains or contained liquor.

2. No retail licensee may lock, or permit the locking of, the entrances to the licensed premises until all persons other than the licensee and its employees have left.

3. No licensee may change the name of its licensed premises without first obtaining a modification of its license as provided in this Chapter.

4. A licensee shall conduct its business in a decent, orderly, and respectable manner and shall not permit loitering by intoxicated persons, rowdiness, undue noise, or any other disturbance offensive to the residents near the location of the licensee.

5. A retail licensee shall demand satisfactory evidence of a person's age upon such person's attempt to purchase any liquor from the retail licensee if such person appears to the retail licensee to be under the age of twenty-one (21) and shall refuse to sell liquor to any such person who fails or refuses to produce such satisfactory evidence. Satisfactory evidence of age shall include:

a. A driver's license or identification card validly issued by any state department of motor vehicles;

b. A United States active duty military identification;

c. A passport validly issued by any jurisdiction; and

d. Identification card issued by a federally recognized tribe which includes a photograph and date of birth.

Section 16–3–19. Insurance.

1. Licensees and their employees are liable for injuries or damage to property

resulting from their negligent or reckless acts and omissions, whether in the operation of the licensed premises or in their violation of this Title.

2. All manufacturers and retailers conducting on-sales shall maintain insurance coverage insuring against liability under this Section in an amount required by rules and regulations of the Board or, if not provided therein, in the amount of at least $1,000,000.00 for bodily injury to any one (1) person, $500,000.00 for any one (1) accident or personal injury, and $100,000.00 for property damage.

Chapter 4

Enforcement and Violations

Section 16–4–1. Complaints.

1. Allegations of a violation of this Title shall be presented to the Board by submitting a complaint with such allegation in writing to the Chairperson of the Board or his or her designee.

2. A complaint may be submitted by any Board member or member of the public who believes that a person has committed a violation of this Title.

3. A complaint shall specify the person against whom the allegation is being made and the conduct that is alleged to be in violation of this Title.

4. Upon receipt of a complaint pursuant to this Section, the Board shall review the complaint to determine if the allegations made fall within the scope of this Title and whether, assuming the facts alleged are true, said facts would constitute a violation of this Title.

5. If the Board determines that the allegations do not fall within the scope of this Title or do not allege facts which, if true, would constitute a violation of this Title, the Board shall provide written notice to the complainant which shall state that:

a. The Board received the complaint;

b. The Board has reviewed the complaint in accordance with the provisions of this Chapter;

c. The Board has determined that the allegations do not fall within the scope of this Title and/or do not allege facts which would constitute a violation of this Title; and

d. The matter is closed.

6. If the Board determines that the allegations fall within the scope of this Title and allege facts which, if true, would constitute a violation of this Title, the Board shall make or cause to be made a preliminary investigation of the allegations in the complaint and, if there is reason to believe the allegations in the complaint, the Board shall issue a notice of violation as provided in this Chapter.

Section 16–4–2. Examination and Audit.

1. The Board may examine and audit any licensee for the purpose of enforcing this Title.

2. In conducting an examination and audit pursuant to this Section, the Board may:

a. Examine any books, records, papers, maps, documents, or other data which may be relevant and material to the inquiry upon reasonable notice:

i. During normal business hours;

ii. At any other time agreed to by the person having possession, custody, or care for such data; or

iii. At any time pursuant to an order of the Tribal Court;

b. Summon the licensee, any officer, employee, or agent of the licensee, or any person having possession, custody, or care of the books of account containing entries relating to the business of the licensee or required to perform the act, or any other person the Board may deem proper, to appear before the Board at the time and place named in the summons and to produce such books, records, papers, maps, documents, or other data, and to give such testimony, under oath, as may be relevant or material to the inquiry; and

c. Take testimony of any person, under oath, as may be relevant or material to the inquiry.

Section 16–4–3. Notice of Violation.

1. If the Board has reason to believe that a violation of this Title has occurred, the Board shall issue a notice of violation to all persons accused of the violation.

2. A notice of violation shall state:

a. The specific provisions of this Title alleged to have been violated;

b. The Board will consider any written response to the notice of violation from the accused before determining whether to proceed with the notice of violation; and

c. The accused may respond in writing to the notice of violation within fourteen (14) calendar days of service of the notice.

3. If a notice of violation is not delivered to a person accused of the violation personally at the time of issuance, it shall be served on such person in the manner provided for service of a summons in the rules of procedure governing civil actions in Tribal Court.

4. The accused shall have the right to respond to a notice of violation within the time stated in the notice of violation. The accused may include copies of any documents which the accused believes support his or her position.

5. After the time has expired for the accused to respond to a notice of violation, the Board shall consider any written response to the notice of violation and determine how to proceed with the notice of violation. Based on its review, the Board may:

a. Close the notice of violation if satisfied by the accused's response; or

b. Conduct or cause to be conducted a thorough investigation of the notice of violation.

6. If an investigation is conducted and such investigation reveals that there is evidence to support that a violation of this Title occurred, the Board shall determine an appropriate sanction for such violation as provided in this Chapter, including civil fine, license suspension or revocation, or both, and impose such sanction in accordance with the provisions of this Chapter.

7. Written notice shall be provided of the Board's decision under this Section.

Section 16–4–4. Formal Conference.

1. Within thirty (30) days of service of a decision of the Board, a person subject of the decision may request a conference with the Board to seek a review and redetermination of the decision.

2. A request for a conference shall:

a. Be made in writing to the Board or its designee;

b. Identify the decision of the Board;

c. Declare the redetermination sought; and

d. Include a complete statement of the facts relied on.

3. The Board, after an initial inquiry, may deny the request for a conference and direct the person to proceed to an appeal in accordance with this Chapter.

4. Upon request or its own initiative, the Board may stay any action on its decision until a time not more than thirty (30) days after issuance of a decision from the conference.

5. The Board may confer with the person by phone or in person, or may require the submission of additional written material and will issue a written decision. If the result sought is denied in whole or in part, the decision will state the basis for the denial.

6. After the Board issues its decision, the person may appeal the matters in dispute as provided in this Chapter. The person may request a stay of the decision within ten (10) days after issuance of the decision, provided the request is based upon an intention to request a hearing.

7. If no appeal is made within the time allowed, the decision from a formal conference is final and is not subject to any appeal before the Board or in any court.

Section 16–4–5. Appeal.

1. Within thirty (30) days of service of a decision of the Board or issuance of a decision from a formal conference, a party aggrieved by the decision may file an appeal with the Board.

2. A request for appeal shall:

a. Be made in writing to the Board;

b. Identify the decision of the Board;

c. Identify any conference decision;

d. Declare the redetermination sought; and

e. Include a complete statement of the facts relied on.

3. Upon request or its own initiative, the Board may stay any action on its decision until a time not more than thirty (30) days after issuance of a decision from the appeal.

4. The Board shall conduct a hearing on the applicant's appeal and take testimony and examine documentary evidence as necessary to determine the appeal.

5. After hearing an appeal, the Board shall issue a decision. The decision of the Board on an appeal under this Section shall be the final decision of the Board, provided that the Board shall have been deemed to have issued a final decision denying an appeal if the Board:

a. Fails to schedule and hold a hearing on the merits of an otherwise valid appeal within sixty (60) days after receipt of a notice of appeal; or

b. Fails to issue a written decision within thirty (30) days of the hearing on the merits of the appeal.

6. The Board may permit or require, pursuant to the rules and regulations of the Board, one or more levels of review by its employees or delegates in addition and prior to appeal to the Board, provided that the failure to proceed to a next required level of review shall constitute a waiver of any further appeal or judicial review.

7. The failure to file an appeal pursuant to this Section shall not prevent the aggrieved party from defending any action brought by the Board against the party in Tribal Court.

Section 16–4–6. Judicial Review.

1. If a party is aggrieved by a final decision of the Board on appeal, the party may challenge the decision by filing a petition requesting judicial review of the Board's decision in the Tribal Court.

2. Judicial review of the Board's decision shall proceed in accordance with the following:

a. The petition for judicial review shall be filed within thirty (30) days of the issuance of the Board's decision;

b. No new or additional evidence may be introduced, but the matter shall be heard on the record established before the Board;

c. No new or additional issues may be raised and only issues raised before the Board may be heard regardless of the Board's authority to hear the issue;

d. The Tribal Court shall uphold all factual findings of the Board unless the Tribal Court concludes that such findings are not supported by the substantive evidence in the record established before the Board;

e. In reviewing legal conclusions reached by the Board, the Tribal Court shall give proper weight to the Board's interpretation of this Title and any rules and regulations of the Board;

f. The Tribal Court shall affirm any determination by the Board that the issuance, renewal, or modification of a license is not in the best interests of the Tribe, its members, or the community as a whole unless such determination is clearly arbitrary and capricious;

g. The Tribal Court may affirm, reverse, modify, or vacate and remand the Board's final decision, but shall affirm the final decision unless the Tribal Court concludes that the final decision of the Board is:

i. Not supported by the evidence;

ii. Arbitrary or capricious;

iii. An abuse of discretion;

iv. Beyond the Board's authority; or

v. Otherwise contrary to the laws of the Tribe.

3. The Tribal Court shall dismiss any action brought against the Board if the person filing the action has not exhausted all administrative remedies before the Board, including an appeal to the Board.

4. Notwithstanding anything to the contrary in this Title, the Tribal Court shall not have jurisdiction or authority to award or order the payment of damages or other monies or provide any remedy to a party except for affirming, reversing, modifying or vacating and remanding the decision of the Board.

5. The Tribal Court's jurisdiction to review a final decision of the Board shall be exclusive and a final decision of the Board shall not be subject to appeal, review, challenge, or other action in any court or tribunal except as provided in this Section.

Section 16–4–7. Storage, Sale, and Manufacture Violations.

1. It shall be a violation of this Title:

a. To introduce, store, possess, sell, offer for sale, distribute, transport, or manufacture liquor without first obtaining all necessary licenses or in any manner not authorized by this Title;

b. To store, sell, offer for sale, distribute, transport, or manufacture liquor in violation of any provision of this Title or the terms of a license issued pursuant to this Title;

c. To deliver liquor to a manufacturer, wholesaler, or retailer at any place other than the premises described in the license of such manufacturer, wholesaler, or retailer;

d. For any manufacturer, wholesaler, or retailer to keep or store any liquor at any place other than on the premises where such manufacturer, wholesaler, or retailer is authorized to operate and except as otherwise provided in this Title;

e. For any retailer to make or solicit orders for the delivery of liquor from any person unless such person is registered as a salesman in accordance with this Title;

f. For any wholesaler or manufacturer to take or solicit orders for the delivery of liquor through any person unless such person is registered as a salesman in accordance with this Title;

g. For any retailer to have any interest in the property or business of a manufacturer or wholesaler, provided the following shall not be an interest in the property or business of a retailer, manufacturer, or wholesaler:

i. The Tribe's ownership or other interest in lands or property;

ii. The Tribe's leasing, assignment, licensing, or other authorization of use or occupancy of lands or property or its status as a landlord, lessor, assignor, or licensor, even if the rent, fees, payment, or other consideration paid under any such lease, assignment, license, or other authorization is based on revenues of the tenant, lessee, assignee, licensee, or other user or occupant;

iii. The Tribe's ownership, operation, or establishment of a division, instrumentality, economic enterprise, or other entity, even if the Tribe has a right to or receives revenues or distributions from, or assets of, such division, instrumentality, economic enterprise, or other entity; or

iv. The Tribe's regulatory or other governmental authority over a retailer, manufacturer, or wholesaler, including a lien or other encumbrance resulting from such regulatory or governmental authority.

h. For any licensee to neglect or refuse to produce or submit for inspection, examination, or audit any records lawfully requested by the Board in accordance with this Title;

i. For a retailer to obtain liquor in unbroken packages except from a manufacturer or wholesale licensee;

j. For a retailer or employee of a retailer to accept or give gifts of liquor in connection with its business, except for the sampling of liquor permitted in this Title;

k. For a manufacturer or retailer conducting on-sales to employ any person for the purpose of soliciting the purchase of liquor within the licensed premises on a percentage or commission basis;

l. For a manufacturer or retailer conducting on-sales to sell liquor

without insurance coverage as required by this Title;

m. To knowingly employ a person under the age of majority in the sale, distribution, or manufacture of liquor;

n. For a manufacturer conducting on-sales, a retailer, or an employee of either to consume liquor or be intoxicated while selling liquor on the licensed premises;

o. For a manufacturer conducting on-sales or a retailer to sell liquor for anything other than cash, check, or credit or debit card transaction or to extend credit to any person, organization, or entity for the purchase of liquor;

p. For a retailer conducting off-sales or an employee of such a retailer to sell or give liquor in broken or refilled packages;

q. For a retailer conducting off-sales or an employee of such a retailer to permit the consumption of liquor on the retailer's premises;

r. For a retailer conducting on-sales or an employee of such a retailer to sell or give liquor for consumption off the retailer's premises;

s. To knowingly sell liquor to a person under the age of twenty-one (21) years;

t. For a manufacturer, retailer, or employee of either to sell or give any liquor to any person or permit the consumption of liquor on the licensed premises between the hours of two 2:00 a.m. and 6:00 a.m., provided that a manufacturer may sell or give liquor in unopened packages to wholesale and retail licensees during any hour; or

u. For a manufacturer or retailer conducting on-sales or an employee of either to sell or give liquor to an intoxicated person within the licensed premises.

2. If an act is a violation of this Title when committed by a licensee, retailer, wholesaler, manufacturer, or entity, the licensee, retailer, wholesaler, manufacturer, or entity is also liable if the act is committed by one of its employees or agents.

3. In addition to any other consequences for a violation of this Title, including suspension or revocation of a license, a person who commits a violation under this Section shall be subject to a civil fine in an amount provided by rules and regulations of the Board or, if not provided therein, an amount up to one thousand dollars ($1,000) per occurrence, which may be imposed by the Board pursuant to a notice of violation and thereafter enforced and collected through a civil cause of action brought by the Board on behalf of the Tribe in the Tribal Court.

Section 16–4–8. Violations by Public.

1. It shall be a violation of this Title for any person:

a. Who is under the age of twenty-one (21) years, to:

i. Purchase or attempt to purchase liquor except at the direction and under the supervision of the Board, its designee, or other law enforcement official for the purpose of enforcing this Title or other applicable law governing liquor on Tribal lands;

ii. Consume or possess liquor except for possession as a part of employment to the extent permitted under this Title and any applicable state or federal law, consumption or possession as part of a bona fide religious ceremony, or consumption or possession in his or her permanent place of residence; or

iii. Attempt to purchase liquor through the use of false or altered identification which purports to show the person to be over the age of twenty-one (21) years;

b. To consume liquor from a broken package in a public place, other than licensed premises specified in a manufacturer license, a retailer license which allows on-sales, or a special event license; or

c. To transfer in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain liquor, provided that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this subsection.

2. In addition to any other consequences for a violation of this Title, a person who commits a violation of this Section shall be subject to a civil fine in an amount provided by rules and regulations of the Board or, if not provided therein, an amount up to one hundred dollars ($100) per occurrence, which may be imposed by the Board pursuant to a notice of violation and thereafter enforced and collected through a civil cause of action brought by the Board on behalf of the Tribe in the Tribal Court.

Section 16–4–9. Other Violations.

1. Any act or transaction which does not comply with any provision of this Title or any rule, regulation, order, or decision of the Board shall be a violation of this Title and deemed an act or transaction not in conformity with this Title.

2. In addition to any other consequences for a violation of this Title, including suspension or revocation of a license, a person who commits a violation under this Section shall be subject to a civil fine in an amount provided by rules and regulations of the Board or, if not provided therein, an amount up to five hundred dollars ($500) per occurrence, which may be imposed by the Board pursuant to a notice of violation and thereafter enforced and collected through a civil cause of action brought by the Board on behalf of the Tribe in the Tribal Court.

Section 16–4–10. Reporting of Violations. The Board may report any violation of this Title to the appropriate officials of other jurisdictions and request an investigation and, if appropriate, prosecution of such violation as a violation of the laws of that jurisdiction, including the criminal laws of that jurisdiction.

Section 16–4–11. Revocation and Suspension of License.

1. The Board may summarily suspend for up to fifteen (15) days the license of any person upon a finding of imminent danger to the public welfare caused by the licensee or any act or omission of the licensee.

2. The Board, after at least ten (10) days notice and a full hearing, may revoke the license of any person for any of the following:

a. Repeatedly violating or permitting the violation of any provision of this Title or the rules and regulations of the Board;

b. Failure or refusal to pay all taxes imposed on the sale, distribution, or manufacture of liquor under the laws of the Tribe;

c. Misrepresentation of a material fact in the licensee's application for a license or any renewal thereof;

d. The occurrence of any event which would have made the licensee ineligible for a license if the event had occurred prior to the issuance of the license;

e. Failure to maintain insurance coverage as required by this Title for a continuous period of more than thirty (30) days;

f. Imminent danger to the public welfare caused by the licensee or any act or omission of the licensee which has not been corrected within a reasonable time after notice from the Board; or

g. Failure of the licensee to correct an unhealthy or unsafe condition on the licensed premises within a reasonable time after notice from the Board.

3. The Board may suspend the license of any licensee for a period not exceeding one-hundred eighty (180) days as an alternative to revoking the license if the Board is satisfied that the grounds giving rise to the revocation or the circumstances thereof are such that a suspension of the license would be adequate.

4. Any suspension of a license pursuant to this Section shall be

effective twenty-four (24) hours after service of notice thereof upon the licensee. During any period of suspension of a license, the licensee shall have and exercise no rights or privileges whatsoever under the license.

5. After revocation of a license, the licensee's rights and privileges under such license shall terminate twenty-four (24) hours after service of notice thereof upon the licensee. Any licensee whose license is revoked shall not be granted any license under the provisions of this Title for a period of two (2) years from the date of revocation.

Section 16–4–12. Enjoining Business. In addition to any other remedies available to it, the Board may bring, in the name of the Tribe, an action in any appropriate court to enjoin the operation of any unlicensed business, activity, or function when this Title requires a license for the conduct of such business, activity, or function or of any other unlawful business, activity, or function. The enjoining of any person pursuant to this Section shall be deemed an exclusion of the person pursuant to the Tribe's power to exclude and other inherent powers and authority of the Tribe.

Section 16–4–13. Seizure of Contraband.

1. In addition to any other remedies available to it, the Board, pursuant to an order issued by the Board, may seize any liquor possessed contrary to the terms of this Title, including liquor possessed for manufacture or sale, as contraband.

2. Upon seizure of any liquor pursuant to this Section, the Board shall inventory all items seized and leave a written copy of such inventory with the person from whom it was seized or, if such person cannot be found, posted at the place from which the liquor was seized.

3. Any person who claims an ownership interest, right of possession to, or other interest in liquor seized pursuant to this Section may request a formal conference regarding or file an appeal of the Board's seizure of such liquor in accordance with the provisions of this Chapter governing appeals before the Board.

4. Upon the expiration or conclusion of any appeal permitted under this Chapter of seizure of liquor pursuant to this Section, including permitted judicial review, such liquor shall be forfeited and all title and ownership interest in such liquor shall vest in the Tribe unless an appeal or judicial review returns such liquor to the person from whom it was seized or other person entitled thereto.

5. If necessary, the Board may file a complaint for forfeiture against any liquor seized pursuant to this Section in the Tribal Court. Upon the Board showing by a preponderance of the evidence that seized liquor is contraband under this Title, the Tribal Court shall enter an order that such liquor is forfeited and that all title and ownership interest in such liquor is vested in the Tribe.

6. Any liquor seized pursuant to this Section to which title has vested in the Tribe that is no longer required for evidence may be sold for the benefit of the Tribe or destroyed under the supervision of the Board.

Section 16–4–14. Sovereign Immunity in Enforcement.

1. Except for valid judicial review of a decision of the Board as provided in this Title, nothing in this Title shall be construed as limiting, waiving, or abrogating the sovereignty or the sovereign immunity of the Board or any of its agents, officers, officials, personnel, or employees.

2. An action brought or taken by the Board, including without limitation the bringing of suit for the collection of fines or enjoining a business, activity, or function, shall not constitute a waiver of sovereign immunity as to any counterclaim, regardless of whether the asserted counterclaim arises out of the same transaction or occurrence or in any other respect.

3. No economic enterprise of the Tribe may claim sovereign immunity as a defense to any action brought or taken by the Board, including a suit for the collection of fines or the enjoining of a business, activity, or function of such economic enterprise and, to the extent necessary, the Tribe waives the sovereign immunity of its economic enterprises in any action brought or taken by the Board against such economic enterprises.

[FR Doc. 2022–01787 Filed 1–27–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

[223D0102DM/DS62400000/DLSN00000/000000/DX62401]

FY 2019 Service Contract Inventory

AGENCY: Office of Acquisition and Property Management, Interior.

ACTION: Notice of public availability.

SUMMARY: The Department of the Interior is publishing this notice to advise the public of the availability of the Fiscal Year (FY) 2019 Service Contract Inventory, in accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010.

ADDRESSES: *Obtaining Documents:*

The Office of Federal Procurement Policy (OFPP) guidance is available at:

- *https://obamawhitehouse.archives.gov/sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf.*

The Department of the Interior has posted its FY 2019 Service Contract Inventory on the Department of the Interior homepage at the following link:

- *https://www.doi.gov/pam/service-contract-inventory.*

FOR FURTHER INFORMATION CONTACT: Valerie Green, Acquisition Analyst, Policy Branch, Office of Acquisition and Property Management (PAM), Department of the Interior. Phone number: 202–513–0797, Email: *Valerie_green@ios.doi.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117) requires civilian agencies to prepare an annual inventory of their service contracts. The analyses help inform agency managers whether contractors are being used appropriately or if rebalancing the workforce may be required.

In addition to the agency analyses, the process includes extracting contract data from the Federal Procurement Data System (FPDS) and the System for Award Management (SAM) and the consolidated output file is posted for public use.

The Inventory provides information on service contract actions over $25,000 that the Department made in FY 2019. The information is organized by function to show how contracted resources are distributed throughout the Department. The Department's analysis of its Service Contract Inventory is summarized in the FY 2019 Service Contract Inventory Report. The 2019 Report was developed in accordance with guidance issued on December 19, 2011 and November 5, 2010, by the Office of Management and Budget's Office of Federal Procurement Policy.

Authority: The authority for this action is the Consolidated Appropriations Act of 2010 (Pub. L. 111–117).

Megan Olsen,

Director, Office of Acquisition and Property Management, Department of the Interior.

[FR Doc. 2022–01661 Filed 1–27–22; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–IMR–YELL–33194; PPWONRADE2, PMP00EI05.YP0000]

Notice of Intent To Prepare an Environmental Impact Statement for a Bison Management Plan for Yellowstone National Park, Idaho, Montana, Wyoming

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The National Park Service is preparing an Environmental Impact Statement in accordance with the National Environmental Policy Act (NEPA) for a Bison Management Plan for Yellowstone National Park.

DATES: The National Park Service requests comments concerning the scope of the analysis, and identification of potential alternatives, information, and analyses relevant to the planning process. All comments must be received or postmarked by February 28, 2022.

ADDRESSES: Information will be available for public review and comment online at *https://parkplanning.nps.gov/YellowstonebisonEIS.* You may also mail your written comments to the Office of the Superintendent, P.O. Box 168, Yellowstone National Park, WY 82190–0168.

FOR FURTHER INFORMATION CONTACT: Morgan Warthin, Public Affairs Specialist, Yellowstone National Park, 307–344–2010, *morgan_warthin@nps.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Scope and Purpose and Need

The plan will focus on actions the National Park Service (NPS) may take to manage bison within Yellowstone National Park (the park) and consolidate various actions and environmental compliance analyses conducted over the past two decades into a contemporary plan. Other tribal and governmental agencies play important roles in bison management outside of the park, and the NPS intends to continue to work cooperatively with these groups as appropriate.

The purpose of the plan is to preserve an ecologically sustainable population of wild, migratory bison while continuing to work with partners to address brucellosis transmission, human safety, property damage, and support tribal hunting outside of the park.

Action is needed because new information obtained since the approval of the Interagency Bison Management Plan (IBMP) in 2000 indicates some of the premises regarding disease transmission in the initial plan were incorrect or changed over time. In addition, there are fewer cattle near the park and Federal and State disease regulators have taken steps to lessen the economic impacts of brucellosis outbreaks in cattle. Since 2006, seven tribes have hunted bison on national forest lands adjacent to the park pursuant to long-standing treaties with the Federal Government.

Preliminary Alternatives Under Consideration

The NPS's proposed action is to prepare and implement a new plan that provides Yellowstone National Park with tools to manage bison that reflect the best available information and current circumstances on the ground. The alternatives have been developed by taking into consideration management actions that could occur on lands outside the park in Montana. The alternatives describe external actions that could enhance management efforts inside the park, while acknowledging the NPS does not have jurisdiction or control over actions beyond the park boundary such as hunting, construction of capture or quarantine facilities, or tolerance for bison. Descriptions of external actions is not an endorsement or commitment from partners.

Actions Common to All Alternatives

Beginning in 2014, twenty-eight First Nations and Tribes signed *The Buffalo: A Treaty of Cooperation, Renewal and Restoration* to restore buffalo to their rightful place in the First Nations' and Tribes' respective cultures and territories. In 2016, these Buffalo Nations provided the Secretary of the Interior with a resolution supporting the Bison Conservation and Transfer Program (BCTP) in Yellowstone National Park. In 2020, they also conveyed their support for the Department of the Interior's Bison Conservation Initiative and offered to collaborate with the Department and others through shared stewardship to bring this vision into reality. The NPS will continue to support the 2014 Buffalo Treaty and 2020 Bison Conservation Initiative by engaging Buffalo Nations associated with Yellowstone bison to explore ways to increase the efficiency and safety of hunting outside the park and increase the restoration of brucellosis-free bison to tribal and public lands. Other Federal and State IBMP partners would inform this vision with the U.S. Forest Service and Montana Fish, Wildlife & Parks participating in consultations about hunting and the Animal and Plant Health Inspection Service (APHIS) and Montana Department of Livestock participating in consultations about the BCTP.

Research by park scientists and collaborators has determined there is sufficient forage in the park to sustain the numbers of bison described in the preliminary alternatives. They used state-of-the-art technology to analyze satellite images and conservatively estimate the amount of plant forage produced in non-forested areas. They determined that all the grazers combined, including bison, elk, pronghorn, mule deer, and bighorn sheep, would not consume more than half of the plant material produced during most years. There is considerable complexity around these estimates, however, due to large variations in weather and grass production from year-to-year. As a result, scientists will continue to monitor and adapt these estimates.

Adaptive management is a key concept that would be incorporated into all the preliminary alternatives. Under adaptive management, biologists establish desired conditions, evaluate current conditions, identify undesired trends, implement management actions, monitor progress towards desired conditions, and adjust actions to improve progress. The NPS and other Federal and State agencies and tribes involved with the IBMP have used this process to inform decision-making and adjust bison management. The NPS would continue to implement monitoring and research to obtain timely information and adjust conservation and management activities.

Operations plans would continue to serve as the main mechanism for describing, implementing, and adjusting commitments and agreements for the cooperative management of Yellowstone bison across jurisdictions. Under each alternative, managers from the NPS would continue to meet with the other Federal, State, and Tribal agencies to coordinate bison management using the existing framework and partnership protocols for the IBMP. The NPS would continue to prepare annual assessments of the status of the bison population and propose adjustments to adaptive management and operations plans based

on the selected alternative in the record of decision resulting from this process.

When Yellowstone bison cross the boundary of the park into surrounding states, they are no longer under the jurisdiction of the NPS. Instead, their management is the prerogative of the respective state and the U.S. Forest Service on National Forest System lands. The NPS would continue to work with the State of Montana, Custer Gallatin National Forest, and private landowners to increase tolerance for bison on suitable lands outside the park where a low risk of brucellosis transmission to cattle can be maintained. In addition, the NPS would continue to explore other activities with partners to advance the purpose of this plan, such as construction of additional quarantine facilities, use of temporary trapping facilities near the edge of management (tolerance) areas, and streamlining brucellosis testing protocols and quarantine periods for the BCTP.

Preliminary alternatives being considered are as follows:

Alternative 1—No Action Alternative—Current Management

The NPS would continue to manage bison pursuant to the 2000 IBMP as adaptively adjusted and implemented through consensus decisions and annual operations plans by the agencies involved with bison management. Other members of the IBMP include APHIS, Confederated Salish and Kootenai Tribes of the Flathead Nation, U.S. Forest Service (Custer Gallatin National Forest), InterTribal Buffalo Council, Nez Perce Tribe, and State of Montana (Department of Livestock; Fish, Wildlife & Parks). The NPS would maintain a population range of bison similar to the last two decades (3,500 to 5,000 after calving).

IBMP managers have made consensus decisions about population targets since 2013 that led to a bison population averaging nearly 4,200 at the end of winter and 5,000 animals after calving. Managers agreed to these numbers because of increased tolerance for bison outside the park, balancing hunting outside the park with capturing animals for slaughter inside the park, developing a transfer program to relocate bison to tribes, and continued success limiting bison-related conflicts outside the park. The IBMP partners have 20 years of experience managing bison at higher numbers with no brucellosis transmission to cattle and fewer property and safety conflicts over time. The larger numbers conserved also have supported bison as a meaningful component of the food web influencing energy and nutrient transfer throughout the ecosystem, improved visitor experience by providing an unparalleled opportunity to view large herds of free-roaming bison, and ensured gene flow and conservation of existing genetic diversity.

Under this alternative, bison would be allowed to exit the park into established northern and western management zones in Montana, and numbers and distribution would be regulated by captures for quarantine or shipment to slaughter and public and tribal harvests primarily on national forest lands near the park boundary. The NPS, in consultation with the tribes and informed by other agencies, would adaptively adjust removals and population size based on assessments of the status of the population and bison movements in and outside the park. Within the park, management of bison such as capture, hazing, and quarantine would generally occur near the boundary. However, the NPS may haze bison as necessary outside the park by working with partners to reduce conflicts with cattle, people, and property. Hazing involves moving bison away from an area where they are not wanted such as developed areas, highways, or private property using people on foot, on horseback, or in vehicles. Disease surveillance would continue to be conducted on bison placed in the BCTP and some bison shipped to slaughter or harvested outside the park.

Under this alternative, the NPS would rely substantially on captures of migrating bison at Stephens Creek (inside the northern boundary of the park) and shipments of bison to slaughter to regulate numbers and provide bison to tribes. If space is available, some bison testing negative for previous brucellosis exposure would be placed in quarantine as part of the BCTP to increase the number of live brucellosis-free animals relocated to the Fort Peck Indian Reservation in northeastern Montana and eventually other tribal lands. If space is not available, these bison would be shipped to slaughter. The NPS would continue to work with APHIS and non-governmental organizations to increase capacity in the BCTP and lower the number of transfer-eligible animals sent to slaughter. These efforts would include doubling the size of quarantine pastures in and around Stephens Creek and developing necessary water infrastructure to support this expansion as described in the Finding of No Significant Impact for the park's 2018 Environmental Assessment for Bison Quarantine. The NPS would continue to coordinate captures at Stephens Creek with tribal harvests outside the park to reduce the effects of capture on harvest opportunities and continue discussions with the tribes and other agencies to improve communication, safety, and handling of bison carcasses.

Alternative 2—Enhance Restoration and Tribal Engagement

Bison would be managed within a population range of about 4,500 to 6,000 bison after calving with an emphasis on using the BCTP and tribal hunting outside the park to regulate bison numbers. The NPS may use proactive measures such as low stress hazing of bison toward the park boundary to increase tribal hunting opportunities outside the park. The NPS would reduce shipment to slaughter based on the needs and requests of tribes. The upper limit of the population range in this alternative is somewhat higher than current management under the IBMP over the last decade (Alternative 1). Bison would continue to exit the park into established northern and western management zones and management of bison within the park would be like Alternative 1 regarding criteria used for removals, hazing, and disease surveillance. The BCTP and hunt-trap coordination would continue as in Alternative 1. The NPS may collaborate with interested partners to establish additional quarantine facilities outside the park. As the BCTP expands and hunter harvests increase over a broader area in Montana, the NPS would reduce captures for shipments to slaughter.

Alternative 3—Food-Limited Carrying Capacity

The NPS would rely on natural selection, bison dispersal, and public and tribal harvests in Montana as the primary tools to regulate bison numbers, which would likely range from 5,500 to 8,000 or more bison after calving. Trapping for shipments to slaughter would immediately cease. The NPS would continue captures to maintain the BCTP as in Alternatives 1 and 2. Under this alternative, the NPS expects a large increase in hunting opportunities from increasing population size and the elimination of captures for shipments to slaughter. Substantially larger harvests would have to occur outside the park for this alternative to be effective, which would require public and tribal hunters to allow bison to distribute and hunt them across a larger landscape. If bison numbers approach the estimated food-limited carrying capacity of the park (>8,000 bison), the NPS would reinstitute shipments to slaughter as described for Alternatives 1 and 2. Large

captures may occur more frequently as bison numbers approach or exceed carrying capacity. The NPS may haze bison in Yellowstone National Park when necessary to protect people and property. Disease surveillance would be conducted on some harvested bison.

Summary of Expected Impacts

Expected impacts within the park boundary from implementation of NPS bison management actions include: Potential changes in population structure and bison behavior from hazing, culling, and hunting outside the park; maintenance of the ecological role provided by bison (engineering habitats, redistributing nutrients, altering plant growth patterns, improving biodiversity, and providing meat for predators, scavengers and decomposers); potential impacts to human health and safety; potential impacts on vegetation as a result of bison grazing at various population levels; and potential impacts to the visitor experience due to closures and bison management operations in and around the capture and quarantine facilities within the Park.

Expected impacts outside of the park boundary from implementation of NPS bison management actions include potential changes in: Maintaining the low risk of brucellosis spreading from bison to cattle, of which there are no documented cases since the IBMP was implemented in 2000 due to existing mitigation measures; the number of bison available for tribal and public hunting opportunities; the number of conflicts between bison and cattle, people, and property; and the number of brucellosis-free bison available to be sent to other appropriate lands.

Anticipated Permits and Authorizations

The NPS anticipates consulting with the U.S. Fish and Wildlife Service under Section 7 of the Endangered Species Act for potential impacts to threatened and endangered species. The NPS will continue to participate in the IBMP framework and work cooperatively with its partners. the NPS will use and coordinate the NEPA public scoping process to help fulfill the public involvement requirements under the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the alternatives will assist the NPS in identifying and evaluating impacts to such resources, and consulting with the State Historic Preservation Officer on the potential for adverse effects.

Schedule for the Decision-Making Process

- Agencies have two years from the date of the issuance of the notice of intent to the date a record of decision is signed to complete an Environmental Impact Statement (EIS) (40 CFR 1501.10).
- The NPS expects to make the Draft EIS available to the public in Fall 2022.
- After public review and comment, the NPS expects to make the Final EIS available to the public in Fall 2023.
- At least 30 days after the Final EIS is available, the record of decision will be completed in accordance with applicable timeframes established in 40 CFR 1506.11.

Public Scoping Process

This notice of intent initiates the scoping process, which guides the development of the EIS. The NPS will host two virtual public scoping meetings. During the virtual public scoping meetings, the NPS will present information pertinent to the EIS for the Bison Management Plan and allow the public to ask questions regarding the scope of issues and alternatives that should be considered when preparing the EIS. While the NPS will not solicit oral comments at these virtual public meetings, written comments may be submitted at any time during the scoping process. See the **ADDRESSES** section (above) and the *Submitting Comments* section (below) for more information. Details regarding the exact dates and times of these virtual public scoping meetings will be announced on the project website (*https://parkplanning.nps.gov/YellowstonebisonEIS*) and through local and regional media. The virtual public scoping meetings will also be announced through email notification, press release, and social media to individuals and organizations.

Reasonable Accommodations

Persons needing reasonable accommodations to attend and participate in the virtual public scoping meetings should contact Yellowstone National Park's Office of Strategic Communications, using one of the methods listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible. To allow sufficient time to process requests, please make contact no later than one week before the desired virtual public meeting.

Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Planning Process

The NPS requests possible alternatives, information, and analyses from all interested parties. The NPS will consider these comments in developing the Draft EIS. Specifically, the NPS is seeking:

1. Biological information, analyses, and relevant data concerning bison and other wildlife;
2. Potential effects that the alternatives could have on other aspects of the human environment, including ecological, aesthetic, historic, cultural, economic, social, environmental justice, or health effects;
3. Other possible reasonable alternatives that the NPS should consider, including additional or alternative avoidance, minimization, and mitigation measures;
4. Other information relevant to the Bison Management Plan and its impacts on the human environment.

Submitting Comments

If you wish to comment, you may submit comments by the methods listed above in the **ADDRESSES** section. Comments will not be accepted by fax, email, or by any method other than those specified above. Bulk comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Comments must be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments submitted anonymously will be accepted and considered.

Cooperating Agencies

- U.S. Forest Service, Custer Gallatin National Forest
- Animal and Plant Health Inspection Service
- State of Montana (Montana Department of Livestock, Montana Fish, Wildlife & Parks)
- Nez Perce Tribe
- Intertribal Buffalo Council

- Confederated Salish and Kootenai Tribes

Yellowstone National Park has also invited the following tribes with treaty hunting rights to participate as cooperating agencies (responses are forthcoming): Blackfeet Tribe of the Blackfeet Indian Reservation of Montana, Confederated Tribes of the Umatilla Indian Reservation, Crow Tribe of Montana, Northern Arapaho Tribe of the Wind River Reservation, Shoshone-Bannock Tribes of the Fort Hall Reservation, and the Yakama Nation.

Decision Maker

The Decision Maker is the NPS Regional Director for Interior Regions 6, 7, and 8.

Termination of 2015 EIS Process

This notice also terminates the EIS for a Management Plan for Yellowstone-area Bison initiated by the NPS on March 16, 2015 (80 FR 13603–13604).

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

Michael Reynolds,

Regional Director, Interior Regions 6, 7, & 8.

[FR Doc. 2022–01865 Filed 1–27–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–NEW; Docket ID: BOEM–2017–0016]

Agency Information Collection Activities; Evaluating Connections: BOEM's Environmental Studies and Assessments

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before February 28, 2022.

ADDRESSES: Submit your written comments on this ICR to the Office of Management and Budget's desk officer for the Department of the Interior at *www.reginfo.gov/public/do/PRAMain* within 30 days of publication of this notice. From the *www.reginfo.gov/public/do/PRAMain* landing page, find this information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference Office of Management and Budget (OMB) Control Number 1010–NEW in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: Anna Atkinson by email at *anna.atkinson@boem.gov* or by telephone at 703–787–1025.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the public and Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of the information collection requirements and minimize the public's reporting burden. It also helps the public understand BOEM's information collection requirements.

Title of Collection: Evaluating Connections: BOEM's Environmental Studies and Assessments.

Abstract: Section 20 of the Outer Continental Shelf Lands Act (OCSLA) (43 U.S.C. 1346) requires the Secretary of the Interior to study any area or region included in an oil, gas, or other lease sale to gather information needed for assessment and management of impacts on the human, marine, and coastal environments of the Outer Continental Shelf (OCS) and the affected coastal areas. Additionally, subsequent to the leasing and developing of any OCS area, the Secretary may authorize further environmental studies to gather information that can be used for identifying significant changes and trends in the quality and productivity of such environments and for designing experiments to identify the causes of such changes.

This statutory authority is carried out through BOEM's Environmental Studies Program (ESP). In fulfilling its mission, BOEM must comply with a range of environmental laws and regulations. To comply with relevant statutes and policies, BOEM requires current and relevant scientific information to develop informed environmental analyses required by the National Environmental Policy Act (NEPA) and to conduct appropriate and meaningful consultations with other Federal agencies. For example, the following types of documents are considered in the universe of BOEM environmental analyses:

- NEPA environmental impact statements.
- NEPA environmental assessments.
- National Historic Preservation Act documents (including section 106 evaluations of effects on historic properties and programmatic agreements).
- Essential fish habitat assessments for Magnuson-Stevens Fishery Conservation and Management Act consultations.
- Endangered Species Act section 7 biological evaluations or biological assessments.
- Analyses and assessments prepared to comply with the Clean Air Act, Coastal Zone Management Act, and Marine Mammal Protection Act.
- Analyses and assessments such as engineering analyses, regulatory impact analyses, resource evaluations, additional NEPA-related analyses, site assessments, and cost-benefit analyses prepared for OCSLA and other regulatory requirements.

Environmental studies sponsored by ESP provide scientific information to inform BOEM's environmental analyses, which are overseen through BOEM's Environmental Assessment Program (EAP). BOEM describes the process by which environmental studies inform environmental analyses and environmental analyses inform environmental studies as a ''feedback loop.'' To determine how well this feedback loop is functioning and to identify potential improvements in the science-to-policy process, BOEM is pursuing an evaluation of the linkages between the scientific research it is funding and the information needs within its environmental analyses. The evaluation will include surveys and interviews of BOEM's ESP and EAP partners (*e.g.,* Federal and State agencies, academic institutions and scholars, consultants, tribal members, industry representatives, and environmental non-governmental organizations).

The survey will focus on information exchange between BOEM's ESP and EAP and their external program partners. The survey results will be used to understand how program partners use information derived from BOEM's studies and analyses and to trace the networks through which this information is disseminated. The survey results will inform a network analysis to understand the network structure, possible network influence on outcomes, and people or organizations that could be targeted or connected to achieve better expected outcomes.

The survey will be administered online. The survey will be sent to ESP

and EAP partners identified by BOEM staff. Following a brief email introduction, each survey respondent will receive a unique weblink to complete the online survey. The survey questions will ask respondents: (1) From whom they receive and with whom they share BOEM environmental studies and analyses information, and (2) how they use that environmental information for their organization's work. The survey will include fewer than 20 mostly discrete-choice questions and will take up to 20 minutes to complete. Descriptive statistics will be calculated at the organizational level, and results will be presented in a tabular format and network graphs.

All agencies, organizations, and institutions that BOEM identifies as important for understanding the feedback loop will be contacted for an interview. Interviews will be semi-structured. Respondents will be asked questions tailored to their type of organization. Interviewers will ask respondents to provide insight into how and why linkages between BOEM and respondents are (or are not) present, and how and why respondents are (or are not) using environmental studies and analyses information from BOEM. As a semi-structured interview, the interviewer will have the opportunity to ask follow-up questions based on initial responses. The interviewers will ask about the respondents' roles or positions within their organizations, how they use BOEM's environmental studies and analyses information in their organizations' work, and how their organizations contribute to BOEM's environmental studies and analyses. Additionally, the interviewers will request recommendations on ways to strengthen linkages moving forward. The responses will be analyzed using qualitative coding analysis.

This information is not otherwise available and will help inform BOEM's efforts to improve the feedback loop and to ultimately better inform its decisions.

OMB Control Number: 1010–NEW.

Type of Review: New.

Respondents/Affected Public: BOEM ESP and EAP partners.

Total Estimated Number of Annual Responses: 70 interviews; up to 300 online surveys.

Survey questions will be discrete-choice/closed-ended; interview guide will be semi-structured/open-ended.

Estimated Completion Time per Response: 60 minutes per interview; up to 20 minutes per survey.

Total Estimated Number of Annual Burden Hours: 70 hours for interviews; up to 100 hours for surveys.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time.

Total Estimated Annual Non-Hour Burden Cost: There is no non-hour cost burden associated with this collection.

A **Federal Register** notice with a 60-day public comment period on this proposed ICR was published on April 28, 2021 (86 FR 22451). BOEM did not receive any comments during the 60-day comment period.

BOEM is again soliciting comments on this proposed ICR. BOEM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure this information will be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments that you submit in response to this notice are a matter of public record. BOEM will include or summarize each comment in its request to OMB for approval of this ICR. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifying information—may be publicly disclosed. In order to inform BOEM's decision whether it can withhold from disclosure your personally identifiable information, you must identify any information contained in your comments that, if released, would clearly constitute an unwarranted invasion of your privacy. Also, you must briefly describe possible harmful consequences of disclosing that information, such as embarrassment, injury, or other harm. While you can ask BOEM in your comment to withhold your personally identifiable information from public disclosure, BOEM cannot guarantee that it will be able to do so.

BOEM protects proprietary information in accordance with the Freedom of Information Act (5 U.S.C. 552), and the Department of the Interior's implementing regulations (43 CFR part 2).

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Peter Meffert,

Acting Chief, Office of Regulations.

[FR Doc. 2022–01722 Filed 1–27–22; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 221S180110; S2D2S SS08011000 SX064A000 22XS501520; OMB Control Number 1029–0089]

Agency Information Collection Activities; Exemption for Coal Extraction Incidental to the Extraction of Other Minerals

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before February 28, 2022.

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. Please provide a copy of your comments to Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Room 4556–MIB, Washington, DC 20240, or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0089 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at (202) 208–2716. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA; 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to

comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on September 30, 2021 (86 FR 54237). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: This Part implements the requirement in Section 701(28) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), which grants an exemption from the requirements of SMCRA to operators extracting not more than 16 ⅔ percentage tonnage of coal incidental to the extraction of other minerals. This information will be used by the regulatory authorities to make that determination.

Title of Collection: Exemption for Coal Extraction Incidental to the Extraction of Other Minerals.

OMB Control Number: 1029–0089.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: State and Tribal governments.

Total Estimated Number of Annual Respondents: 67.

Total Estimated Number of Annual Responses: 206.

Estimated Completion Time per Response: Varies 1 hour to 30 hours.

Total Estimated Number of Annual Burden Hours: 734.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: One time.

Total Estimated Annual Nonhour Burden Cost: $800.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Mark J. Gehlhar,

Information Collection Clearance Officer, Division of Regulatory Support.

[FR Doc. 2022–01804 Filed 1–27–22; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1281]

Certain Video Security Equipment and Systems, Related Software, Components Thereof, and Products Containing Same Notice of Commission Determination Not To Review an Initial Determination Granting Complainants' Motion for Leave To Amend the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 7) of the presiding administrative law judge (''ALJ'') granting the complainants' motion for leave to amend the complaint and notice of investigation to transfer the asserted patents in this investigation from certain complainants to complainant Motorola Solutions, Inc. and to add Avigilon USA Corporation as an additional complainant.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On September 14, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Motorola Solutions, Inc. of Chicago, Illinois (''Motorola Solutions''); Avigilon Corporation of British Columbia, Canada; Avigilon Fortress Corporation of British Columbia, Canada; Avigilon Patent Holding 1 Corporation of British Columbia, Canada (''Avigilon Patent Holding''); and Avigilon Technologies Corporation of British Columbia, Canada (collectively, ''Complainants''). *See* 86 FR 51182–83 (Sept. 14, 2021). The complaint alleges a violation of section 337 based upon the importation into the United States, sale for importation, or sale after importation into the United States of certain video security equipment and systems, related software, components thereof, and products containing same by reason of infringement of certain claims of U.S. Patent Nos. 7,868,912 (''the '912 patent''); 10,726,312 (''the '312 patent''); and 8,508,607 (''the '607 patent'') (collectively, ''the Asserted Patents''). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation names Verkada Inc. of San Mateo, California as the only respondent. *Id.* The Office of Unfair Import Investigations is also named as a party. *Id.*

On December 27, 2021, Complainants filed an unopposed motion seeking leave to file an amended complaint and notice of investigation to reflect the transfer of all right, title, and interest in: (1) The '312 patent from Avigilon Corporation to Motorola Solutions; (2)

the '912 patent from Avigilon Fortress Corporation to Motorola Solutions; and (3) the '607 patent from Avigilon Patent Holding to Motorola Solutions. The motion also seeks to add a recent new licensee, Avigilon USA Corporation of Dallas, Texas, as an additional complainant.

On December 28, 2021, the ALJ issued the subject ID (Order No. 7) granting Complainants' unopposed motion for leave to amend the complaint and notice of investigation. Order No. 7 (December 28, 2021). The subject ID finds that Complainants' unopposed motion is supported by good cause pursuant to Commission Rule 210.14(b) (19 CFR 210.14(b)) and that there is no prejudice to any party if the motion is granted.

No party petitioned for review of the subject IDs.

The Commission has determined not to review the subject ID (Order No. 7). Complainant Avigilon USA Corporation is added as a complainant to this investigation.

The Commission vote for this determination took place on January 25, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: January 25, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–01811 Filed 1–27–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1125–NEW]

Agency Information Collection Activities; Proposed Collection Comments Requested; Volunteer Waiver for Gratuitous Services (EOIR–62)

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on September 28, 2021, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until February 28, 2022.

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.

If you need a copy of the proposed information collection or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305–0289.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* New collection.

2. *The Title of the Form/Collection:* Waiver for Volunteer Services.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is EOIR–62; the sponsoring component is Executive Office for Immigration Review, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: private individuals. Other: None. Abstract: This information collection is necessary to accept volunteer services pursuant to 31 U.S.C. 1342 and 5 U.S.C. 3111.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 200 respondents will complete the form annually with an average of 5 minutes per response.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 16.7 hours. It is estimated that 200 respondents will take 6 minutes to complete the form.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: January 24, 2022.

Melody D. Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–01696 Filed 1–27–22; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Amendment to a Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On January 24, 2022, the Department of Justice lodged a proposed amendment to the 1986 consent decree with the United States District Court for the District of Maine in the lawsuit entitled *United States, et al.* v. *Inmont Corporation, et al.,* Civil Action No. 86–0029–B.

In that action, the United States sought, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601, *et seq.,* injunctive relief and recovery of response costs regarding the Winthrop Landfill Superfund Site in Winthrop, Maine (the ''Site''). The matter was originally resolved in 1986 when the United States entered into a Consent Decree with four potentially responsible parties regarding the Site (the ''1986 Consent Decree''). The 1986 Consent Decree required, among other things, that the settlers implement the remedial

action selected by the U.S. Environmental Protection Agency (''EPA'') in a 1985 record of decision (''1985 ROD'') for the Site.

On September 5, 2019, EPA issued an amendment to the 1985 ROD, which, among other things, documented EPA's decision to conduct additional remedial work at Hoyt Brook, a part of the Site. The proposed amendment to the 1986 Consent Decree, which was lodged with the Court on January 24, 2022, modifies the 1986 Consent Decree to make it consistent with the amended ROD.

The publication of this notice opens a period for public comment on the proposed Amendment to the 1986 Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *Inmont Corporation, et al.,* Civil Action No. 86–0029–B, D.J. Ref. No. 90–11–2–130. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed amended consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed amended consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $98.00 (25 cents per page reproduction cost) payable to the United States Treasury. For a copy of the Amended Consent Decree without its attachments, enclose a check or money order for $2.50.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–01786 Filed 1–27–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number: 1110–0078]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision and Renewal of a Currently Approved Collection

AGENCY: Federal Bureau of Investigation, Office of Private Sector, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation, Office of Private Sector, is submitting the following information collection request renewal to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until March 29, 2022.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Michael Whitaker, Supervisory Special Agent, Federal Bureau of Investigation, Office of Private Sector, 935 Pennsylvania Ave. NW, Washington, DC 20535, *MJWhitaker@fbi.gov,* 202–324–3000.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

➢ Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office of Private Sector, including whether the information will have practical utility;

➢ Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

➢ Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

➢ Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision and renewal of a currently approved collection

2. *The Title of the Form/Collection:* Voice of Customer Survey

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number for this collection. The applicable component within the Department of Justice is the Federal Bureau of Investigation, Office of Private Sector.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* Survey will affect businesses or other for-profit, and not-for-profit institutions. The survey is intended to measure the effectiveness of the FBI's Office of Private Sector's engagement efforts with the Private Sector and Academia.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Approximately 900 respondents. Average response time: 15 minutes per respondent.

6. *An estimate of the total public burden (in hours) associated with the collection:* 225 hours (15 min × 900 respondents).

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: January 24, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–01697 Filed 1–27–22; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Self-Employment Assistance (SEA) Program

ACTION: Notice of availability; request for comments.

SUMMARY: The Department of Labor (DOL) is submitting Employment and Training Administration (ETA)-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 February 28, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) if the information will be processed and used in a timely manner; (3) 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; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Mara Blumenthal by telephone at 202–693–8538, or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Section 2183(b)(1) of the Middle Class Tax Relief and Job Creation Act of 2012 directs the Secretary of Labor to establish reporting requirements for States that have established Self-Employment Assistance (SEA) programs. ETA currently uses Form ETA–9161 as an electronic reporting mechanism to collect this required information. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on August 10, 2021 (86 FR 43680).

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–ETA.

Title of Collection: Self-Employment Assistance (SEA) Program.

OMB Control Number: 1205–0490.

Affected Public: State, Local, and Tribal Governments; Individuals or Households.

Total Estimated Number of Respondents: 3,405.

Total Estimated Number of Responses: 27,220.

Total Estimated Annual Time Burden: 13,640 hours.

Total Estimated Annual Other Costs Burden: $0.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: January 24, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–01691 Filed 1–27–22; 8:45 am]

BILLING CODE 4510–FW–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2022–012]

Privacy Act of 1974; System of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice revising a system of records.

SUMMARY: We propose to revise a system of records in our existing inventory of systems subject to the Privacy Act of 1974. The system is NARA 44, Reasonable Accommodation Request Records. We are revising it to make it more clear that the system includes records of requests for religious accommodations under Title VII of the Civil Rights Act of 1964. Our existing SORN *permits* religious accommodation requests; however, we want to modify our SORN to *expressly authorize* such requests for people who may submit religious accommodation requests related to COVID vaccination requirements. We are also updating the SORN to reorganize the SORN into the current required format. In this notice, we publish the system of records notice in full for public notice and comment.

DATES: This revised system of records, NARA 44, is effective on January 28, 2022.

ADDRESSES: National Archives and Records Administration, Regulations Desk, Strategy and Policy Division, Suite 4100, 8601 Adelphi Road, College Park, MD 20740.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov* or by phone at 301.837.3151.

SUPPLEMENTARY INFORMATION: Our Reasonable Accommodation Request Records system of records (NARA 44) includes records of requests, processing, and decisions for reasonable accommodations submitted by current and former NARA employees and applicants. It specifically mentions accommodations for disabilities. Due to recent COVID-related executive orders, a Federal employee may now request an exception to a COVID vaccination based on religious requirements, so we feel it is appropriate to clarify that this system also includes reasonable accommodations for religious reasons. As a result, we are adding language to also specifically state that the system includes religious accommodation requests. We are adding a reference to such requestors in the ''categories of individuals covered'' section, adding a reference to religious accommodation requests in the ''categories of records in the system'' section and listing information on religious beliefs and practices in the types of information a requestor might submit, removing the phrase ''under the Rehabilitation Act'' from the end of the ''record source categories'' section so that it doesn't appear to limit the system to only requests for disability accommodations, and adding Title VII of the Civil Rights Act of 1964 to the authorities list.

The Privacy Act of 1974, as amended (5 U.S.C. 552a) (''Privacy Act''), provides certain safeguards for an individual against an invasion of personal privacy. It requires Federal agencies that disseminate any record of personally identifiable information to do so in a manner that assures the action is for a necessary and lawful purpose, the information is current and accurate for its intended use, and the agency provides adequate safeguards to prevent misuse of such information. NARA intends to follow these principles when transferring information to another agency or individual as a ''routine use,'' including assuring that the information is relevant

for the purposes for which it is transferred.

David S. Ferriero,

Archivist of the United States.

NARA 44

SYSTEM NAME AND NUMBER:

Reasonable Accommodation Request Records, NARA 44

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

The Office of Equal Employment Opportunity at the National Archives in College Park maintains reasonable accommodation request files. The system address is the same as the system manager address.

SYSTEM MANAGER:

For these case files, the system manager is the Director, Office of Equal Employment Opportunity. The business addresses for system managers are listed in Appendix B, last republished September 27, 2018 (83 FR 48869). As system manager contact information is subject to change, for the most up-to-date information, visit our website at *www.archives.gov/privacy/inventory*.

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C. 552a(a)(3), as amended.

44 U.S.C. 2104(a), as amended.

The Americans with Disabilities Act of 1990, as amended.

Title VII of the Civil Rights Act of 1964, as amended.

29 U.S.C. 791.

Executive Order 13164.

29 CFR part 1614.

PURPOSE OF THE SYSTEM:

We use the information in this system to process and implement employee reasonable accommodation requests and any resulting accommodation.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include current and former NARA employees and applicants who have requested accommodation pursuant to NARA policy for processing reasonable accommodation requests. This includes accommodations for employees and applicants with disabilities and for religious reasons.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reasonable accommodation request records may contain some or all of the following records: Requests for reasonable accommodation including medical records or religious information, notes or records made during consideration of requests, and decisions on requests. These records may contain: The employee or applicant's name, email address, mailing address, phone number, medical information, information on their religious beliefs and practices, and any additional information provided by the employee related to the processing of the request. If an accommodation request is made by a family member, health professional, or representative of a NARA employee or applicant, the records may also contain that requestor's name, email address, mailing address, phone number, and any additional information provided by the requestor relating to the processing of the request.

RECORD SOURCE CATEGORIES:

NARA obtains information in these files from employees, applicants, and any family members, health professionals, or representatives of a NARA employee or applicant, who request reasonable accommodation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

We maintain reasonable accommodation request files to (or for):

(a) Process and implement employee requests for reasonable accommodations, including manager review, reasonable accommodation staff review, medical or health staff review, and sharing with other people necessary to process or implement the request and any resulting accommodation;

(b) disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act; and

(c) routine uses A, B, C, D, E, F, G, and H listed in Appendix A apply to this system. Appendix A was last republished on December 20, 2013 (78 FR 77255, 77287). For the most up-to-date information, see the Appendix on our website at *www.archives.gov/privacy/inventory.*

POLICIES AND PRACTICES FOR STORING RECORDS:

Paper and electronic records.

POLICIES AND PRACTICES FOR RETRIEVING RECORDS:

Staff may retrieve information in these case files by the name of the employee or applicant, or by request number.

POLICIES AND PRACTICES FOR RETAINING AND DISPOSING OF RECORDS:

Reasonable accommodation request records are temporary records and we destroy them in accordance with disposition instructions in the NARA Records Schedule (a supplement to the NARA Files Maintenance and Records Disposition Manual). Individuals may request a copy of the disposition instructions from the NARA Privacy Act Officer (at the address listed in Appendix B).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

During normal hours of operation, we maintain paper records in areas accessible only by authorized NARA personnel. Authorized NARA personnel access electronic records via password-protected workstations located in attended offices or through a secure remote-access network. After business hours, buildings have security guards and secured doors, and electronic surveillance equipment monitors all entrances.

RECORDS ACCESS PROCEDURES:

People who wish to access their records should submit a request in writing to the NARA Privacy Act Officer at the address listed in Appendix B.

CONTESTING RECORDS PROCEDURES:

NARA's rules for contesting the contents of a person's records and appealing initial determinations are in 36 CFR part 1202.

NOTIFICATION PROCEDURES:

People inquiring about their records should notify the NARA Privacy Act Officer at the address listed in Appendix B.

[FR Doc. 2022–01706 Filed 1–27–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB review, Comment Request, Proposed Collection: 2022–2024 IMLS Native American Library Services Basic Grants Program Performance Report Form

AGENCY: Institute of Museum and Library Services, National Foundation of the Arts and the Humanities.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested

data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This Notice proposes the clearance of the performance report form for the agency's non-competitive Native American Library Services Basic Grants program. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 27, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

OMB is particular interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

FOR FURTHER INFORMATION CONTACT: Connie Bodner, Ph.D., Director, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone at 202–653–4636, or by email at *cbodner@imls.gov.* Office hours are from 8:30 a.m. to 5 p.m., E.T., Monday through Friday, except Federal holidays. Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services (IMLS) is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

Current Actions: The purpose of this collection is to facilitate the administration of IMLS's non-competitive Native American Library Services Basic Grants program by creating a record of the IMLS-funded activities, results, and accomplishments at annual intervals throughout the grant period and at the conclusion of each award, and assessments of performance measurement. IMLS uses this information to monitor individual grants report to Congress and the Office of Management and Budget about the agency's progress in addressing its strategic goals, and to improve the grant program. This action is to renew the performance report form for the next three years.

The 60-Day Notice was published in the **Federal Register** on January 8, 2021 (86 FR 1539). No comments were received.

Agency: Institute of Museum and Library Services.

Title of Collection: 2022–2024 IMLS Native American Library Services Basic Grants Program Performance Report Form.

OMB Control Number: 3137–0098.

Agency Number: 3137.

Affected Public: Native American Library Services Basic Grants awardees.

Total Estimated Number of Annual Responses: 180.

Frequency of Response: Once per year.

Average Hours per Response: 2.

Total Estimated Number of Annual Burden Hours: 360.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Cost Burden: $11,001.60.

Total Annual Federal Costs: $7,846.20.

Dated: January 25, 2022.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2022–01718 Filed 1–27–22; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

Submission for OMB Review, Comment Request, Proposed Collection: 2022–2024 Grant Performance Report Forms

AGENCY: Institute of Museum and Library Services.

ACTION: Submission for OMB review, comment request.

SUMMARY: The Institute of Museum and Library Services announces that the following information collection has been submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. This Notice proposes the clearance of one interim and one final performance report form for the agency's discretionary grant programs. A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **FOR FURTHER INFORMATION CONTACT** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 27, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this Notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Institute of Museum and Library Services'' under ''Currently Under Review;'' then check ''Only Show ICR for Public Comment'' checkbox. Once you have found this information collection request, select ''Comment,'' and enter or upload your comment and information. Alternatively, please mail your written comments to Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education,

Office of Management and Budget, Room 10235, Washington, DC 20503, or call (202) 395–7316.

OMB is particularly interested in comments that help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submission of responses).

FOR FURTHER INFORMATION CONTACT: Connie Bodner, Director, Office of Grants Policy and Management, Institute of Museum and Library Services, 955 L'Enfant Plaza North SW, Suite 4000, Washington, DC 20024–2135. Dr. Bodner can be reached by telephone at 202–653–4636, or by email at *cbodner@imls.gov.* Persons who are deaf or hard of hearing (TTY users) can contact IMLS at 202–207–7858 via 711 for TTY-Based Telecommunications Relay Service.

SUPPLEMENTARY INFORMATION: The Institute of Museum and Library Services (IMLS) is the primary source of federal support for the nation's libraries and museums. We advance, support, and empower America's museums, libraries, and related organizations through grant making, research, and policy development. To learn more, visit *www.imls.gov.*

Current Actions: The purpose of this collection is to facilitate the administration of IMLS discretionary grant programs by creating a record of all IMLS-funded project activities, results, and accomplishments at annual intervals throughout the grant period and at the conclusion of each award; accounts of best practices and lessons learned; and assessments of performance measurement. Although specific goals, objectives, and eligibility criteria vary among the agency's grant programs, using standardized performance report forms helps ensure consistent information collection, systematic monitoring practices, and comparable analyses of performance. IMLS uses this information to monitor individual grants, report to Congress and the Office of Management and Budget about the agency's progress in addressing its strategic goals, and to improve its grant programs. The forms submitted for public review in this Notice are the IMLS Interim Performance Report Form and the IMLS Final Performance Report Form. This action is to seek approval for these two forms for the next three years.

The 60-day Notice was published in the **Federal Register** on January 8, 2021 (86 FR 1534). No comments were received.

Agency: Institute of Museum and Library Services.

Title of Collection: 2022–2024 Grant Performance Report Forms.

OMB Control Number: 3137–0100.

Agency Number: 3137.

Affected Public: Library and museum grant program awardees.

Total Number of Respondents: 1,220.

Frequency of Response: Varies over a 3-year period.

Average Hours per Response: 8.75.

Total Burden Hours: 10,680.

Total Annualized Capital/Startup Costs: n/a.

Total Annual Cost Burden: $321,468.00.

Total Annual Federal Costs: $78,462.00.

Dated: January 25, 2022.

Suzanne Mbollo,

Grants Management Specialist, Institute of Museum and Library Services.

[FR Doc. 2022–01720 Filed 1–27–22; 8:45 am]

BILLING CODE 7036–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Center for Science and Engineering Statistics, National Science Foundation.

ACTION: Notice.

SUMMARY: The National Center for Science and Engineering Statistics (NCSES) within the National Science Foundation (NSF) is announcing plans to request renewal of the NCSES Generic Clearance for Improvement Projects (3145–0174). In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NCSES will prepare the submission requesting that OMB approve clearance of this collection for three years.

DATES: Written comments on this notice must be received by March 29, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18253, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: NCSES Generic Clearance for Improvement Projects.

OMB Control Number: 3145–0174.

Expiration Date of Current Approval: July 31, 2022.

Type of Request: Intent to seek approval to extend an information collection for three years.

Abstract: Established within the National Science Foundation by the America COMPETES Reauthorization Act of 2010 § 505, codified in the National Science Foundation Act of 1950, as amended, the National Center for Science and Engineering Statistics (NCSES)—one of 13 principal federal statistical agencies—serves as a central Federal clearinghouse for the collection, interpretation, analysis, and dissemination of objective data on science, engineering, technology, research and development for use by practitioners, researchers, policymakers, and the public. NCSES conducts about a dozen nationally representative surveys to obtain the data for these purposes. The Generic Clearance will be used to ensure that the highest quality data are obtained from these surveys. State of the art methodology will be used to develop, evaluate, and test questionnaires and survey concepts as well as to improve survey and statistical methodology. This may include field or pilot tests of questions for future large-scale surveys, as needed. The Generic Clearance will also be used to test and evaluate data dissemination tools and methods, in an effort to improve access for data users.

Use of the Information: The purpose of these studies is to use the latest and most appropriate methodology to improve NCSES surveys, evaluate new data collection efforts, and evaluate data dissemination tools and mechanisms. Methodological findings may be presented externally in technical papers

at conferences, published in the proceedings of conferences, or in journals. Improved NCSES surveys, data collections, and data dissemination will help policymakers in decisions on research and development funding, graduate education, and the scientific and engineering workforce, as well as contributing to reduced survey costs.

Expected Respondents: The respondents will be from industry, academia, nonprofit organizations, members of the public, and State, local, and Federal governments. Respondents will be either individuals or institutions, depending on the topic under investigation. Qualitative procedures will generally be conducted in person, online (using Zoom, Microsoft Teams, or other conferencing tools), or over the phone. Quantitative procedures may be conducted using mail, Web, email, smartphone app, or telephone modes, depending on the topic under investigation. Up to 28,515 respondents may be contacted across all projects. No respondent will be contacted more than twice in one year under this generic clearance. Every effort will be made to use technology to limit the burden on respondents from small entities.

Both qualitative and quantitative methods will be used to improve NCSES's current data collection instruments and processes and to reduce respondent burden, as well as to develop new surveys and new or improved data dissemination tools. Qualitative and quantitative methods that may be used include, but are not limited to, the following: Behavior coding, split panel tests, experimental pilot studies, field tests, focus groups, respondent debriefings, exploratory interviews, cognitive interviews, and usability tests. Cognitive interviews and usability tests may include the use of scenarios, paraphrasing, card sorts, vignette classifications, rating tasks, or participatory design methods (*e.g.,* collaborative digital whiteboards). NCSES may conduct these studies using interviewer-administered or self-administered methods, including online convenience samples.

Estimate of Burden: NCSES estimates that a total reporting and recordkeeping burden of 11,500 hours will result from activities to improve its surveys. The calculation is shown in Table 1.

TABLE 1—POTENTIAL SURVEYS FOR IMPROVEMENT PROJECTS, WITH THE NUMBER OF RESPONDENTS AND BURDEN HOURS

Survey or information collection	2022–25 number of respondents	2022–25 number of hours
Survey of Doctorate Recipients	5,000	1,100
Survey of Earned Doctorates	2,500	945
National Training, Education, and Workforce Survey	660	400
Other surveys of the science and engineering workforce	1,250	550
Higher Education Research & Development Survey	450	350
Federally Funded Research & Development Centers (FFRDC) Survey	80	100
State Government Research & Development Survey	150	225
Survey of Nonprofit Research Activities	200	200
Business Enterprise Research & Development Survey	50	150
Survey of Scientific & Engineering Facilities	300	200
Public Perceptions of Science	1,100	180
Data dissemination tools and mechanisms	3,100	800
Projects conducted under the NCSES Broad Agency Announcement (BAA)	3,675	3,300
Other surveys and projects not specified	10,000	3,000
Total	28,515	11,500

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of NCSES, including whether the information shall have practical utility; (b) the accuracy of NCSES's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: January 25, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–01791 Filed 1–27–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–10716; NRC–2020–0214]

Sigma-Aldrich Company, Fort Mims Site

AGENCY: Nuclear Regulatory Commission.

ACTION: License termination; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is noticing the termination of the Sigma-Aldrich Company, Fort Mims Site, Materials License No. 24–16273–01, located in Maryland Heights, MO.

DATES: The license termination for Materials License No. 24–16273–01 was issued on November 16, 2021.

ADDRESSES: Please refer to Docket ID NRC–2020–0214 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0214. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

• *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: George Alexander, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6755; email: *George.Alexander@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Sigma-Aldrich Company's (Sigma's) Fort Mims Site is located at 11542 Fort Mims Drive, Maryland Heights, Missouri in a commercial/industrial park. The site consists of a 3-acre parcel of land previously used for the radiolabeling of chemicals with carbon-14 and tritium.

II. Discussion

By email dated August 22, 2019, the NRC received an application to amend Sigma's decommissioning plan. That application was supplemented by letter dated April 27, 2020, requesting a license amendment for the termination of NRC Materials License No. 24–16273–01, and by letter dated October 19, 2020, providing the NRC Form 313 ''Application for Materials License'' for this action. By email dated July 31, 2020, the NRC staff accepted for detailed technical review Sigma's license amendment request to amend the decommissioning plan and terminate the license.

The NRC staff reviewed the revised decommissioning plan with the site-specific dose model and license termination request. Based on Sigma's dose analysis and the NRC's independent and confirmatory surveys and analyses, the NRC staff concluded in a safety evaluation report dated November 16, 2021, that the Fort Mims Site met the dose criteria for unrestricted use and that the residual radioactivity is as low as reasonably achievable, consistent with section 20.1402 of title 10 of the *Code of Federal Regulations,* ''Radiological criteria for unrestricted use.'' Based on an environmental assessment dated November 12, 2021, NRC staff concluded that there would be no significant environmental impacts. Accordingly, NRC Materials License No. 24–16273–01 for the Fort Mims Site was terminated.

III. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS, as indicated.

Document	ADAMS accession No.
NRC Approval of Sigma-Aldrich Company's Fort Mims Facility Decommissioning Plan, dated May 12, 2009	ML091330309
Sigma-Aldrich Fort Mims Site Revised Decommissioning Plan, dated June 27, 2019	ML19273A160
Transmittal Email—Sigma-Aldrich Fort Mims Revised Decommissioning Plan, dated August 22, 2019	ML19273A163
Sigma-Aldrich Fort Mims Site Request for License Termination, dated April 27, 2020	ML20120A544
Transmittal Email—NRC Acceptance Review of Revised Decommissioning Plan and License Termination Request, dated July 31, 2020.	ML20213C693
Sigma-Aldrich Fort Mims Site Revised Decommissioning Plan: NRC Form 313, ''Application for Materials License,'' dated October 19, 2020.	ML20294A191
NRC Environmental Assessment and Finding of No Significant Impact Related to the Issuance of a License Amendment for the Sigma-Aldrich Fort Mims Site, dated November 12, 2021.	ML21277A097
NRC Safety Evaluation Report of Revised Decommissioning Plan and License Termination Request for the Sigma-Aldrich Fort Mims Site, dated November 16, 2021.	ML21300A384
NRC Materials License 24–16273–01 Termination Amendment 21, dated November 16, 2021	ML21300A383

Dated: January 25, 2022.

For the Nuclear Regulatory Commission.

Randolph W. Von Till,

Chief, Uranium Recovery and Materials Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–01754 Filed 1–27–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of January 31, February 7, 14, 21, 28, March 7, 2022.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

Week of January 31, 2022

There are no meetings scheduled for the week of January 31, 2022.

Week of February 7, 2022—Tentative

Tuesday, February 8, 2022

10:00 a.m. Meeting with the Organization of Agreement States and the Conference of Radiation Control Program Directors (Public Meeting); (Contact: Celimar Valentin-Rodriguez: 301–415–7124).

Additional Information: The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.* For those who would like to attend in person, note that all visitors are required to complete the NRC Self-Health Assessment and Certification of Vaccination forms. Visitors who certify

that they are not fully vaccinated or decline to complete the certification must have proof of a negative Food and Drug Administration-approved polymerase chain reaction (PCR) or Antigen (including rapid tests) COVID–19 test specimen collection from no later than the previous 3 days prior to entry to an NRC facility. The forms and additional information can be found here *https://www.nrc.gov/about-nrc/covid-19/guidance-for-visitors-to-nrc-facilities.pdf.*

Week of February 14, 2022—Tentative

There are no meetings scheduled for the week of February 14, 2022.

Week of February 21, 2022—Tentative

Thursday, February 24, 2022

10:00 a.m. Briefing on Regulatory Research Program Activities (Public Meeting); (Contact: Nick Difrancesco: 301–415–1115).

Additional Information: The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/.* For those who would like to attend in person, note that all visitors are required to complete the NRC Self-Health Assessment and Certification of Vaccination forms. Visitors who certify that they are not fully vaccinated or decline to complete the certification must have proof of a negative Food and Drug Administration-approved polymerase chain reaction (PCR) or Antigen (including rapid tests) COVID–19 test specimen collection from no later than the previous 3 days prior to entry to an NRC facility. The forms and additional information can be found here *https://www.nrc.gov/about-nrc/covid-19/guidance-for-visitors-to-nrc-facilities.pdf.*

Week of February 28, 2022—Tentative

There are no meetings scheduled for the week of February 28, 2022.

Week of March 7, 2022—Tentative

There are no meetings scheduled for the week of March 7, 2022.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Tyesha.Bush@nrc.gov* or *Betty.Thweatt@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: January 26, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–01953 Filed 1–26–22; 4:15 pm]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Medical Exception Request

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intent to request extension of OMB approval of information collection.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, without change, under the Paperwork Reduction Act, of a collection of information for its employees to request a medical exception to the COVID–19 vaccination requirement.

DATES: Comments must be submitted on or before March 29, 2022.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: paperwork.comments@pbgc.gov.* Refer to OMB control number 1212–0075 in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026.

Commenters are strongly encouraged to submit public comments electronically. PBGC expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions received must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and refer to OMB control number 1212–0075. All comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Commenters should not include any information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (''confidential business information''). Submission of confidential business information without a request for protected treatment constitutes a waiver of any claims of confidentiality.

Copies of the collection of information may be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026, or calling 202–229–4040 during normal business hours. TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–229–4040.

FOR FURTHER INFORMATION CONTACT: Melissa Rifkin (*rifkin.melissa@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–229–6563. (TTY and TDD users may call the Federal relay service toll-free at 800–877–8339 and ask to be connected to 202–229–6563.)

SUPPLEMENTARY INFORMATION: Under Executive Order 14043, every Federal agency must ''implement, to the extent consistent with applicable law, a program to require COVID–19 vaccination for all of its Federal employees, with exceptions only as required by law.'' In following this directive, the Pension Benefit Guaranty Corporation (PBGC) has a requirement that its employees must receive and submit proof of a COVID–19 vaccination. As required by 29 U.S.C. 701 *et seq.* and 29 CFR part 1630, PBGC allows an exception from the vaccination requirement for employees who demonstrate medical reasons or disabilities that would make the COVID–19 vaccine unsafe for them. To

obtain this exception, employees must complete the Request for Medical Exception to COVID–19 Vaccination Requirement form. PBGC uses the information on this form to verify employees' assertions that they are entitled to an exception to the COVID–19 vaccination requirement because of their medical or disability statuses.

The medical exception request collection of information has been approved by OMB under control number 1212–0075 (expires May 31, 2022). PBGC intends to request that OMB extend its approval for 3 years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

PBGC estimates that an average of 2 employees each year will submit Request for Medical Exception to COVID–19 Vaccination Requirement forms. The total estimated annual burden of the collection of information is 0.5 hours and $0.

PBGC is soliciting public comments to—

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodologies and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Issued in Washington, DC.

Hilary Duke,

Assistant General Counsel for Regulatory Affairs, Pension Benefit Guaranty Corporation.

[FR Doc. 2022–01801 Filed 1–27–22; 8:45 am]

BILLING CODE 7709–02–P

PENSION BENEFIT GUARANTY CORPORATION

Privacy Act of 1974; Systems of Records

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of new systems of records.

SUMMARY: Pursuant to the Privacy Act of 1974 the Pension Benefit Guaranty Corporation (PBGC) is proposing to establish two new systems of records: (1) PBGC–27: Ensuring Workplace Health and Safety in Response to a Public Health Emergency; and (2) PBGC–28: Physical Security and Facility Access. PBGC–27 will maintain information collected to assist PBGC with maintaining a safe and healthy workplace and to protect PBGC staff working on-site from risks associated with a public health emergency (as defined by the U.S. Department of Health and Human Services and declared by its Secretary), such as a pandemic or epidemic. PBGC–28 will maintain information collected while providing visitor, employee, and government contractor access control; physical and operational security; and video surveillance for PBGC facilities.

DATES: The new systems of records described herein will become effective February 28, 2022, without further notice, unless comments result in a contrary determination and a notice is published to that effect. Comments must be received on or before February 28, 2022 to be assured of consideration.

ADDRESSES: You may submit written comments to PBGC by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the website instructions for submitting comments.
- *Email: reg.comments@pbgc.gov.* Refer to SORN in the subject line.
- *Mail or Hand Delivery:* Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005.

Commenters are strongly encouraged to submit public comments electronically. PBGC expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable.

All submissions must include the agency's name (Pension Benefit Guaranty Corporation, or PBGC) and reference this notice. Comments received will be posted without change to PBGC's website, *http://www.pbgc.gov,* including any personal information provided. Do not submit comments that include any personally identifiable information or confidential business information. Copies of comments may also be obtained by writing to Disclosure Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005, or calling 202–326–4040 during normal business hours. (TTY users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: Shawn Hartley, Chief Privacy Officer, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005, 202–229–6321. For access to any of PBGC's systems of records, contact D. Camilla Perry, Disclosure Officer, Office of the General Counsel, Disclosure Division, 1200 K Street NW, Washington, DC 20005, or by calling 202–229–4040, or go to *https://www.pbgc.gov/about/policies/pg/privacy-at-pbgc/system-of-records-notices.*

SUPPLEMENTARY INFORMATION: PBGC is proposing to establish two new Systems of Records:

(1) PBGC–27: Ensuring Workplace Health and Safety in Response to a Public Health Emergency

PBGC is proposing to establish a new system of records titled ''Ensuring Workplace Health and Safety in Response to a Public Health Emergency.'' The purpose of this system is to assist PBGC with maintaining a safe and healthy workplace and to protect PBGC staff working on-site from risks associated with a public health emergency (as defined by the U.S. Department of Health and Human Services and declared by its Secretary), such as a pandemic or epidemic. This system maintains information collected about PBGC staff and visitors accessing PBGC facilities during a public health emergency, including a pandemic or epidemic. It maintains biographical information collected about PBGC staff and visitors.

(2) PBGC–28: Physical Security and Facility Access

PBGC is proposing to establish a new system of records titled ''Physical Security and Facility Access.'' The purpose of this system is to maintain information to allow PBGC to provide for its facilities: Control of access by visitors, employees, and government contractors; physical and operational security; and video surveillance. This system can also be used to maintain information from issuing temporary facility access for employees and contractors who are not in possession of their Personal Identity Verification (PIV) card or office key.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit

written comments on this proposed new notice. A report has been sent to Congress and the Office of Management and Budget for their evaluation.

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

SYSTEM NAME AND NUMBER:

PBGC–27: Ensuring Workplace Health and Safety in Response to a Public Health Emergency—PBGC.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

PBGC, 1200 K Street NW, Washington, DC 20005 (Records may be kept at an additional location as backup for Continuity of Operations).

SYSTEM MANAGER(S) AND ADDRESS:

Workplace Solutions Department/ Emergency Management, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970 (29 U.S.C. 627), Executive Order 12196, Occupational safety and health programs for Federal employees (Feb. 26, 1980), Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees (Sep. 14, 2021), Executive Order 14042, Executive Order on Ensuring Adequate COVID Safety Protocols for Federal Contractors (Sep. 9, 2021), and the National Defense Authorization Act For Fiscal Year 2017 (5 U.S.C. 6329c(b)). Information will be collected and maintained in accordance with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*)

PURPOSE(S):

The information in the system is collected to assist PBGC with maintaining a safe and healthy workplace and to protect PBGC staff working on-site from risks associated with a public health emergency (as defined by the U.S. Department of Health and Human Services and declared by its Secretary), such as a pandemic or epidemic.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include PBGC staff (*e.g.,* political appointees, employees, detailees, contractors, consultants, interns, and volunteers) and visitors to a PBGC facility during a public health emergency, such as a pandemic or epidemic.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains information collected about PBGC staff and visitors accessing PBGC facilities during a public health emergency, including a pandemic or epidemic. It maintains biographical information collected about PBGC staff and visitors that includes, but is not limited to, their name, contact information, or whether they are in a high-risk category. It maintains health information collected about PBGC staff that includes, but is not limited to, temperature checks, test results, dates, symptoms, and potential or actual exposure to a pathogen. It maintains health information collected about building visitors, that includes, but is not limited to, temperature checks, test results, dates, symptoms, and potential or actual exposure to a pathogen. It maintains information collected about PBGC staff and visitors to a PBGC facility necessary to conduct contact tracing that includes, but is not limited to, the dates when they visited the facility, the locations that they visited within the facility (*e.g.,* office and cubicle number), the duration of time spent in the facility, whether they may have potentially come into contact with a contagious person while visiting the facility, travel dates and locations, and a preferred contact number. It maintains information about emergency contacts for PBGC staff that includes, but is not limited to, the emergency contact's name, phone number, and email address.

RECORD SOURCE CATEGORIES:

The information in this system is collected in part directly from the individual or from the individual's emergency contact. Information is also collected from human resources systems, emergency notification systems, and Federal, state, and local agencies assisting with the response to a public health emergency. Information may also be collected from property management companies responsible for managing office buildings that house PBGC facilities including security systems monitoring access to PBGC facilities, video surveillance, and access control devices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 522a(b), and:

1. General Routine Uses G1 through G14 apply to this system of records (see Prefatory Statement of General Routine Uses at 83 FR 6247 (Feb. 13, 2018)).

These records and information in these records may also be disclosed:

2. To a Federal, state, or local agency to the extent necessary to comply with laws governing reporting of infectious disease;

3. To PBGC staff member's emergency contact for purposes of locating a staff member during a public health emergency;

4. To federal contractors performing physical security and/or access control duties at PBGC facilities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained manually in paper and/or electronic form, including computer databases, magnetic tapes, and discs. Records are also maintained on PBGC's secure network and back-up tapes.

RETRIEVABILITY:

Records are retrieved by the name of the individual.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the General Records Retention Schedules issued by the National Archives and Records Administration (NARA) or a PBGC records disposition schedule approved by NARA. Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media practice Records of emergency contacts for PBGC staff will be maintained in accordance with General Records Schedule 5.3, Item 020: Employee Emergency Contact Information, which requires that the records be destroyed when superseded or obsolete, or upon separation or transfer of employee. PBGC will work with the National Archives and Records Administration (NARA) to draft and secure approval of a records disposition schedule to cover the remainder of the records described in this SORN. Until this records disposition schedule is approved by NARA, PBGC will maintain, and not destroy, these records.

SAFEGUARDS:

PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the security, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Paper records are kept in file cabinets in areas of restricted access that are

locked after office hours. Electronic records are stored on computer networks and protected by assigning user identification numbers to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURE:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURE:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request, in accordance with 29 CFR 4902.5, identifying the information they wish to correct in their file, in addition to following the requirements of the Record Access Procedure above.

NOTIFICATION PROCEDURE:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY

None.

SYSTEM NAME AND NUMBER:

PBGC–28: Physical Security and Facility Access.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Pension Benefit Guaranty Corporation (PBGC), 1200 K Street NW, Washington, DC 20005. (Records may be kept at an additional location as backup for continuity of operations.)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Workplace Solutions Department, PBGC, 1200 K Street NW, Washington, DC 20005.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12977; 6 CFR part 37; Homeland Security Presidential Directive (HSPD) 12: Policy for a Common Identification Standard for Federal Employees and Contractors.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to maintain information to allow PBGC to provide for its facilities: Control of visitor, employee, and government contractor access; physical and operational security; and video surveillance. It can also be used to maintain information from issuing temporary facility access for employees and contractors who are not in possession of their Personal Identity Verification (PIV) card or office key.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current PBGC employees, students, interns, government contractors, employees of other agencies, vendors, and other authorized visitors who access PBGC facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to employee and government contractor access, visitor access, and facility security. This includes government Personal Identity Verification (PIV) cards, visitor, contractor, and employee access records, temporary access cards, biometric data, and video surveillance recordings. PIV card records include the following information: Name, type of access, employee affiliation, expiration date, activation date, credential serial number, height, eye color, and hair color. Visitor access records include the following information: Name, reason for visit, organization name, date and time of visit, floor visited, and temporary visitor badge number or barcode. Employee access records include date and time of room or facility access and fingerprint or other biometric data.

RECORD SOURCE CATEGORIES:

Subject individuals, employees, visitors, contractors, vendors, and others visiting PBGC facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about covered individuals may be disclosed without consent as permitted by the Privacy Act of 1974, 5 U.S.C. 552a(b), and:

1. General Routine Uses G1 through G5 and G7 through G12 apply to this system of records (See Prefatory Statement of General Routine Uses at 83 FR 6247 (Feb. 13, 2018)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained manually in paper and/or electronic form (including computer databases or discs). Records may also be maintained on back-up tapes, or on a PBGC or a contractor-hosted network.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by any one of the following: Employee or contractor name, PIV card number, temporary access card number, access clearance, key number, key removal date and time, visitor name, date and time of visit, organization, name of PBGC personnel escorting the visitor, visitor badge number, and reason for visit.

RETENTION AND DISPOSAL:

Records are maintained and destroyed in accordance with the National Archives and Record Administration's (NARA) Basic Laws and Authorities (44 U.S.C. 3301, *et seq.*) or a PBGC records disposition schedule approved by NARA. Records existing on paper are destroyed beyond recognition. Records existing on computer storage media are destroyed according to the applicable PBGC media practice for physical security and access control systems and will be maintained in accordance with General Records Schedule 5.6 Security Records Items: 010, 021, 100, 111, 120, 121, 130, and 240.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

PBGC has established security and privacy protocols that meet the required security and privacy standards issued by the National Institute of Standards and Technology (NIST). Records are maintained in a secure, password protected electronic system that utilizes security hardware and software to include multiple firewalls, active intruder detection, and role-based access controls. PBGC has adopted appropriate administrative, technical, and physical controls in accordance with PBGC's security program to protect the confidentiality, integrity, and availability of the information, and to ensure that records are not disclosed to or accessed by unauthorized individuals.

Electronic records are stored on computer networks, which may include cloud-based systems, and protected by controlled access with PIV cards, assigning user accounts to individuals needing access to the records and by passwords set by authorized users that must be changed periodically.

RECORD ACCESS PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to request access to their records in accordance with 29 CFR 4902.4, should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

CONTESTING RECORD PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to amend their records must submit a written request, in accordance with 29 CFR 4902.5, identifying the information they wish to correct in their file, following the requirements of Record Access Procedure above.

NOTIFICATION PROCEDURES:

Individuals, or third parties with written authorization from the individual, wishing to learn whether this system of records contains information about them should submit a written request to the Disclosure Officer, PBGC, 1200 K Street NW, Washington, DC 20005, providing their name, address, date of birth, and verification of their identity in accordance with 29 CFR 4902.3(c).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2022–01799 Filed 1–27–22; 8:45 am]

BILLING CODE 7709–02–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2019–211; CP2021–43]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 1, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2019–211; *Filing Title:* USPS Notice of Amendment to Parcel Select Contract 34, Filed Under Seal; *Filing Acceptance Date:* January 24, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* February 1, 2022.

2. *Docket No(s).:* CP2021–43; *Filing Title:* USPS Notice of Amendment to Parcel Select Contract 44, Filed Under Seal; *Filing Acceptance Date:* January 24, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* February 1, 2022.

This Notice will be published in the **Federal Register**.

Jennie L. Jbara,

Alternate Certifying Officer.

[FR Doc. 2022–01769 Filed 1–27–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Sunshine Act Meetings

DATE AND TIME: Monday, February 7, 2022, at 10:00 a.m.; and Tuesday, February 8, 2022, at 8:30 a.m.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza SW, in the Benjamin Franklin Room.

STATUS: Monday, February 7, 2022, at 10:00 a.m.—Closed; Tuesday, February 8, 2022, at 8:30 a.m.—Open.

MATTERS TO BE CONSIDERED:

Monday, February 7, 2022, at 10:00 a.m. (Closed)

1. Strategic Issues.
2. Financial and Operational Matters.
3. Administrative Items.

Tuesday, February 8, 2022, at 8:30 a.m. (Open)

1. Remarks of the Chairman of the Board of Governors.
2. Remarks of the Postmaster General and CEO.
3. Approval of Minutes of Previous Meetings.
4. Committee Reports.
5. Quarterly Financial Report.
6. Quarterly Service Performance Report.
7. Approval of Tentative Agendas for May Meetings.

A public comment period will begin immediately following the adjournment of the open session on February 8, 2022. During the public comment period, which shall not exceed 60 minutes, members of the public may comment on

any item or subject listed on the agenda for the open session above. Additionally, the public will be given the option to join the public comment session and participate via teleconference. Registration of speakers at the public comment period is required. Should you wish to participate via teleconference, you will be required to give your first and last name, a valid email address to send an invite and a phone number to reach you should a technical issue arise. Speakers may register online at *https://www.surveymonkey.com/r/BOG-02-08-2022.* No more than three minutes shall be allotted to each speaker. The time allotted to each speaker will be determined after registration closes. Registration for the public comment period, either in person or via teleconference, will end on February 6 at 5 p.m. ET. Participation in the public comment period is governed by 39 CFR 232.1(n).

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2022–01874 Filed 1–26–22; 11:15 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94039; File No. SR–MIAX–2022–05]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Professional Rebate Program

January 24, 2022.

Pursuant to the provisions of 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 January 13, 2022, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to change the Professional Rebate Program so that it applies only to orders that add liquidity to the Exchange. The Exchange initially filed this proposal on January 3, 2022 (SR–MIAX–2022–02) and withdrew such filing on January 13, 2022. The Exchange proposes to implement the fee change effective January 13, 2022.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is one of 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than approximately 13% of the market share of executed volume of multiply-listed equity and exchange-traded fund (''ETF'') options trades as of January 11, 2022, for the month of January 2022.[3] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, as of January 11, 2022, the Exchange has a total market share of 5.41% of all equity options volume, for the month of January 2022.[4]

The Exchange currently offers a Professional Rebate Program (the ''Program'') as defined in the Fee Schedule. Under the Program, the Exchange will credit each Member[5] the per contract amount resulting from any contracts executed from an order submitted by a Member for the account(s) of a (i) Public Customer[6] that is not a Priority Customer;[7] (ii) Non-MIAX Market Maker; (iii) Non-Member Broker-Dealer; or (iv) Firm (for purposes of the Professional Rebate Program, ''Professional'') which is executed electronically on the Exchange in all multiply-listed option classes (excluding, in simple or complex as applicable, mini-options, QCC[8] and cQCC Orders,[9] PRIME[10] and cPRIME Orders,[11] PRIME and cPRIME AOC Responses,[12] PRIME and cPRIME

[3] *See* MIAX's ''The Market at a Glance'', available at *https://www.miaxoptions.com/* (last visited January 11, 2022).

[4] *See id.*

[5] The term ''Member'' means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100.

[6] The term ''Public Customer'' means a person that is not a broker or dealer in securities. *See* Exchange Rule 100.

[7] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Exchange Rule 100.

[8] Qualified Contingent Cross Order. A Qualified Contingent Cross Order is comprised of an originating order to buy or sell at least 1,000 contracts, or 10,000 mini-option contracts, that is identified as being part of a qualified contingent trade, as that term is defined in Interpretations and Policies .01 of Rule 516, coupled with a contra-side order or orders totaling an equal number of contracts. A Qualified Contingent Cross Order is not valid during the opening rotation process described in Rule 503. *See* Exchange Rule 516(j).

[9] A Complex Qualified Contingent Cross or ''cQCC'' Order is comprised of an originating complex order to buy or sell where each component is at least 1,000 contracts that is identified as being part of a qualified contingent trade, as defined in Rule 516, Interpretations and Policies .01, coupled with a contra-side complex order or orders totaling an equal number of contracts. Trading of cQCC Orders is governed by Rule 515(h)(4). *See* Exchange Rule 518(b)(6).

[10] PRIME is a process by which a Member may electronically submit for execution (''Auction'') an order it represents as agent (''Agency Order'') against principal interest, and/or an Agency Order against solicited interest. *See* Exchange Rule 515A(a).

[11] A Complex PRIME or ''cPRIME'' Order is a complex order (as defined in Rule 518(a)(5)) that is submitted for participation in a cPRIME Auction. Trading of cPRIME Orders is governed by Rule 515A, Interpretations and Policies .12. *See* Exchange Rule 518(b)(7).

[12] An Auction-or-Cancel or ''AOC'' order is a limit order used to provide liquidity during a specific

Contra-side Orders, and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400 (collectively, for purposes of the Professional Rebate Program, ''Excluded Contracts'')), provided the Member achieves certain Professional volume increase percentage thresholds in the month relative to the fourth quarter of 2015, as described in the table above.

The percentage thresholds in each tier are based upon the increase in the total volume submitted by a Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during a particular month as a percentage of the total volume reported by the Options Clearing Corporation (OCC) in MIAX classes during the same month (the ''Current Percentage''), less the greater of (x) total volume submitted by that Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume reported by OCC in MIAX classes during the fourth quarter of 2015, and (y) 0.065% (the ''Baseline Percentage''). Volume for transactions in both simple and complex orders will be aggregated to determine the appropriate volume tier threshold applicable to each transaction. For purposes of determining the Baseline Percentage for any Member that did not execute any contracts for the account(s) of a Professional on MIAX in the fourth quarter of 2015, the Baseline Percentage shall be 0.065%.

The Member's percentage increase will be calculated as the Current Percentage less the Baseline Percentage. Members will receive rebates for contracts submitted by such Member on behalf of a Professional(s) that are executed within a particular percentage tier based upon that percentage tier only, and will not receive a rebate for such contracts that applies to any other tier. The increase in volume percentage will be recorded for, and credits will be delivered to, the Member that submits the order to MIAX on behalf of the Professional. Volume for both simple and complex orders will be aggregated to determine the appropriate volume tier threshold applicable to each transaction. MIAX will aggregate the contracts resulting from Professional orders transmitted and executed electronically on MIAX from Members and their Affiliates [13] for purposes of the thresholds described in the table above. A Member may request to receive its credit under the Program as a separate direct payment.

For Simple Orders [14] the per contract credit of $0.10 for Tier 1 will apply to percentage thresholds from above 0.00% up to 0.005%. Next, the per contract credit of $0.15 for Tier 2 will apply only to percentage thresholds from above 0.005% up to 0.020%, beginning with the first contract executed in Tier 2, but will not apply to contracts executed in Tier 1, to which the $0.10 per contract credit applied. Thereafter, the per contract credit of $0.20 for Tier 3 will apply to percentage thresholds from above 0.020%, beginning with the first contract executed in Tier 3, but will not apply to contracts executed in Tier 1, to which the $0.10 per contract credit applied, and will not apply to contracts executed in Tier 2, to which the $0.15 per contract credit applied.

For Complex Orders [15] the per contract credit of $0.03 for Tier 1 will apply to percentage thresholds from above 0.00% up to 0.005%. Next, the per contract credit of $0.05 for Tier 2 will apply only to percentage thresholds from above 0.005% up to 0.020%, beginning with the first contract executed in Tier 2, but will not apply to contracts executed in Tier 1, to which the $0.03 per contract credit applied. Thereafter, the per contract credit of $0.07 for Tier 3 will apply to percentage thresholds from above 0.020%, beginning with the first contract executed in Tier 3, but will not apply to contracts executed in Tier 1, to which the $0.03 per contract credit applied, and will not apply to contracts executed in Tier 2, to which the $0.05 per contract credit applied.

The below table reflects the current Professional Rebate Program in the Fee Schedule.

PROFESSIONAL REBATE PROGRAM

Type of market participants eligible for rebate	Tier	Percentage thresholds of volume increase in multiply-listed options (except Excluded Contracts) for the Current Month Compared to Fourth Quarter 2015	Per contract credit (except Excluded Contracts) for Simple Orders	Per contract credit (except Excluded Contracts) for Complex Orders
Public Customer that is Not a Priority Customer	1	Above 0.00%–0.005%	$0.10	$0.03
Non-MIAX Market Maker	2	Above 0.005%–0.020%	0.15	0.05

Exchange process (such as the Opening Imbalance process described in Rule 503) with a time in force that corresponds with that event. AOC orders are not displayed to any market participant, are not included in the MBBO and therefore are not eligible for trading outside of the event, may not be routed, and may not trade at a price inferior to the away markets. *See* Exchange Rule 516(b)(4).

[13] For purposes of the MIAX Options Fee Schedule, the term ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, (''Affiliate''), or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). *See* MIAX Options Exchange Fee Schedule.

[14] A Simple Order is an order on the Exchange's regular electronic book of orders and quotes. *See* Exchange Rule 518(a)(15).

[15] A ''complex order'' is any order involving the concurrent purchase and/or sale of two or more different options in the same underlying security (the ''legs'' or ''components'' of the complex order), for the same account, in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.00) and for the purposes of executing a particular investment strategy. Mini-options may only be part of a complex order that includes other mini-options. Only those complex orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs, as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. A complex order can also be a ''stock-option order'' as described further, and subject to the limitations set forth, in Interpretations and Policies .01 of this Rule. A stock-option order is an order to buy or sell a stated number of units of an underlying security (stock or Exchange Traded Fund Share (''ETF'')) or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of options contract(s) on the opposite side of the market representing either (i) the same number of units of the underlying security or convertible security, or (ii) the number of units of the underlying stock necessary to create a delta neutral position, but in no case in a ratio greater than eight-to-one (8.00), where the ratio represents the total number of units of the underlying security or convertible security in the option leg to the total number of units of the underlying security or convertible security in the stock leg. Only those stock-option orders in the classes designated by the Exchange and communicated to Members via Regulatory Circular with no more than the applicable number of legs as determined by the Exchange on a class-by-class basis and communicated to Members via Regulatory Circular, are eligible for processing. *See* Exchange Rule 518(a)(5).

PROFESSIONAL REBATE PROGRAM—Continued

Type of market participants eligible for rebate	Tier	Percentage thresholds of volume increase in multiply-listed options (except Excluded Contracts) for the Current Month Compared to Fourth Quarter 2015	Per contract credit (except Excluded Contracts) for Simple Orders	Per contract credit (except Excluded Contracts) for Complex Orders
Non-Member Broker-Dealer Firm	3	Above 0.020%	0.20	0.07

The Exchange now proposes to revise the Program to make the credit available only to those orders (both simple and complex) that add liquidity to the Exchange. The purpose of this change is to encourage Members to direct greater Professional trade volume to the Exchange that adds liquidity. Increased Professional volume will provide for greater liquidity, which benefits all market participants. The practice of incentivizing increased order flow in order to attract liquidity is, and has been, commonly practiced in the options markets. The Program similarly intends to attract Professional order flow, which will increase liquidity, thereby providing greater trading opportunities and tighter spreads for other market participants and causing a corresponding increase in order flow from such other market participants.

The specific volume increase thresholds of the Program's tiers are not changing under this proposal and were set based upon business determinations and an analysis of volume levels. The volume increase thresholds are intended to encourage firms that route some Professional orders to the Exchange to increase the number of such orders that are sent to the Exchange to achieve the next threshold and to provide incentive for new participants to send Professional orders as well. Increasing the number of such orders sent to the Exchange will in turn provide tighter and more liquid markets, and therefore attract more business overall. Similarly, the different credit rates at the different tier levels were based on an analysis of revenue and volume levels and are intended to provide increasing rewards for increasing the volume of trades sent to and executed on the Exchange. The specific amounts of the tiers and rates were set in order to encourage suppliers of Professional order flow to reach for higher tiers.

The purpose of calculating the Baseline Percentage as the total volume submitted by that Member and executed for the account(s) of a Professional on MIAX (not including Excluded Contracts) during the fourth quarter of 2015 as a percentage of the total volume reported by OCC in MIAX classes during the fourth quarter of 2015 is to maintain a constant measuring methodology based upon a sample of the most current market conditions available over a meaningful period of time (*e.g.,* three months), which should help Members submitting orders designated as Professional (as defined above) better understand the volume thresholds that will result in higher rebate amounts.

The Exchange will continue to leave certain Excluded Contracts (specifically, Non-Priority Customer to Non-Priority Customer orders, QCC Orders, PRIME Orders, PRIME AOC Responses, and PRIME Contra-side Orders) out of the calculation of the Current and Baseline percentages measuring contracts executed on MIAX and accordingly from the calculation of the percentage thresholds of volume increase. The Exchange believes that it is unnecessary and redundant to offer an incentive where both sides of the trade are submitted and executed by the same Member that submits such orders on behalf of Professionals.

Executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan referenced in MIAX Rule 1400 are excluded from the calculation because the execution of such orders occurs on away markets. Providing rebates to Professional executions that occur on other trading venues would be inconsistent with the proposal. Therefore, such volume is excluded from the Program in order to promote the underlying goal, which is to increase liquidity and execution volume on the Exchange.

The Exchange also excludes mini-options from the calculation of the percentage thresholds of volume increase. Mini-options contracts are excluded from the Program because the cost to the Exchange to process quotes, orders and trades in mini-options is the same as for standard options. This, coupled with the lower per-contract transaction fees charged to other market participants, makes it impractical to offer Members a credit for Professional mini-option volume that they transact.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(4) of the Act [17] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [18] 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 and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

As discussed above the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels to be excessive or incentives to be insufficient, and the Exchange represents only a small percentage of the overall market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and self-regulatory organization (''SRO'') revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [19]

The Exchange believes that the ever-shifting market shares among the exchanges from month to month

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products, in response to transaction and non-transaction fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees and rebates, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable. The Exchange believes the proposal reflects a reasonable and competitive pricing structure which will continue to incentivize market participants to direct liquidity adding orders to the Exchange, which the Exchange believes would enhance liquidity and market quality on the exchange to the benefit of all Members.

The Exchange believes that amending the Program to provide a per contract rebate only to liquidity adding orders and to no longer provide a per contract rebate to those orders that remove liquidity from the Exchange is reasonable, equitable and not unfairly discriminatory as the Program is available to all Members and all similarly situated market participants are subject to the same rebate structure under the Program, and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange's proposal is intended to encourage participants to submit more orders that add liquidity to the Exchange, thus enhancing liquidity on the Exchange. Increased liquidity benefits all market participants by providing more trading opportunities and tighter spreads. The Exchange believes the Program, as amended, will continue to encourage liquidity and support the quality of price discovery, thereby promoting market transparency and improving investor protection.

The Exchange believes that the proposed change to its Program is reasonably designed to incentivize Members to submit orders which add liquidity to the Exchange, which facilitates increased trading opportunities, tighter spreads, and overall enhanced market quality to the benefit of all market participants. The Exchange further believes the proposed change is reasonable as incentive programs have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable, and not unfairly discriminatory because they are open to all members on an equal basis and provide additional benefits or discounts that are reasonably related to an exchange's market quality. In particular, the Exchange believes its proposal to provide a per contract credit only to liquidity adding orders and to not provide a per contract credit to liquidity removing orders is reasonable, equitable, and not unfairly discriminatory for these same reasons, as it provides Members with an additional incentive to submit liquidity adding orders to the Exchange in order to qualify for a rebate under the Program.

The Exchange believes its proposal to offer certain per contract credits to simple and complex orders that add liquidity under the Program is consistent with Section 6(b)(4) of the Act [20] because it applies equally to all participants. The Exchange's proposal is intended to encourage participants to submit more orders to the Exchange that add liquidity, thus enhancing liquidity and removing impediments to and perfecting the mechanisms of a free and open market and a national market system. Additionally, if a Member does not satisfy the requirements of the Program then they will simply not receive the rebate offered by the Program for that month.

For the reasons discussed above, the Exchange submits that the proposal satisfies the requirements of Sections 6(b)(4) and 6(b)(5) of the Act [21] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities and is not designed to unfairly discriminate between customers, issuers, brokers, or dealers.

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 Exchange believes that the proposed rule change would increase both intermarket and intramarket competition by incentivizing Members to direct orders for the account(s) of Professionals to the Exchange, which should enhance the quality of the Exchange's markets and increase the volume of contracts traded here. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange will benefit all market participants and improve competition on the Exchange. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. The Exchange believes that the proposed rule change reflects this competitive environment because it encourages market participants to direct their customer order flow, to provide liquidity, and to attract additional transaction volume, to the Exchange. Given the robust competition for volume among options markets, many of which offer the same products, implementing a volume based rebate program for orders that add liquidity to attract order flow like the one being proposed in this filing is consistent with the above-mentioned goals of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[22] and Rule 19b–4(f)(2) [23] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[20] 15 U.S.C. 78f(b)(4).

[21] 15 U.S.C. 78f(b)(4) and (5).

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

[23] 17 CFR 240.19b–4(f)(2).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2022–05 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2022–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2022–05 and should be submitted on or before February 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01702 Filed 1–27–22; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94031]

Order Granting Application by The Nasdaq Stock Market LLC for an Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

January 24, 2022.

The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') has filed with the Securities and Exchange Commission (''Commission'') an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] from the rule filing requirements of Section 19(b) of the Exchange Act [2] with respect to certain rules of the Financial Industry Regulatory Authority, Inc. (''FINRA''), Cboe Exchange, Inc. (''Cboe''), and New York Stock Exchange LLC (''NYSE''), that the Exchange seeks to incorporate by reference.[3] Section 36 of the Exchange Act, subject to certain limitations, authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchange has requested, pursuant to Rule 0–12 under the Exchange Act,[4] that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Exchange's rules that are effected solely by virtue of a change to a cross-referenced FINRA, Cboe, or NYSE rule. Specifically, the Exchange requests that it be permitted to incorporate by reference changes made to the FINRA, Cboe, and NYSE rules that are cross-referenced in the Exchange's rules identified below, without the need for the Exchange to file separately similar proposed rule changes pursuant to Section 19(b) of the Exchange Act: [5]

• General 9, Section 1(b) (Prohibition Against Trading Ahead of Customer Orders) cross-references FINRA Rule 5320 (except for FINRA Rule 5320.02(b) and the reference to FINRA Rule 6420 in FINRA Rule 5320).

• General 9, Section 1(c) (Front Running Policy) cross-references FINRA Rule 5270.

• General 9, Section 1(f) (Confirmation of Callable Common Stock) cross-references FINRA Rule 2232.

• General 9, Section 1(h) (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) cross-references FINRA Rule 2140.

• General 9, Section 2 (Customers' Securities or Funds) cross-references FINRA Rule 2150.

• General 9, Section 3 (Communications with the Public) cross-references FINRA Rule 2210 (except for FINRA Rule 2210(c)).

• General 9, Section 5 (Telemarketing) cross-references FINRA Rule 3230.

• General 9, Section 6 (Forwarding of Proxy and Other Issuer-Related Materials) cross-references FINRA Rule 2251.

• General 9, Section 7 (Disclosure of Financial Condition, Control Relationship with Issuer and Participation or Interest in Primary or Secondary Distribution) cross-references FINRA Rules 2261, 2262, and 2269.

• General 9, Section 8 (SIPC Information) cross-references FINRA Rule 2266.

• General 9, Section 9 (Fairness Opinions) cross-references FINRA Rule 5150.

• General 9, Section 10(a) (Recommendations to Customers (Suitability)) cross-references FINRA Rule 2111 (except for the references to FINRA Rule 2214 in FINRA Rule 2111).

• General 9, Section 10(c) (Know Your Customer) cross-references FINRA Rule 2090.

• General 9, Section 11 (Best Execution and Interpositioning) cross-references FINRA Rule 5310 (except for the references to FINRA Rule 2121 and its supplementary material in FINRA Rule 5310).

• General 9, Section 12 (Customer Account Statements) cross-references FINRA Rule 2231.

• General 9, Section 13 (Margin Disclosure Statement) cross-references FINRA Rule 2264.

• General 9, Section 14 (Approval Procedures for Day-Trading Accounts) cross-references FINRA Rules 2130 and 2270.

• General 9, Section 15 (Borrowing From or Lending to Customers) cross-references FINRA Rule 3240.

• General 9, Section 16 (Charges for Services Performed) cross-references FINRA Rule 2122.

[1] 15 U.S.C. 78mm(a)(1).

[2] 15 U.S.C. 78s(b).

[3] *See* Letter from Angela S. Dunn, Principal Associate General Counsel, Nasdaq, to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated January 20, 2022 (''Exemptive Request'').

[4] 17 CFR 240.0–12.

[5] *See* Exemptive Request, *supra* note 3, at 5.

• General 9, Section 17 (Net Transactions with Customers) cross-references FINRA Rule 2124.
• General 9, Section 19 (Discretionary Accounts) cross-references FINRA Rule 3260.
• General 9, Section 20 (Supervision) cross-references FINRA Rules 3110 and 3170.
• General 9, Section 21 (Supervisory Control System, Annual Certification of Compliance and Supervisory Processes) cross-references FINRA Rules 3120 and 3130 (except for the references to MSRB rules in FINRA Rule 3130).
• General 9, Section 23 (Outside Business Activities of an Associated Person) cross-references FINRA Rule 3270.
• General 9, Section 24 (Private Securities Transactions of an Associated Person) cross-references FINRA Rule 3280.
• General 9, Section 25 (Transactions for or by Associated Persons) cross-references FINRA Rule 3210.
• General 9, Section 26 (Influencing or Rewarding Employees of Others) cross-references FINRA Rule 3220.
• General 9, Section 27 (Reporting Requirements) cross-references FINRA Rule 4530 (except for FINRA Rule 4530(h)).
• General 9, Section 28 (Disclosure to Associated Persons When Signing Form U4) cross-references FINRA Rule 2263 (except for subsection (2) of FINRA Rule 2263).
• General 9, Section 30 (Books and Records) cross-references FINRA Rule 4511.
• General 9, Section 31 (Use of Information Obtained in Fiduciary Capacity) cross-references FINRA Rule 2060.
• General 9, Section 33 (Reporting Requirements for Clearing Firms) cross-references FINRA Rule 4540.
• General 9, Section 34 (Extensions of Time Under Regulation T and SEC Rule 15c3–3) cross-references FINRA Rule 4230.
• General 9, Section 37 (Anti-Money Laundering Compliance Program) cross-references FINRA Rule 3310.
• General 9, Section 38(b) (Margin Requirements) cross-references FINRA Rule 4210.
• General 9, Section 39(b) (Fidelity Bonds) cross-references FINRA Rule 4360.
• General 9, Section 40 (Capital Compliance) cross-references FINRA Rule 4110.
• General 9, Section 41 (Regulatory Notification and Business Curtailment) cross-references FINRA Rule 4120.
• General 9, Section 42 (Audit) cross-references FINRA Rule 4140.
• General 9, Section 43 (General Requirements) cross-references FINRA Rule 4511.
• General 9, Section 44 (Records of Written Customer Complaints) cross-references FINRA Rule 4513.
• General 9, Section 45 (Customer Account Information) cross-references FINRA Rule 4512.
• General 9, Section 46 (Authorization Records for Negotiable Instruments Drawn From a Customer's Account) cross-references FINRA Rule 4514.
• General 9, Section 47 (Approval and Documentation of Changes in Account Name or Designation) cross-references FINRA Rule 4515.
• General 9, Section 48 (Notifications, Questionnaires and Reports) cross-references FINRA Rule 4521.
• Equity 10, Section 1 (Direct Participation Programs) cross-references FINRA Rules 2310 and 5110.
• Equity 10, Section 2 (Investment Company Securities) cross-references FINRA Rule 2341 (except for the reference to FINRA Rule 2320 in FINRA Rule 2341).
• Equity 11, Rule 11860 (Acceptance and Settlement of COD Orders) cross-references FINRA Rule 11860.
• Equity 11, Rule 11870 (Customer Account Transfer Contracts) cross-references FINRA Rule 11870.
• Options 6C, Section 3 (Margin Requirements) cross-references the initial and maintenance margin requirements of Cboe and NYSE.
• Options 10, Section 20 (Communications with Public Customers) cross-references FINRA's Communications with Public Customers rule.

The Exchange represents that the FINRA, Cboe, and NYSE rules listed above are regulatory rules and not trading rules.[6] The Exchange represents that, as a condition to the requested exemption from Section 19(b) of the Exchange Act, the Exchange will provide written notice to its members whenever FINRA, Cboe, or NYSE proposes a change to a cross-referenced rule.[7] The Exchange states that such notice will alert its members and persons associated with a member to the proposed FINRA, Cboe, or NYSE rule change and give them an opportunity to comment on the proposal.[8] The Exchange further represents that it will inform members in writing when the Commission approves any such proposed rule changes.[9]

According to the Exchange, this exemption is appropriate because it would result in the Exchange's rulebook being consistent with the relevant cross-referenced FINRA, Cboe, and NYSE rules at all times, thus ensuring consistent regulation of joint members of Nasdaq, FINRA, Cboe, and NYSE.[10] The Exchange further states that, even if members are not joint members of Nasdaq, FINRA, Cboe, and NYSE, the exemption is appropriate because it will permit its rules to remain consistent with FINRA's, Cboe's, and NYSE's rules and ensure consistent treatment of industry members with respect to the aforementioned rules.[11]

The Commission has issued exemptions similar to the Exchange's request.[12] In granting similar exemptions, the Commission stated that it would consider similar future exemption requests, provided that:

• An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive

[6] *See id.* at 6, n.12. The Exchange also states that it is not ''cherry picking'' because the Exchange would be incorporating categories of rules. *See id.*

[7] *See id.* at 6. The Exchange represents that it will provide such notice via a posting on the same website location where the Exchange posts its own rule filings pursuant to Rule 19b–4(l) within the time frame required by such rule. *See id.* at 6, n.13. The website posting will include a link to the location on FINRA's, Cboe's, or NYSE's website where the applicable proposed rule change is posted. *See id.*

[8] *See id.* at 6.

[9] *See id.*

[10] *See id.* at 5.

[11] *See id.* at 5–6.

[12] *See, e.g.,* Securities Exchange Act Release Nos. 83296 (May 21, 2018), 83 FR 24362 (May 25, 2018) (order granting NYSE National, Inc.'s exemptive request relating to rules of FINRA incorporated by reference); 83040 (April 12, 2018), 83 FR 17198 (April 18, 2018) (order granting MIAX PEARL, LLC's exemptive request relating to rules of the Miami International Securities Exchange, LLC incorporated by reference); 76998 (January 29, 2016), 81 FR 6066, 6083–84 (February 4, 2016) (order granting application for registration as a national securities exchange of ISE Mercury, LLC and exemptive request relating to rules of certain self-regulatory organizations (''SROs'') (including FINRA) incorporated by reference); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) (''BATS Options Market Order''); 61152 (December 10, 2009), 74 FR 66699, 66709–10 (December 16, 2009) (order granting application for registration as a national securities exchange of C2 Options Exchange, Incorporated and exemptive request relating to rules of the Chicago Board Options Exchange, Incorporated, incorporated by reference).

orders pursuant to Rule 0–12 under the Exchange Act; [13]

• The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (*e.g.,* the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and

• The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.[14]

The Commission believes that the Exchange has satisfied each of these conditions. The Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and the Exchange's resources by avoiding duplicative rule filings based on simultaneous changes to identical rule text sought by more than one SRO.[15] The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described FINRA, Cboe, and NYSE rules it has incorporated by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its members whenever FINRA, Cboe, or NYSE changes a rule that the Exchange has incorporated by reference.

Accordingly, *it is ordered*, pursuant to Section 36 of the Exchange Act,[16] that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in the Exemptive Request, provided that the Exchange promptly provides written notice to its members whenever FINRA, Cboe, or NYSE proposes to change a rule that the Exchange has incorporated by reference.

[13] *See* 17 CFR 240.0–12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule).

[14] *See* BATS Options Market Order, *supra* note 12 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) (''2004 Order'')).

[15] *See* BATS Options Market Order, *supra* note 12, 75 FR at 8761; *see also* 2004 Order, *supra* note 14, 69 FR at 8502.

[16] 15 U.S.C. 78mm.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01699 Filed 1–27–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94037; File No. SR–BX–2022–002]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend References to FINRA Continuing Education Fees

January 24, 2022.

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 January 12, 2022, Nasdaq BX, Inc. (''BX'' 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 BX's Pricing Schedule at Equity 7, Section 30, Regulatory, Registration and Processing Fees, to reflect adjustments to FINRA Continuing Education Fees.

The Exchange also proposes technical amendments to BX Options 7, Section 1, General Provisions.

While the changes proposed herein are effective upon filing, the Exchange has designated the new Maintaining Qualifications Program (''MQP'') Fee, elimination of the $100 Continuing Education Session Fee, and technical amendments to become operative on January 31, 2022. Additionally, the Exchange designates an $18 Continuing Education Regulatory Element Session Fee to become operative on January 1, 2023.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[17] 17 CFR 200.30–3(a)(76).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93928 (January 7, 2022) (SR–FINRA–2021–034).

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

This proposal amends BX's Pricing Schedule at Equity 7, Section 30, Regulatory, Registration and Processing Fees, to reflect adjustments to FINRA Continuing Education Fees.[4] The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of BX Members that are not FINRA members (''Non-FINRA members''). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees.

Today, BX Equity 7, Section 30, provides a list of FINRA Web CRD Fees, Fingerprint Processing Fees, and Continuing Education Fees. The Exchange proposes to amend the Continuing Education Fees within Equity 7, Section 30 on behalf of the Exchange. The fees listed within Equity 7, Section 30 reflect fees set by FINRA.

Specifically, the Exchange proposes to decrease the $55 Continuing Education Web-based Fee to $18. This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.[5]

[4] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[5] *See* note 3 above. On September 21, 2021, the SEC approved amendments to FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements) to, among other things, require registered persons to complete the Regulatory Element of CE annually by December 31 of each year, rather than every three years, and to complete Regulatory Element content for each representative or principal registration category that they hold. *See* Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015). The Regulatory Element is

FINRA currently charges a fee of $55 to each individual who completes the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. In conjunction with the amendments to transition to an annual Regulatory Element requirement, FINRA amended the Continuing Education Regulatory Element Session Fee from $55 to $18.[6] FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the $18 Continuing Education Regulatory Element Session Fee as of January 1, 2023 to coincide with the effective date of the transition to an annual Regulatory Element requirement.[7]

The Exchange proposes to eliminate the $100.00 continuing education fee for each individual who is required to complete the S101 or S201. This fee applied to continuing education programs administered at test centers. In 2015, FINRA filed to end test center delivery of the Regulatory Element.[8] Effective October 1, 2015, Web-based delivery has been available for the Regulatory Element. The revised fee of $18 is a Web-based delivery. The Exchange proposes to remove the outdated continuing education fee of $100 from its Pricing Schedule related to test center delivery.

The Exchange also proposes to adopt a new Maintaining Qualifications Program (''MQP'') Fee of $100 fee for each individual electing to participate in the continuing education program, following the termination of a registration category, under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the MQP within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed annual fee would be assessed at the time an eligible individual elects to participate in the continuing education program under FINRA Rule 1240(c) and thereafter annually each year that the individual continues in the program. This fee is paid directly to FINRA. FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the $100 MQP fee as of January 31, 2022.

With respect to the rule text, the current $55 Continuing Education Fee is being reworded to reflect the elimination of the $100 fee and renamed the ''Continuing Education Regulatory Element Session Fee.'' The $55 will remain in effect until January 1, 2023 so it is being retained in the Pricing Scheduled with a note that ''This fee will be amended on January 1, 2023 as noted below.''

The FINRA Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

Technical Amendment

The Exchange also proposes to make technical amendments to BX Options 7, Section 1, General Provisions. The Exchange proposes to re-letter the entire section in order to easily cite to the various sections. Proposed ''(a)'' contains references that the Exchange proposes to alphabetize, without change to the rule text. The term ''Joint Back Office'' or ''JBO'' would be re-located to proposed section ''a'' as that is a descriptive term and does not belong with proposed ''d''.

The Exchange proposes to add a new ''b'' and header, ''For Purposes of Common Ownership Aggregation of Activity of Affiliated Members and Member Organizations'' to more clearly delineate the rule text associated with aggregation of the activity of affiliates. The Exchange would also re-letter and re-number that section.

A ''c'' is proposed to be added to the adding and removing liquidity paragraph.

A ''d'' and new header is proposed to be added before the Removal of Days. The new header would provide, ''For purposes of determining equity tier calculations under this section, any day that the market is not open for the entire trading day will be excluded from such calculation.'' This new header would introduce the rule text which follows.

Finally, an ''e'' is proposed before the Collection of Exchange Fees and Other Claims section.

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 Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to decrease the $55 Continuing Education Regulatory Element Session Fee for all Registrations to $18 in accordance with an adjustment to FINRA's fees.[11] The Exchange's rule text will reflect the current rates for continuing education that will be assessed by FINRA as of January 1, 2023. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

The Exchange believes eliminating the outdated $100 fee for continuing education is reasonable as test center delivery of the Regulatory Element was phased out in 2016 and the continuing education programs are no longer offered at testing centers.[12]

The Exchange believes that it is reasonable to adopt a new MQP Fee of $100 for each individual electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the program within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to

administered by FINRA and focuses on regulatory requirements and industry standards. The proposed rule change also included amendments to the Firm Element training, which is provided by each firm annually to its registered persons and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

[6] FINRA notes that the proposed $18 annual fee is comparable to the current $55 fee over a three-year period. Moreover, the proposed fee for the annual Regulatory Element would be the same for all registered persons, regardless of the amount of annual content that they would be required to complete (that is, an individual who holds multiple registrations would be subject to the same proposed $18 annual fee as an individual who holds a single registration). *See* note 3 above.

[7] The Exchange would file to remove the rule text concerning the $55 fee once the $18 fee becomes operative.

[8] *See* Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (SR–FINRA–2015–015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements). FINRA phased out the test center delivery as of July 1, 2016. *See* FINRA Information Notice dated May 16, 2016 (*https://www.finra.org/rules-guidance/notices/information-notice-051616*).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* note 3 above.

[12] *See* note 8 above.

apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make technical amendments within BX Options 7, Section 1 is reasonable, equitable and not unfairly discriminatory as the amendments are non-substantive. The amendments will bring greater clarity to the rule text.

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 Exchange does not believe that this proposal creates an unnecessary or inappropriate inter-market burden on competition as FINRA's fees apply to all market participants. Specifically, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition as the decreased Continuing Education Regulatory Element Session Fee for all Registrations of $18 will be assessed by FINRA to all Members who are required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. Likewise, with respect to the $100 MQP Fee, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition because the fee will be assessed by FINRA to all individuals electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Finally, eliminating the outdated $100 fee for continuing education does not create an unnecessary or inappropriate intra-market burden on competition as test center delivery of the Regulatory Element was phased out and the continuing education programs are no longer offered at testing centers.[13] Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make technical amendments within BX Options 7, Section 1 does not impose an undue burden on competition as the amendments are non-substantive. The amendments will bring greater clarity to the rule text.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2022–002 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–BX–2022–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2022–002 and should be submitted on or before February 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01711 Filed 1–27–22; 8:45 am]

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[13] *See* note 8 above.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94040; File No. SR–GEMX–2022–02]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend References to FINRA Continuing Education Fees

January 24, 2022.

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 January 11, 2022, Nasdaq GEMX, LLC (''GEMX'' 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend GEMX's Pricing Schedule at Options 7, Section 5, Legal & Regulatory, to reflect adjustments to FINRA Continuing Education Fees.

While the changes proposed herein are effective upon filing, the Exchange has designated the new Maintaining Qualifications Program (''MQP'') Fee, elimination of the $100 Continuing Education Session Fee, and technical amendments to become operative on January 31, 2022. Additionally, the Exchange designates an $18 Continuing Education Regulatory Element Session Fee to become operative on January 1, 2023.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/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

This proposal amends GEMX's Pricing Schedule at Options 7, Section 5, Legal & Regulatory, to reflect adjustments to FINRA Continuing Education Fees.[4] The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of GEMX Members that are not FINRA members (''Non-FINRA members''). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees.

Today, GEMX Options 7, Section 5B, provides a list of FINRA Web CRD Fees, Fingerprint Processing Fees, and Continuing Education Fees. The Exchange proposes to amend the Continuing Education Fees within Options 7, Section 5B on behalf of the Exchange. The fees listed within Options 7, Section 5B reflect fees set by FINRA.

Specifically, the Exchange proposes to decrease the $55 Continuing Education Web-based Fee to $18. This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.[5] FINRA currently charges a fee of $55 to each individual who completes the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. In conjunction with the amendments to transition to an annual Regulatory Element requirement, FINRA amended the Continuing Education Regulatory Element Session Fee from $55 to $18.[6] FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the $18 Continuing Education Regulatory Element Session Fee as of January 1, 2023 to coincide with the effective date of the transition to an annual Regulatory Element requirement.[7]

The Exchange proposes to eliminate the $100.00 continuing education fee for each individual who is required to complete the S101 or S201. This fee applied to continuing education programs administered at test centers. In 2015, FINRA filed to end test center delivery of the Regulatory Element.[8] Effective October 1, 2015, Web-based delivery has been available for the Regulatory Element. The revised fee of $18 is a Web-based delivery. The Exchange proposes to remove the outdated continuing education fee of $100 from its Pricing Schedule related to test center delivery.

The Exchange also proposes to adopt a new Maintaining Qualifications Program (''MQP'') Fee of $100 fee for each individual electing to participate in the continuing education program, following the termination of a registration category, under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the MQP within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed annual fee would be assessed at the time an eligible individual elects to participate in the continuing education program under FINRA Rule 1240(c) and thereafter annually each year that the individual continues in the program. This fee is paid directly to FINRA. FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the $100 MQP fee as of January 31, 2022.

With respect to the rule text, the current $55 Continuing Education Fee is being reworded to reflect the elimination of the $100 fee and renamed the ''Continuing Education Regulatory Element Session Fee.'' The $55 will remain in effect until January 1, 2023 so it is being retained in the Pricing Scheduled with a note that ''*This fee will be amended on January 1, 2023 as noted below.*''

The FINRA Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

Technical Amendment

The Exchange also proposes to make a technical amendment within the FINRA Web CRD Fees to the following sentence, ''$110—For the additional processing of each initial or amended

[3] *See* Securities Exchange Act Release No. 93928 (January 7, 2022) (SR–FINRA–2021–034).

[4] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[5] *See* note 3 above. On September 21, 2021, the SEC approved amendments to FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements) to, among other things, require registered persons to complete the Regulatory Element of CE annually by December 31 of each year, rather than every three years, and to complete Regulatory Element content for each representative or principal registration category that they hold. *See* Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015). The Regulatory Element is administered by FINRA and focuses on regulatory requirements and industry standards. The proposed rule change also included amendments to the Firm Element training, which is provided by each firm annually to its registered persons and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

[6] FINRA notes that the proposed $18 annual fee is comparable to the current $55 fee over a three-year period. Moreover, the proposed fee for the annual Regulatory Element would be the same for all registered persons, regardless of the amount of annual content that they would be required to complete (that is, an individual who holds multiple registrations would be subject to the same proposed $18 annual fee as an individual who holds a single registration). *See* note 3 above.

[7] The Exchange would file to remove the rule text concerning the $55 fee once the $18 fee becomes operative.

[8] *See* Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (SR–FINRA–2015–015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements). FINRA phased out the test center delivery as of July 1, 2016. *See* FINRA Information Notice dated May 16, 2016 (*https://www.finra.org/rules-guidance/notices/information-notice-051616*).

Form U4, Form U5 or Form BD that includes the initial reporting, amendment or certification of one of more disclosure events or proceedings.'' The Exchange proposes to change the word ''of'' to ''or.''

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 Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to decrease the $55 Continuing Education Regulatory Element Session Fee for all Registrations to $18 in accordance with an adjustment to FINRA's fees.[11] The Exchange's rule text will reflect the current rates for continuing education that will be assessed by FINRA as of January 1, 2023. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

The Exchange believes eliminating the outdated $100 fee for continuing education is reasonable as test center delivery of the Regulatory Element was phased out in 2016 and the continuing education programs are no longer offered at testing centers.[12]

The Exchange believes that it is reasonable to adopt a new MQP Fee of $100 for each individual electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the program within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make a technical amendment within the FINRA Web CRD Fees is reasonable, equitable and not unfairly discriminatory as it is a non-substantive amendment.

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 Exchange does not believe that this proposal creates an unnecessary or inappropriate inter-market burden on competition as FINRA's fees apply to all market participants. Specifically, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition as the decreased Continuing Education Regulatory Element Session Fee for all Registrations of $18 will be assessed by FINRA to all Members who are required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. Likewise, with respect to the $100 MQP Fee, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition because the fee will be assessed by FINRA to all individuals electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Finally, eliminating the outdated $100 fee for continuing education does not create an unnecessary or inappropriate intra-market burden on competition as test center delivery of the Regulatory Element was phased out and the continuing education programs are no longer offered at testing centers.[13] Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make a technical amendment within the FINRA Web CRD Fees does not impose an undue burden on competition as it is a non-substantive amendment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–GEMX–2022–02 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–GEMX–2022–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*.) Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* note 3 above.

[12] *See* note 8 above.

[13] *See* note 8 above.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–GEMX–2022–02 and should be submitted on or before February 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01703 Filed 1–27–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94038; File No. SR–NASDAQ–2021–040]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Establish the ''Extended Trading Close'' and Related Order Types

January 24, 2022.

I. Introduction

On July 12, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add Equity 4, Rule (''Rule'') 4755 and amend Rules 4702 and 4703 to establish the ''Extended Trading Close,'' as well as the ''ETC Eligible LOC'' and ''Extended Trading Close'' order types. The proposed rule change was published for comment in the **Federal Register** on July 28, 2021.[3] On September 9, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On October 25, 2021, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the proposed rule change as originally filed.[6] On October 26, 2021, the Commission published notice of Amendment No. 1 and instituted proceedings pursuant to Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.[8] This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposal

The Exchange proposes to adopt the Extended Trading Close (''ETC''), which would be a process during which eligible orders in Nasdaq-listed securities may match and execute at the Nasdaq official closing price (''NOCP''), as determined by the Nasdaq closing cross or the LULD closing cross (together, the ''Closing Cross''), for a five-minute period immediately following the Closing Cross.[9]

As proposed, only ''ETC Orders'' and ''ETC Eligible LOC Orders'' (together, ''ETC Eligible Orders'') would be eligible to participate in the ETC.[10] An ETC Order would be a new order type for Nasdaq-listed securities that may be executed only during the ETC and only at the NOCP as determined by the Closing Cross.[11] An ETC Order may be entered, cancelled, or modified between the time when the ETC commences and ends.[12] If an ETC Order is not fully executed at the conclusion of the ETC, then any unexecuted portion of the order would be cancelled.[13] An ETC Eligible LOC Order would be a LOC order for a Nasdaq-listed security entered through RASH or FIX that did not fully execute during the Closing Cross, and would participate in the ETC if the NOCP, as determined by the Closing Cross, is at or within its limit price.[14] A participant may choose to disable a LOC order from participating in the ETC, in which case the system would cancel any shares of the LOC order that remain unexecuted after the Closing Cross.[15] In addition, if a participant enters a time-in-force that continues after the time of the Closing Cross for a LOC order (*i.e.,* closing cross/extended hours order), then such order would bypass the ETC.[16] Any unexecuted portion of an ETC Eligible LOC Order may be cancelled or modified by the participant at any time during the ETC, and any unexecuted portion of an ETC Eligible LOC Order at the conclusion of the ETC would be cancelled.[17]

As proposed, the ETC would commence upon the conclusion of the Closing Cross and end at 4:05 p.m. (or 1:05 p.m. on a day when the Exchange closes early).[18] The system would match

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92466 (July 22, 2021), 86 FR 40667. The comment letters received on the proposed rule change are available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2021-040/srnasdaq2021040.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 92905, 86 FR 51390 (September 15, 2021).

[6] In Amendment No. 1, the Exchange modified the scenarios in which executions in the Extended Trading Close would be suspended, and made conforming and clarifying changes throughout the proposed rule change. Amendment No. 1 is available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2021-040/srnasdaq2021040.htm.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 93428, 86 FR 60318 (November 1, 2021).

[9] *See* proposed Rule 4755(a)(5).

[10] ETC Orders and ETC Eligible LOC Orders may only execute against other ETC Orders and ETC Eligible LOC Orders. *See* proposed Rules 4702(b)(17)(A) and 4702(b)(12)(A).

[11] *See* proposed Rule 4702(b)(17)(A). An ETC Order may be assigned a minimum quantity order attribute, and the minimum quantity condition may be satisfied only by execution against one or more orders, each of which must have a size that satisfies the minimum quantity condition. *See* proposed Rule 4702(b)(17)(B). *See also* Amendment No. 1 at 13–14 n.18. If no orders in the ETC satisfy a minimum quantity condition for an ETC Order, then the ETC Order with a minimum quantity condition would rest on the Nasdaq book in time priority unless and until there is an order that can satisfy the minimum quantity condition to allow for execution of the ETC Order; if no such order is present in the ETC at its conclusion, then the ETC Order would cancel. *See* proposed Rule 4702(b)(17)(B). Moreover, an ETC Order may be referred to as having a time-in-force of ''ETC.'' *See* proposed Rule 4703(a)(8).

[12] The system would reject an ETC Order that is submitted prior to the commencement of the ETC. *See* proposed Rule 4702(b)(17)(A). In addition, the system would not accept an ETC Order entered on any day when insufficient interest exists in the system to conduct a Closing Cross for that security, or when the Exchange invokes contingency procedures due to a disruption that prevents the execution of the Closing Cross. *See id.*

[13] *See id.*

[14] *See* proposed Rule 4702(b)(12)(A). The Exchange also proposes to amend Rule 4702(b)(12) to describe the participation of LOC orders in the LULD closing cross.

[15] *See id.* Post-only orders, midpoint peg post-only orders, supplemental orders, and market maker peg orders may not operate as ETC Eligible LOC Orders, and ETC Eligible LOC Orders would be rejected if they are assigned a pegging attribute. *See* Amendment No. 1 at 9 n.14.

[16] *See* proposed Rule 4702(b)(12)(B).

[17] *See* proposed Rule 4702(b)(12)(A).

[18] As proposed, the ETC would not occur for a security on any day when insufficient interest exists in the Exchange system to conduct the Closing

Continued

and execute ETC Eligible Orders continuously throughout the ETC, in time priority order based on the time the system received each order into the ETC,[19] and at the NOCP as determined by the Closing Cross.[20] If fewer than all shares of ETC Eligible Orders are executed by the conclusion of the ETC, then the system would cancel any unexecuted portions of such orders.[21]

Also as proposed, beginning at 4:00:05 p.m. (or 1:00:05 p.m. on a day when the Exchange closes early), the Exchange would disseminate by electronic means an ETC order imbalance indicator every 5 seconds until the ETC concludes.[22] The ETC order imbalance indicator would disseminate the following information: (a) Symbol; (b) the number of shares of ETC Eligible Orders that have been matched and executed at the NOCP during the ETC, as of the time of dissemination of the ETC order imbalance indicator; (c) the size of any ETC imbalance [23] (exclusive of orders with minimum quantity instructions); and (d) the buy or sell direction of any ETC imbalance.[24]

Moreover, as proposed, the Exchange system would suspend execution of ETC Eligible Orders in a security whenever it detects: (i) An order in that same security resting on the Nasdaq continuous book in after-hours trading [25] with a bid (offer) price that is higher than (lower than) the NOCP for that security, as determined by the Closing Cross; or (ii) the after-hours trading last sale price, or the best after-hours trading bid (offer) price, of the security other than on the Nasdaq continuous book is either more than 0.5% or $0.01 higher than (lower than) the NOCP for that security as determined by the Closing Cross, whichever is greater.[26] The system would resume execution of ETC Eligible Orders in a security in scenario (i) if and when the system determines, during the ETC, that the Nasdaq continuous book in after-hours trading is clear of resting orders in that security with a bid (offer) price that is higher than (lower than) the NOCP for that security, as determined by the Closing Cross.[27] The system would resume execution of ETC Eligible Orders in a security in scenario (ii) if and when the after-hours trading last sale price or the best after-hours trading bid (offer) price of the security (other than on the Nasdaq continuous book) returns to within the greater of the 0.5% or $0.01 thresholds during the ETC.[28] If execution of ETC Eligible Orders remains suspended as of the conclusion of the ETC, then the system would cancel any remaining unexecuted ETC Eligible Orders in that security.[29]

The Exchange represents that it will surveil the ETC for any unfair or manipulative trading practices.[30]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[31] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[32] which requires, among other things, that the rules of a national securities 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 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, and that the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and Section 6(b)(8) of the Act,[33] which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that the ETC would provide an additional opportunity for Exchange participants to trade Nasdaq-listed securities at the NOCP on the Exchange, and would provide an alternative to the mechanisms currently available on other venues that allow customers to execute orders at the Closing Cross price after the Closing Cross concludes.

The Commission received a comment letter opposing the proposal.[34] This commenter states that the Exchange has not effectively identified the purpose, use case, or client demand for the ETC.[35] This commenter also does not believe that the ETC would enhance the Closing Cross process, or improve price discovery or liquidity in the Closing Cross.[36] Rather, this commenter believes that the ETC could detract from the Closing Cross because some market participants would withhold their interest from the Closing Cross and

Cross for that security or when the Exchange invokes contingency procedures due to a disruption that prevents the execution of the Closing Cross. *See* proposed Rule 4755(b). Moreover, the Exchange would cancel executions in a security that occur in the ETC if the Exchange nullifies the Closing Cross in that security pursuant to the rules governing clearly erroneous transactions. *See id.* The Exchange also states that if short sale orders in securities subject to Regulation SHO are permitted to execute in the Closing Cross pursuant to Rule 201 of Regulation SHO, then the system would also permit short sale executions in such securities to occur in the ETC; whereas the system would reject short sale orders in securities if short sale orders in such securities were not permitted to execute in the Closing Cross. *See* Amendment No. 1 at 8 n.11. Moreover, the restrictions of Rule 201 of Regulation SHO will apply to the ETC to the extent that the current national best bid is being calculated, collected, and disseminated for securities. *See id.*

[19] ETC Eligible LOC Orders would receive new timestamps upon entry into the ETC and be prioritized amongst each other and ETC Orders based on the time the system received each order into the ETC. *See* Amendment No. 1 at 9. Specifically, the system would submit ETC Eligible LOC Orders for participation in the ETC, and would assign them new timestamps, in random order. *See id.* at 9 n.15. Therefore, ETC Eligible LOC Orders may not necessarily enter the ETC with the same relative priority that they had prior to the ETC. *See id.* Moreover, due to the time required for the system to process ETC Eligible LOC Orders for participation in the ETC, it is possible that an ETC Eligible LOC Order would enter the ETC with a lower time priority than an ETC Order entered after the Closing Cross concludes. *See id.*

[20] *See* proposed Rule 4755(b)(2). All ETC Eligible Orders executed in the ETC would be trade reported anonymously and disseminated via the consolidated tape. *See* proposed Rule 4755(b)(5).

[21] *See* proposed Rule 4755(b)(4).

[22] *See* proposed Rule 4755(b)(1).

[23] ETC imbalance would mean the number of shares of buy or sell ETC Eligible Orders that have not been matched during the ETC. *See* proposed Rule 4755(a)(4).

[24] *See* proposed Rule 4755(a)(8).

[25] *See* proposed Rule 4755(a)(1) (defining ''after hours trading'').

[26] *See* proposed Rule 4755(b)(3).

[27] *See id.*

[28] *See id.*

[29] *See id.*

[30] *See* Amendment No. 1 at 19.

[31] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(5).

[33] 15 U.S.C. 78f(b)(8).

[34] *See* letter from Mehmet Kinak, Global Head of Systematic Trading & Market Structure and Jonathan Siegel, Senior Legal Counsel—Legislative & Regulatory Affairs, T. Rowe Price, to Vanessa Countryman, Secretary, Commission, dated August 18, 2021 (''T. Rowe Letter'').

[35] *See id.* at 1.

[36] *See id.* This commenter also distinguishes the ETC from off-exchange trading venues' mechanisms that allow their participants to receive the NOCP, and states that these other mechanisms are pre-arranged matched trades or guaranteed close trades that (unlike the ETC) are received prior to the Closing Cross and the determination of the closing price. *See id.* at 2. This commenter also states that when a trade is sent to an off-exchange mechanism after the Closing Cross, it is generally a trade that is executed by a broker in a principal capacity, and these transactions tend to be ''clean-up'' trades for orders that did not complete in the auction or trades to facilitate other specific needs of a client. *See id.* The commenter believes that these existing clean-up and facilitation mechanisms generally work well and does not believe there is a void that the Exchange needs to fill in this regard. *See id.*

refrain from submitting orders until they know the NOCP.[37] This, according to the commenter, would detract from the robustness and quality of the closing price.[38] Moreover, this commenter states that the availability of information going into the closing auction becomes the principal driver of price discovery in the continuous market in the last five to ten minutes of trading.[39] According to the commenter, if participants do not submit their true interest in hopes they could trade in greater size utilizing the ETC, the breadth and quality of market information could be affected and result in more uncertainty and volatility in continuous trading behavior leading into the close.[40]

In its response letter, the Exchange disagrees with the commenter's concerns that the ETC would threaten the integrity of the Closing Cross.[41] The Exchange reiterates that the ETC would compete with other venues that already offer mechanisms that enable their customers to execute orders at the Closing Cross price after the Closing Cross concludes.[42] The Exchange also does not believe that the ETC would siphon orders away from the Closing Cross.[43] According to the Exchange, the Closing Cross is robust, efficient, and affords its participants reasonable assurance that their orders will execute, and the published indicative price and order imbalance information prior to the commencement of the Closing Cross enable its participants to mitigate their risks of participating in the Closing Cross.[44] The Exchange believes that the ETC should not significantly alter the behavior of participants for which execution assurance is important,[45] and that the ETC could bolster participants' willingness to participate in the Closing Cross because the ETC would provide an added opportunity for their LOC orders to execute at the Closing Cross price.[46] The Exchange further states that it expects participants to use the ETC as a ''clean-up'' mechanism for executing orders that are not executed in the Closing Cross or to facilitate other specific client needs.[47]

The Commission believes that the ETC would provide Exchange participants an opportunity to trade Nasdaq-listed securities at the NOCP on the Exchange after the Closing Cross. Specifically, Exchange participants that submitted LOC orders for the Closing Cross but did not receive a full execution for those orders could choose to allow the remaining shares to participate in the ETC. In addition, Exchange participants that did not participate in the Closing Cross but want to trade at the NOCP could submit ETC Orders to participate in the ETC. The Commission further believes that the ETC would provide an alternative to the mechanisms currently available on other venues that allow customers to execute orders at the Closing Cross price after the Closing Cross concludes.

With respect to the commenter's concern that the ETC would cause Exchange participants to withhold their interest from the Closing Cross and negatively impact the Closing Cross process, the Commission believes that participants that currently seek to trade at the NOCP in the Closing Cross (and particularly those that seek to trade larger orders) are unlikely to significantly reduce their participation in the Closing Cross and rely instead on the ETC, because there is less assurance that their orders would receive executions in the ETC as compared to the Closing Cross. In particular, ETC Eligible Orders would trade only to the extent that there are available contra-side ETC Eligible Orders, and while the Exchange would disseminate imbalance information for the ETC, unlike the Closing Cross, such imbalance information would not be disseminated before the commencement of the ETC. The Commission also notes that, in response to this concern expressed by the commenter, the Exchange represented that, if it assesses that the ETC has become too large relative to the Closing Cross, or that participants are indeed utilizing the ETC as a regular substitute for the Closing Cross, then it will propose such actions as are necessary to mitigate any threat to the Closing Cross or its price discovery function.[48]

The commenter also expresses concern that the ETC would allow sophisticated participants to engage in arbitrage by quickly identifying price differences between the Closing Cross price and the prevailing after-hours market price before other participants.[49] According to the commenter, these sophisticated participants could use ETC-only order types and ETC imbalance information to opportunistically submit orders to engage with other participants' ETC activity at a previously determined fixed price using the ETC and unwind risk in the after-market at prices that more accurately reflect the current value of the security.[50]

In its response letter, the Exchange states that it does not share the commenter's concerns regarding arbitrage, and states that any risk that ETC participants would face harm from arbitrageurs is likely to be considerably less than the risks that market participants presently face when they trade after-hours.[51] The Exchange also states that because it would suspend ETC executions if significant deviations emerge between the Closing Cross price and the after-hours market price of a security, this should limit the instances in which egregious arbitrage occurs.[52] Finally, the Exchange reiterates that participation in the ETC is voluntary, and therefore any participant that is concerned about arbitrageurs is free to not participate in the ETC or cancel its orders in the ETC.[53]

In Amendment No. 1, the Exchange amended the proposal such that the Exchange would suspend execution of ETC Eligible Orders in a security whenever it detects an order in that security resting on the Nasdaq continuous book in after-hours trading with a bid (offer) price that is higher than (lower than) the NOCP for that security. The Exchange would resume executions of ETC Eligible Orders in that security if and when the system determines, during the ETC, that the Nasdaq continuous book in after-hours

[37] *See id.* at 1–2.

[38] *See id.* at 2. This commenter also expresses the concern that Commission approval of the ETC might encourage others to offer similar functions that would likely further detract from participation and price discovery in the closing auction. *See id.*

[39] *See id.* at 3.

[40] *See id.*

[41] *See* letter from Brett M. Kitt, Associate Vice President & Principal Associate General Counsel, Nasdaq, to Vanessa Countryman, Secretary, Commission, dated September 9, 2021 (''Nasdaq Response Letter'').

[42] *See id.* at 1–2.

[43] *See id.* at 2. The Exchange states that, to the extent that it assesses that the ETC has become too large relative to the Closing Cross, or that members are indeed utilizing the ETC as a regular substitute for the Closing Cross, then it will propose such actions as are necessary to mitigate any threat to the Closing Cross or its price discovery function. *See id.* at 3.

[44] *See id.* at 2.

[45] The Exchange also states that, for those participants that seek to execute large volumes of shares at the Closing Cross price, exclusive participation in the ETC is unlikely to meet their needs, as ETC-only orders will execute only to the extent that sufficient matching share volume exists in the ETC. *See id.* According to the Exchange, because it would disseminate ETC imbalance information only after the ETC commences, participants in the ETC would have less assurance about the outcome of their participation than when they participate in the Closing Cross, or in the Closing Cross and ETC together. *See id.*

[46] *See id.*

[47] *See id.* The Exchange also states that market forces should determine whether the market for this service is already saturated and whether there is new room for competition. *See id.*

[48] *See supra* note 43.

[49] *See* T. Rowe Letter at 3.

[50] *See id.*

[51] *See* Nasdaq Response Letter at 3.

[52] *See id.*

[53] *See id.*

trading is clear of resting orders in that security with a bid (offer) price that is higher than (lower than) the NOCP. The Commission believes that this amendment responds to the commenter's concerns regarding the ability of some participants to take advantage of the differences between the NOCP and the Exchange's after-hours market price.[54] The Commission also believes that suspending execution of ETC Eligible Orders in a security when an order in the same security that is priced better than the NOCP is resting on the Nasdaq continuous book would help promote price priority on the Exchange.

As described above, the Exchange would also suspend execution of ETC Eligible Orders in a security whenever the after-hours trading last sale price, or the best after-hours trading bid (offer) price, of the security (other than on the Nasdaq continuous book) is more than 0.5% or $0.01 higher than (lower than) the NOCP for that security, whichever is greater. The Exchange would resume executions of ETC Eligible Orders in this scenario if and when the after-hours trading last sale price or the best after-hours trading bid (offer) price of the security (other than on the Nasdaq continuous book) returns to within the greater of the 0.5% or $0.01 thresholds during the ETC. The Commission believes that these price thresholds should help to ensure additional price protection for the ETC as compared to regular after-hours trading, because regular after-hours trading is not suspended in response to price deviations between the Exchange and away markets.

Finally, the Commission notes that participation in the ETC is voluntary, and those participants that are concerned about arbitrageurs may cancel their unexecuted ETC Eligible Orders or elect to not participate in the ETC. As described above, the Exchange has also represented that it will surveil the ETC for any unfair or manipulative trading practices.[55]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[56] that the proposed rule change (SR–NASDAQ–2021–040), as modified by Amendment No. 1 be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01709 Filed 1–27–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94042; File No. SR–ISE–2022–01]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend References to FINRA Continuing Education Fees

January 24, 2022.

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 January 11, 2022, Nasdaq ISE, LLC (''ISE'' 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 ISE's Pricing Schedule at Options 7, Section 9, Legal & Regulatory, to reflect adjustments to FINRA Continuing Education Fees.

While the changes proposed herein are effective upon filing, the Exchange has designated the new Maintaining Qualifications Program (''MQP'') Fee, elimination of the $100 Continuing Education Session Fee, and technical amendments to become operative on January 31, 2022. Additionally, the Exchange designates an $18 Continuing Education Regulatory Element Session Fee to become operative on January 1, 2023.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/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

This proposal amends ISE's Pricing Schedule at Options 7, Section 9, Legal & Regulatory, to reflect adjustments to FINRA Continuing Education Fees.[4] The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of ISE Members that are not FINRA members (''Non-FINRA members''). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees.

Today, ISE Options 7, Section 9E, provides a list of FINRA Web CRD Fees, Fingerprint Processing Fees, and Continuing Education Fees. The Exchange proposes to amend the Continuing Education Fees within Options 7, Section 9E on behalf of the Exchange. The fees listed within Options 7, Section 9E reflect fees set by FINRA.

Specifically, the Exchange proposes to decrease the $55 Continuing Education Web-based Fee to $18. This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.[5]

[54] The Commission notes that no additional comment letters were received after the Exchange filed Amendment No. 1.

[55] *See supra* note 30 and accompanying text.

[56] 15 U.S.C. 78s(b)(2).

[57] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93928 (January 7, 2022) (SR–FINRA–2021–034).

[4] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[5] *See* note 3 above. On September 21, 2021, the SEC approved amendments to FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements) to, among other things, require registered persons to complete the Regulatory Element of CE annually by December 31 of each year, rather than every three years, and to complete Regulatory Element content for each representative or principal registration category that they hold. *See* Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015). The Regulatory Element is administered by FINRA and focuses on regulatory requirements and industry standards. The proposed rule change also included amendments to the Firm

FINRA currently charges a fee of $55 to each individual who completes the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. In conjunction with the amendments to transition to an annual Regulatory Element requirement, FINRA amended the Continuing Education Regulatory Element Session Fee from $55 to $18.[6] FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the $18 Continuing Education Regulatory Element Session Fee as of January 1, 2023 to coincide with the effective date of the transition to an annual Regulatory Element requirement.[7]

The Exchange proposes to eliminate the $100.00 continuing education fee for each individual who is required to complete the S101 or S201. This fee applied to continuing education programs administered at test centers. In 2015, FINRA filed to end test center delivery of the Regulatory Element.[8] Effective October 1, 2015, Web-based delivery has been available for the Regulatory Element. The revised fee of $18 is a Web-based delivery. The Exchange proposes to remove the outdated continuing education fee of $100 from its Pricing Schedule related to test center delivery.

The Exchange also proposes to adopt a new Maintaining Qualifications Program (''MQP'') Fee of $100 fee for each individual electing to participate in the continuing education program, following the termination of a registration category, under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the MQP within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed annual fee would be assessed at the time an eligible individual elects to participate in the continuing education program under FINRA Rule 1240(c) and thereafter annually each year that the individual continues in the program. This fee is paid directly to FINRA. FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the $100 MQP fee as of January 31, 2022.

With respect to the rule text, the current $55 Continuing Education Fee is being reworded to reflect the elimination of the $100 fee and renamed the ''Continuing Education Regulatory Element Session Fee.'' The $55 will remain in effect until January 1, 2023 so it is being retained in the Pricing Scheduled with a note that ''*This fee will be amended on January 1, 2023 as noted below.*''

The FINRA Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

Technical Amendment

The Exchange also proposes to make a technical amendment within the FINRA Web CRD Fees to the following sentence, ''$110-For the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment or certification of one of more disclosure events or proceedings.'' The Exchange proposes to change the word ''of'' to ''or.''

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 Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to decrease the $55 Continuing Education Regulatory Element Session Fee for all Registrations to $18 in accordance with an adjustment to FINRA's fees.[11] The Exchange's rule text will reflect the current rates for continuing education that will be assessed by FINRA as of January 1, 2023. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

The Exchange believes eliminating the outdated $100 fee for continuing education is reasonable as test center delivery of the Regulatory Element was phased out in 2016 and the continuing education programs are no longer offered at testing centers.[12]

The Exchange believes that it is reasonable to adopt a new MQP Fee of $100 for each individual electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the program within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make a technical amendment within the FINRA Web CRD Fees is reasonable, equitable and not unfairly discriminatory as it is a non-substantive amendment.

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 Exchange does not believe that this proposal creates an unnecessary or inappropriate inter-market burden on competition as FINRA's fees apply to all market participants. Specifically, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition as the decreased Continuing Education Regulatory Element Session Fee for all Registrations of $18 will be assessed by FINRA to all Members who are required to complete

Element training, which is provided by each firm annually to its registered persons and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

[6] FINRA notes that the proposed $18 annual fee is comparable to the current $55 fee over a three-year period. Moreover, the proposed fee for the annual Regulatory Element would be the same for all registered persons, regardless of the amount of annual content that they would be required to complete (that is, an individual who holds multiple registrations would be subject to the same proposed $18 annual fee as an individual who holds a single registration). *See* note 3 above.

[7] The Exchange would file to remove the rule text concerning the $55 fee once the $18 fee becomes operative.

[8] *See* Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (SR–FINRA–2015–015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements). FINRA phased out the test center delivery as of July 1, 2016. *See* FINRA Information Notice dated May 16, 2016 (*https://www.finra.org/rules-guidance/notices/information-notice-051616*).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* note 3 above.

[12] *See* note 8 above.

the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. Likewise, with respect to the $100 MQP Fee, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition because the fee will be assessed by FINRA to all individuals electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Finally, eliminating the outdated $100 fee for continuing education does not create an unnecessary or inappropriate intra-market burden on competition as test center delivery of the Regulatory Element was phased out and the continuing education programs are no longer offered at testing centers.[13] Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make a technical amendment within the FINRA Web CRD Fees does not impose an undue burden on competition as it is a non-substantive amendment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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.

[13] *See* note 8 above.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2022–01 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–ISE–2022–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–ISE–2022–01 and should be submitted on or before February 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01704 Filed 1–27–22; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94036; File No. SR–NASDAQ–2022–003]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend References to FINRA Continuing Education Fees

January 24, 2022.

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 January 12, 2022, 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 Nasdaq's Pricing Schedule at Equity 7, Section 30, Regulatory, Registration and Processing Fees, to reflect adjustments to FINRA Continuing Education Fees.

The Exchange also proposes technical amendments to The Nasdaq Stock Market LLC's (''NOM'') Options 7, Section 1, General Provisions.

While the changes proposed herein are effective upon filing, the Exchange has designated the new Maintaining Qualifications Program (''MQP'') Fee, elimination of the $100 Continuing Education Session Fee, and technical amendments to become operative on January 31, 2022. Additionally, the Exchange designates an $18 Continuing Education Regulatory Element Session Fee to become operative on January 1, 2023.[3]

The text of the proposed rule change is available on the Exchange's website at

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93928 (January 7, 2022) (SR–FINRA–2021–034).

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

This proposal amends Nasdaq's Pricing Schedule at Equity 7, Section 30, Regulatory, Registration and Processing Fees, to reflect adjustments to FINRA Continuing Education Fees.[4] The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of Nasdaq members that are not FINRA members (''Non-FINRA members''). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees.

Today, Nasdaq Equity 7, Section 30, provides a list of FINRA Web CRD Fees, Fingerprint Processing Fees, and Continuing Education Fees. The Exchange proposes to amend the Continuing Education Fees within Equity 7, Section 30 on behalf of the Exchange. The fees listed within Equity 7, Section 30 reflect fees set by FINRA.

Specifically, the Exchange proposes to decrease the $55 Continuing Education Web-based Fee to $18. This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.[5] FINRA currently charges a fee of $55 to each individual who completes the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. In conjunction with the amendments to transition to an annual Regulatory Element requirement, FINRA amended the Continuing Education Regulatory Element Session Fee from $55 to $18.[6] FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the $18 Continuing Education Regulatory Element Session Fee as of January 1, 2023 to coincide with the effective date of the transition to an annual Regulatory Element requirement.[7]

The Exchange proposes to eliminate the $100.00 continuing education fee for each individual who is required to complete the S101 or S201. This fee applied to continuing education programs administered at test centers. In 2015, FINRA filed to end test center delivery of the Regulatory Element.[8] Effective October 1, 2015, Web-based delivery has been available for the Regulatory Element. The revised fee of $18 is a Web-based delivery. The Exchange proposes to remove the outdated continuing education fee of $100 from its Pricing Schedule related to test center delivery.

The Exchange also proposes to adopt a new Maintaining Qualifications Program (''MQP'') Fee of $100 fee for each individual electing to participate in the continuing education program, following the termination of a registration category, under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the MQP within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed annual fee would be assessed at the time an eligible individual elects to participate in the continuing education program under FINRA Rule 1240(c) and thereafter annually each year that the individual continues in the program. This fee is paid directly to FINRA. FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the $100 MQP fee as of January 31, 2022.

With respect to the rule text, the current $55 Continuing Education Fee is being reworded to reflect the elimination of the $100 fee and renamed the ''Continuing Education Regulatory Element Session Fee.'' The $55 will remain in effect until January 1, 2023 so it is being retained in the Pricing Scheduled with a note that ''This fee will be amended on January 1, 2023 as noted below.''

The FINRA Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

Technical Amendment

The Exchange also proposes to make technical amendments to NOM Options 7, Section 1, General Provisions. The Exchange proposes to re-letter the entire section in order to easily cite to the various sections. Proposed ''(a)'' contains references that the Exchange proposes to alphabetize, without change to the rule text.

The Exchange proposes to add a new ''b'' and header, ''For Purposes of Common Ownership Aggregation of Activity of Affiliated Members and Member Organizations'' to more clearly delineate the rule text associated with aggregation of the activity of affiliates. The Exchange would also re-letter and re-number that section.

A ''c'' is proposed to be added to the adding and removing liquidity paragraph.

A ''d'' is proposed to be added before the section discussing the determination of tier calculations any day that the market is not open for the entire trading day.

Finally, an ''e'' is proposed before the Collection of Exchange Fees and Other Claims section.

[4] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[5] *See* note 3 above. On September 21, 2021, the SEC approved amendments to FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements) to, among other things, require registered persons to complete the Regulatory Element of CE annually by December 31 of each year, rather than every three years, and to complete Regulatory Element content for each representative or principal registration category that they hold. *See* Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015). The Regulatory Element is administered by FINRA and focuses on regulatory requirements and industry standards. The proposed rule change also included amendments to the Firm Element training, which is provided by each firm annually to its registered persons and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

[6] FINRA notes that the proposed $18 annual fee is comparable to the current $55 fee over a three-year period. Moreover, the proposed fee for the annual Regulatory Element would be the same for all registered persons, regardless of the amount of annual content that they would be required to complete (that is, an individual who holds multiple registrations would be subject to the same proposed $18 annual fee as an individual who holds a single registration). *See* note 3 above.

[7] The Exchange would file to remove the rule text concerning the $55 fee once the $18 fee becomes operative.

[8] *See* Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (SR–FINRA–2015–015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements). FINRA phased out the test center delivery as of July 1, 2016. *See* FINRA Information Notice dated May 16, 2016 (*https://www.finra.org/rules-guidance/notices/information-notice-051616*).

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 Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to decrease the $55 Continuing Education Regulatory Element Session Fee for all Registrations to $18 in accordance with an adjustment to FINRA's fees.[11] The Exchange's rule text will reflect the current rates for continuing education that will be assessed by FINRA as of January 1, 2023. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

The Exchange believes eliminating the outdated $100 fee for continuing education is reasonable as test center delivery of the Regulatory Element was phased out in 2016 and the continuing education programs are no longer offered at testing centers.[12]

The Exchange believes that it is reasonable to adopt a new MQP Fee of $100 for each individual electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the program within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make technical amendments within NOM Options 7, Section 1 is reasonable, equitable and not unfairly discriminatory as the amendments are non-substantive. The amendments will bring greater clarity to the rule text.

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 Exchange does not believe that this proposal creates an unnecessary or inappropriate inter-market burden on competition as FINRA's fees apply to all market participants. Specifically, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition as the decreased Continuing Education Regulatory Element Session Fee for all Registrations of $18 will be assessed by FINRA to all Members who are required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. Likewise, with respect to the $100 MQP Fee, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition because the fee will be assessed by FINRA to all individuals electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Finally, eliminating the outdated $100 fee for continuing education does not create an unnecessary or inappropriate intra-market burden on competition as test center delivery of the Regulatory Element was phased out and the continuing education programs are no longer offered at testing centers.[13] Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make technical amendments within NOM Options 7, Section 1 does not impose an undue burden on competition as the amendments are non-substantive. The amendments will bring greater clarity to the rule text.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2022–003 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 R–NASDAQ–2022–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* note 3 above.

[12] *See* note 8 above.

[13] *See* note 8 above.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2022–003 and should be submitted on or before February 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01713 Filed 1–27–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94034]

Order Granting Application by Nasdaq BX, Inc. for an Exemption Pursuant to Section 36(a) of the Exchange Act From the Rule Filing Requirements of Section 19(b) of the Exchange Act With Respect to Certain Rules Incorporated by Reference

January 24, 2022.

Nasdaq BX, Inc. (''BX'' or ''Exchange'') has filed with the Securities and Exchange Commission (''Commission'') an application for an exemption under Section 36(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] from the rule filing requirements of Section 19(b) of the Exchange Act[2] with respect to certain rules of the Financial Industry Regulatory Authority, Inc. (''FINRA'') that the Exchange seeks to incorporate by reference.[3] Section 36 of the Exchange Act, subject to certain limitations, authorizes the Commission to conditionally or unconditionally exempt any person, security, or transaction, or any class thereof, from any provision of the Exchange Act or rule thereunder, if necessary or appropriate in the public interest and consistent with the protection of investors.

The Exchange has requested, pursuant to Rule 0–12 under the Exchange Act,[4] that the Commission grant the Exchange an exemption from the rule filing requirements of Section 19(b) of the Exchange Act for changes to the Exchange's rules that are effected solely by virtue of a change to a cross-referenced FINRA rule. Specifically, the Exchange requests that it be permitted to incorporate by reference changes made to the FINRA rules that are cross-referenced in the Exchange's rules identified below, without the need for the Exchange to file separately similar proposed rule changes pursuant to Section 19(b) of the Exchange Act:[5]

- General 9, Section 1(b) (Prohibition Against Trading Ahead of Customer Orders) cross-references FINRA Rule 5320 (except for FINRA Rule 5320.02(b) and the reference to FINRA Rule 6420 in FINRA Rule 5320).
- General 9, Section 1(c) (Front Running Policy) cross-references FINRA Rule 5270.
- General 9, Section 1(f) (Confirmation of Callable Common Stock) cross-references FINRA Rule 2232.
- General 9, Section 1(g) (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) cross-references FINRA Rule 2140.
- General 9, Section 2 (Customers' Securities or Funds) cross-references FINRA Rule 2150.
- General 9, Section 3 (Communications with the Public) cross-references FINRA Rule 2210 (except for FINRA Rule 2210(c)).
- General 9, Section 5 (Telemarketing) cross-references FINRA Rule 3230.
- General 9, Section 6 (Forwarding of Proxy and Other Issuer-Related Materials) cross-references FINRA Rule 2251.
- General 9, Section 7 (Disclosure of Financial Condition, Control Relationship with Issuer and Participation or Interest in Primary or Secondary Distribution) cross-references FINRA Rules 2261, 2262, and 2269.
- General 9, Section 8 (SIPC Information) cross-references FINRA Rule 2266.
- General 9, Section 9 (Fairness Opinions) cross-references FINRA Rule 5150.
- General 9, Section 10(a) (Recommendations to Customers (Suitability)) cross-references FINRA Rule 2111 (except for the references to FINRA Rule 2214 in FINRA Rule 2111).
- General 9, Section 10(c) (Know Your Customer) cross-references FINRA Rule 2090.
- General 9, Section 12 (Customer Account Statements) cross-references FINRA Rule 2231.
- General 9, Section 13 (Margin Disclosure Statement) cross-references FINRA Rule 2264.
- General 9, Section 14 (Approval Procedures for Day-Trading Accounts) cross-references FINRA Rules 2130 and 2270.
- General 9, Section 15 (Borrowing From or Lending to Customers) cross-references FINRA Rule 3240.
- General 9, Section 16 (Charges for Services Performed) cross-references FINRA Rule 2122.
- General 9, Section 17 (Net Transactions with Customers) cross-references FINRA Rule 2124.
- General 9, Section 19 (Discretionary Accounts) cross-references FINRA Rule 3260.
- General 9, Section 20 (Supervision) cross-references FINRA Rules 3110 and 3170.
- General 9, Section 21 (Supervisory Control System, Annual Certification of Compliance and Supervisory Processes) cross-references FINRA Rules 3120 and 3130 (except for the references to MSRB rules in FINRA Rule 3130).
- General 9, Section 23 (Outside Business Activities of an Associated Person) cross-references FINRA Rule 3270.
- General 9, Section 24 (Private Securities Transactions of an Associated Person) cross-references FINRA Rule 3280.
- General 9, Section 25 (Transactions for or by Associated Persons) cross-references FINRA Rule 3210.
- General 9, Section 26 (Influencing or Rewarding Employees of Others) cross-references FINRA Rule 3220.
- General 9, Section 27 (Reporting Requirements) cross-references FINRA Rule 4530 (except for FINRA Rule 4530(h)).
- General 9, Section 28 (Disclosure to Associated Persons When Signing Form U4) cross-references FINRA Rule 2263 (except for subsection (2) of FINRA Rule 2263).
- General 9, Section 30 (Books and Records) cross-references FINRA Rule 4511.
- General 9, Section 31 (Use of Information Obtained in Fiduciary

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78mm(a)(1).

[2] 15 U.S.C. 78s(b).

[3] *See* Letter from Angela S. Dunn, Principal Associate General Counsel, BX, to J. Matthew DeLesDernier, Assistant Secretary, Commission, dated August 26, 2021 (''Exemptive Request'').

[4] 17 CFR 240.0–12.

[5] *See* Exemptive Request, *supra* note 3, at 6.

Capacity) cross-references FINRA Rule 2060.

• General 9, Section 33 (Reporting Requirements for Clearing Firms) cross-references FINRA Rule 4540.

• General 9, Section 34 (Extensions of Time Under Regulation T and SEC Rule 15c3–3) cross-references FINRA Rule 4230.

• General 9, Section 37 (Anti-Money Laundering Compliance Program) cross-references FINRA Rule 3310.

• General 9, Section 38(b) (Margin Requirements) cross-references FINRA Rule 4210.

• General 9, Section 39(b) (Fidelity Bonds) cross-references FINRA Rule 4360.

• General 9, Section 40 (Capital Compliance) cross-references FINRA Rule 4110.

• General 9, Section 41 (Regulatory Notification and Business Curtailment) cross-references FINRA Rule 4120.

• General 9, Section 42 (Audit) cross-references FINRA Rule 4140.

• General 9, Section 43 (General Requirements) cross-references FINRA Rule 4511.

• General 9, Section 44 (Records of Written Customer Complaints) cross-references FINRA Rule 4513.

• General 9, Section 45 (Customer Account Information) cross-references FINRA Rule 4512.

• General 9, Section 46 (Authorization Records for Negotiable Instruments Drawn From a Customer's Account) cross-references FINRA Rule 4514.

• General 9, Section 47 (Approval and Documentation of Changes in Account Name or Designation) cross-references FINRA Rule 4515.

• General 9, Section 48 (Notifications, Questionnaires and Reports) cross-references FINRA Rule 4521.

• General 9, Section 64 (Account Approval) cross-references FINRA Rule 2360(b)(16).

• Equity 9, Section 15 (Suitability) cross-references FINRA Rule 2360(b)(19).

• Equity 9, Section 16 (Discretionary Accounts) cross-references FINRA Rule 2360(b)(18).

• Equity 9, Section 17 (Supervision of Accounts) cross-references FINRA Rule 2360(b)(20).

• Equity 9, Section 18 (Customer Complaints) cross-references FINRA Rule 2360(b)(17)(A).

• Equity 9, Section 19 (Communications with the Public and Customers Concerning Index Warrants, Currency Index Warrants, and Currency Warrants) cross-references FINRA Rule 2220 (except for FINRA Rule 2220(c)).

• Equity 9, Section 20 (Maintenance of Records) cross-references FINRA Rule 2360(b)(17)(B).

• Equity 10, Section 2 (Investment Company Securities) cross-references FINRA Rule 2341 (except for the reference to FINRA Rule 2320 in FINRA Rule 2341).

• Equity 11, Rule 11860 (Acceptance and Settlement of COD Orders) cross-references FINRA Rule 11860.

• Equity 11, Rule 11870 (Customer Account Transfer Contracts) cross-references FINRA Rule 11870.

The Exchange represents that the FINRA rules listed above are regulatory rules and not trading rules.[6] The Exchange represents that, as a condition to the requested exemption from Section 19(b) of the Exchange Act, the Exchange will provide written notice to its members whenever FINRA proposes a change to a cross-referenced rule.[7] The Exchange states that such notice will alert its members and persons associated with a member to the proposed FINRA rule change and give them an opportunity to comment on the proposal.[8] The Exchange further represents that it will inform members in writing when the Commission approves any such proposed rule changes.[9]

According to the Exchange, this exemption is appropriate because it would result in the Exchange's rulebook being consistent with the relevant cross-referenced FINRA rules at all times, thus ensuring consistent regulation of joint members of BX and FINRA.[10] The Exchange further states that, even if members are not joint members of BX and FINRA, the exemption is appropriate because it will permit its rules to remain consistent with FINRA's rules and ensure consistent treatment of industry members with respect to the aforementioned rules.[11]

The Commission has issued exemptions similar to the Exchange's request.[12] In granting similar exemptions, the Commission stated that it would consider similar future exemption requests, provided that:

• An SRO wishing to incorporate rules of another SRO by reference has submitted a written request for an order exempting it from the requirement in Section 19(b) of the Exchange Act to file proposed rule changes relating to the rules incorporated by reference, has identified the applicable originating SRO(s), together with the rules it wants to incorporate by reference, and otherwise has complied with the procedural requirements set forth in the Commission's release governing procedures for requesting exemptive orders pursuant to Rule 0–12 under the Exchange Act; [13]

• The incorporating SRO has requested incorporation of categories of rules (rather than individual rules within a category) that are not trading rules (*e.g.,* the SRO has requested incorporation of rules such as margin, suitability, or arbitration); and

• The incorporating SRO has reasonable procedures in place to provide written notice to its members each time a change is proposed to the incorporated rules of another SRO.[14]

The Commission believes that the Exchange has satisfied each of these conditions. The Commission also believes that granting the Exchange an exemption from the rule filing requirements under Section 19(b) of the Exchange Act will promote efficient use of the Commission's and the Exchange's resources by avoiding duplicative rule filings based on simultaneous changes

[6] *See id.* at 6, n.14. The Exchange also states that it is not ''cherry picking'' because the Exchange would be incorporating categories of rules. *See id.*

[7] *See id.* at 6. The Exchange represents that it will provide such notice via a posting on the same website location where the Exchange posts its own rule filings pursuant to Rule 19b–4(l) within the time frame required by such rule. *See id.* at 6–7, n.15. The website posting will include a link to the location on FINRA's website where the applicable proposed rule change is posted. *See id.*

[8] *See id.* at 6–7.

[9] *See id.* at 7.

[10] *See id.* at 6.

[11] *See id.*

[12] *See, e.g.,* Securities Exchange Act Release Nos. 83296 (May 21, 2018), 83 FR 24362 (May 25, 2018) (order granting NYSE National, Inc.'s exemptive request relating to rules of FINRA incorporated by reference); 83040 (April 12, 2018), 83 FR 17198 (April 18, 2018) (order granting MIAX PEARL, LLC's exemptive request relating to rules of the Miami International Securities Exchange, LLC incorporated by reference); 76998 (January 29, 2016), 81 FR 6066, 6083–84 (February 4, 2016) (order granting application for registration as a national securities exchange of ISE Mercury, LLC and exemptive request relating to rules of certain self-regulatory organizations (''SROs'') (including FINRA) incorporated by reference); 61534 (February 18, 2010), 75 FR 8760 (February 25, 2010) (order granting BATS Exchange, Inc.'s exemptive request relating to rules incorporated by reference by the BATS Exchange Options Market rules) (''BATS Options Market Order''); 61152 (December 10, 2009), 74 FR 66699, 66709–10 (December 16, 2009) (order granting application for registration as a national securities exchange of C2 Options Exchange, Incorporated and exemptive request relating to rules of the Chicago Board Options Exchange, Incorporated, incorporated by reference).

[13] *See* 17 CFR 240.0–12 and Securities Exchange Act Release No. 39624 (February 5, 1998), 63 FR 8101 (February 18, 1998) (Commission Procedures for Filing Applications for Orders for Exemptive Relief Pursuant to Section 36 of the Exchange Act; Final Rule).

[14] *See* BATS Options Market Order, *supra* note 12 (citing Securities Exchange Act Release No. 49260 (February 17, 2004), 69 FR 8500 (February 24, 2004) (order granting exemptive request relating to rules incorporated by reference by several SROs) (''2004 Order'')).

to identical rule text sought by more than one SRO.[15] The Commission therefore finds it appropriate in the public interest and consistent with the protection of investors to exempt the Exchange from the rule filing requirements under Section 19(b) of the Exchange Act with respect to the above-described FINRA rules it has incorporated by reference. This exemption is conditioned upon the Exchange promptly providing written notice to its members whenever FINRA changes a rule that the Exchange has incorporated by reference.

Accordingly, *it is ordered,* pursuant to Section 36 of the Exchange Act,[16] that the Exchange is exempt from the rule filing requirements of Section 19(b) of the Exchange Act solely with respect to changes to the rules identified in the Exemptive Request, provided that the Exchange promptly provides written notice to its members whenever FINRA proposes to change a rule that the Exchange has incorporated by reference.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01712 Filed 1–27–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94044; File No. SR–PHLX–2022–02]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend References to FINRA Continuing Education Fees

January 24, 2022.

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 January 12, 2022, Nasdaq PHLX LLC (''Phlx'' 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 Phlx's Pricing Schedule at Options 7, Section 9, Other Member Fees, to reflect adjustments to FINRA Continuing Education Fees.

The Exchange also proposes technical amendments to Phlx Options 7, Section 1, General Provisions.

While the changes proposed herein are effective upon filing, the Exchange has designated the new Maintaining Qualifications Program (''MQP'') Fee, elimination of the $100 Continuing Education Session Fee, and technical amendments to become operative on January 31, 2022. Additionally, the Exchange designates an $18 Continuing Education Regulatory Element Session Fee to become operative on January 1, 2023.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/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

This proposal amends Phlx's Pricing Schedule at Options 7, Section 9C, FINRA Fees, to reflect adjustments to FINRA Continuing Education Fees.[4] The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of Phlx members and member organizations that are not FINRA members (''Non-FINRA members''). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees.

Today, Phlx Options 7, Section 9C, provides a list of FINRA Web CRD Fees, Fingerprint Processing Fees, and Continuing Education Fees. The Exchange proposes to amend the Continuing Education Fees within Options 7, Section 9C on behalf of the Exchange. The fees listed within Options 7, Section 9C reflect fees set by FINRA.

Specifically, the Exchange proposes to decrease the $55 Continuing Education Web-based Fee to $18. This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.[5] FINRA currently charges a fee of $55 to each individual who completes the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. In conjunction with the amendments to transition to an annual Regulatory Element requirement, FINRA amended the Continuing Education Regulatory Element Session Fee from $55 to $18.[6] FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the $18 Continuing Education Regulatory Element Session Fee as of January 1, 2023 to coincide with the effective date of the transition to an annual Regulatory Element requirement.[7]

[15] *See* BATS Options Market Order, *supra* note 12, 75 FR at 8761; *see also* 2004 Order, *supra* note 14, 69 FR at 8502.

[16] 15 U.S.C. 78mm.

[17] 17 CFR 200.30–3(a)(76).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93928 (January 7, 2022) (SR–FINRA–2021–034).

[4] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[5] *See* note 3 above. On September 21, 2021, the SEC approved amendments to FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements) to, among other things, require registered persons to complete the Regulatory Element of CE annually by December 31 of each year, rather than every three years, and to complete Regulatory Element content for each representative or principal registration category that they hold. *See* Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015). The Regulatory Element is administered by FINRA and focuses on regulatory requirements and industry standards. The proposed rule change also included amendments to the Firm Element training, which is provided by each firm annually to its registered persons and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

[6] FINRA notes that the proposed $18 annual fee is comparable to the current $55 fee over a three-year period. Moreover, the proposed fee for the annual Regulatory Element would be the same for all registered persons, regardless of the amount of annual content that they would be required to complete (that is, an individual who holds multiple registrations would be subject to the same proposed $18 annual fee as an individual who holds a single registration). *See* note 3 above.

[7] The Exchange would file to remove the rule text concerning the $55 fee once the $18 fee becomes operative.

The Exchange proposes to eliminate the $100.00 continuing education fee for each individual who is required to complete the S101 or S201. This fee applied to continuing education programs administered at test centers. In 2015, FINRA filed to end test center delivery of the Regulatory Element.[8] Effective October 1, 2015, Web-based delivery has been available for the Regulatory Element. The revised fee of $18 is a Web-based delivery. The Exchange proposes to remove the outdated continuing education fee of $100 from its Pricing Schedule related to test center delivery

The Exchange also proposes to adopt a new Maintaining Qualifications Program (''MQP'') Fee of $100 fee for each individual electing to participate in the continuing education program, following the termination of a registration category, under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the MQP within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed annual fee would be assessed at the time an eligible individual elects to participate in the continuing education program under FINRA Rule 1240(c) and thereafter annually each year that the individual continues in the program. This fee is paid directly to FINRA. FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the $100 MQP fee as of January 31, 2022.

With respect to the rule text, the Exchange proposes to relocate the Continuing Education fees to the end of Options 7, Section 9C. The current $55 Continuing Education Fee is being reworded to reflect the elimination of the $100 fee and renamed the ''Continuing Education Regulatory Element Session Fee.'' The $55 will remain in effect until January 1, 2023 so it is being retained in the Pricing Scheduled with a note that ''This fee will be amended on January 1, 2023 as noted below.'' Finally, the title ''Continuing Education Fees'' is proposed to be amended to ''Continuing Education Fee:''.

The FINRA Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

Technical Amendments

Options 7, Section 9C

The Exchange proposes to relocate the title ''General Registration Fees'' directly above those fees.

The Exchange also proposes to make a technical amendment within the FINRA Web CRD Fees to the following sentence, ''$110-For the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment or certification of one of more disclosure events or proceedings.'' The Exchange proposes to change the word ''of'' to ''or.''

Options 7, Section 1

The Exchange proposes to alphabetize the terms currently within Options 7, Section 1(c). The Exchange proposes to remove ''A'' before the term ''floor transaction'' and instead add ''The term,'' to conform that term to the others, the Exchange is not otherwise amending any of the current rule text.

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 Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to decrease the $55 Continuing Education Regulatory Element Session Fee for all Registrations to $18 in accordance with an adjustment to FINRA's fees.[11] The Exchange's rule text will reflect the current rates for continuing education that will be assessed by FINRA as of January 1, 2023. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

The Exchange believes eliminating the outdated $100 fee for continuing education is reasonable as test center delivery of the Regulatory Element was phased out in 2016 and the continuing education programs are no longer offered at testing centers.[12]

The Exchange believes that it is reasonable to adopt a new MQP Fee of $100 for each individual electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the program within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make technical amendments within Options 7, Section 1 and Section 9C is reasonable, equitable and not unfairly discriminatory as the proposed changes are non-substantive amendment. The amendments will bring greater clarity to the rule text.

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 Exchange does not believe that this proposal creates an unnecessary or inappropriate inter-market burden on competition as FINRA's fees apply to all market participants. Specifically, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition as the decreased Continuing Education Regulatory Element Session Fee for all Registrations of $18 will be assessed by FINRA to all Members who are required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. Likewise, with respect to the $100 MQP Fee, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition because the fee will be assessed by FINRA to all

[8] *See* Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (SR–FINRA–2015–015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements). FINRA phased out the test center delivery as of July 1, 2016. *See* FINRA Information Notice dated May 16, 2016 (*https://www.finra.org/rules-guidance/notices/information-notice-051616*).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* note 3 above.

[12] *See* note 8 above.

individuals electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Finally, eliminating the outdated $100 fee for continuing education does not create an unnecessary or inappropriate intra-market burden on competition as test center delivery of the Regulatory Element was phased out and the continuing education programs are no longer offered at testing centers.[13] Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make technical amendments within Options 7, Section 1 and Section 9C does not impose an undue burden on competition as the proposed changes are non-substantive amendment. The amendments will bring greater clarity to the rule text.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov. Please include File Number SR–PHLX–2022–02 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–PHLX–2022–02. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PHLX–2022–02 and should be submitted on or before February 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

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[13] *See* note 8 above.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94030; File No. SR–NYSE–2022–05]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Rule 7.31 To Provide for Inside Limit Orders and Make Other Conforming Changes

January 24, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on January 18, 2022, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Rule 7.31 to provide for Inside Limit Orders and make other conforming changes. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify Rule 7.31 (Orders and Modifiers) to add new Rule 7.31(a)(3) to provide for Inside

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Limit Orders and to make other conforming changes in connection with the addition of this new order type on the Exchange.

Proposed Rule 7.31(a)(3) would define an Inside Limit Order as a Limit Order that is to be traded at the best price obtainable without trading through the NBBO. Proposed Rule 7.31(a)(3)(A) would provide that, on arrival, a marketable Inside Limit Order to buy (sell) would be assigned a working price of the NBO (NBB) and would trade with all sell (buy) orders on the Exchange Book priced at or below (above) the NBO (NBB) before routing to the NBO (NBB) on an Away Market. Once the NBO (NBB) is exhausted, the Inside Limit Order to buy (sell) would be displayed at its working price and be eligible to trade with incoming sell (buy) orders at that price. When the updated NBO (NBB) is displayed, the Inside Limit Order to buy (sell) would be assigned a new working price of the updated NBO (NBB) and would trade with all sell (buy) orders on the Exchange Book priced at or below the updated NBO (NBB) before routing to the updated NBO (NBB) on an Away Market. Such assessment would continue at each new NBO (NBB) until the order is filled, no longer marketable, or the limit price is reached. Once the Inside Limit Order is no longer marketable, it would be ranked and displayed on the Exchange Book.

Proposed Rule 7.31(a)(3)(B) would provide that an Inside Limit Order may not be designated as a Limit IOC Order but may be designated as a Limit Routable IOC Order. An Inside Limit Order to buy (sell) designated as a Limit Routable IOC Order would trade with sell (buy) orders on the Exchange Book priced at or below (above) the NBO (NBB), and the quantity not traded would be routed to the NBO (NBB). Any unfilled quantity of the Inside Limit Order not traded on the Exchange or an Away Market would be cancelled.

Proposed Rule 7.31(a)(3) is substantially based on rules providing for Inside Limit Orders on the NYSE's affiliated exchanges NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago''), and NYSE National, Inc. (''NYSE National'') (collectively, the ''Affiliated Exchanges''), with one exception.[4] The Exchange does not propose to adopt a version of NYSE American Rule 7.31E(a)(3)(B), NYSE Arca Rule 7.31–E(a)(3)(B), NYSE Chicago Rule 7.31(a)(3)(B), or NYSE National Rule 7.31(a)(3)(B) with respect to designating an Inside Limit Order as a Primary Until 9:45 Order or a Primary Until 3:55 Order because the latter order types are not offered on the Exchange.

The Exchange also proposes conforming changes to Rule 7.31(d)(1), Rule 7.37(a)(4), and Rule 104(b)(6) to reflect the introduction of Inside Limit Orders as follows:

- Rule 7.31(d)(1) currently defines the Reserve Order. The Exchange proposes to modify Rule 7.31(d)(1) to provide that a Reserve Order is a Limit Order or Inside Limit Order with a quantity of the size displayed and with a reserve quantity of the size that is not displayed. This proposed change is consistent with NYSE American Rule 7.31E(d)(1), NYSE Arca Rule 7.31–E(d)(1), NYSE Chicago Rule 7.31(d)(1), and NYSE National Rule 7.31(d)(1).
- Rule 7.37(a) specifies that an Aggressing Order will be matched for execution against contra-side orders in the Exchange Book as provided for in Rule 7.37(b), subject to the provisions of Rule 7.37(a)(1) through (4). Rule 7.37(a)(4) currently provides that Market Orders will be executed at prices that are equal to or better than the NBBO. The Exchange proposes to modify Rule 7.37(a)(4) to provide that Inside Limit Orders will also be executed at prices that are equal to or better than the NBBO, consistent with the parameters of the Inside Limit Order as set forth in proposed Rule 7.31(a)(3). This proposed change is based on NYSE American Rule 7.37E(a)(4), NYSE Arca Rule 7.37–E(a)(4), NYSE Chicago Rule 7.37(a)(4), and NYSE National Rule 7.37(a)(4).
- The Exchange proposes to modify Rule 104(b)(6), which specifies the orders and modifiers that DMM units are not permitted to enter. The Exchange proposes to add Inside Limit Orders to Rule 104(b)(6) as an order type that DMM units may not enter.[5]

The Exchange believes that the proposed rule change would provide enhanced opportunities for trading by adding a new order type and would promote consistency between the Exchange's rules and the rules of its Affiliated Exchanges governing the same order type. In addition, because the purpose of an Inside Limit Order is to assess away market displayed interest on a price-by-price basis, thereby slowing down the routing of such order rather than simultaneously routing the order to away markets at potentially multiple prices, the order would be routed to the market participant with the best displayed price, and any unfilled portion would not be routed to the next best price level until all quotes at the current best bid or offer are exhausted. Accordingly, the Inside Limit Order would offer market participants an opportunity to obtain improved executions by waiting for changes to the NBBO.

Because of the technology changes associated with this proposed rule change, the Exchange will announce the implementation date by Trader Update. Subject to approval of this proposed rule change, the Exchange anticipates that the proposed changes will be implemented in February 2022.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, because it is 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 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.

The Exchange believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market because it would make an additional order type available on the Exchange. Moreover, the Inside Limit Order would offer market participants opportunities to obtain better execution prices because it would wait and adjust for changes to the NBBO (*i.e.,* the order would be routed to the market participant with the best displayed price, and any unfilled portion would not be routed to the next best price level until all quotes at the current best bid or offer are exhausted). The Exchange also believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market, as well as protect investors and the public interest, because it is based on the rules of the Affiliated Exchanges and would therefore promote market quality by providing uniformity and continuity across the Affiliated exchanges with respect to the same order type.

[4] *See* NYSE American Rule 7.31E(a)(3); NYSE Arca Rule 7.31–E(a)(3); NYSE Chicago Rule 7.31(a)(3); and NYSE National Rule 7.31(a)(3).

[5] The Exchange also proposes a non-substantive change to Rule 104(b)(6) to replace the reference to ''Buy Minus Zero Plus Instructions'' with ''Last Sale Peg Orders'' to reflect the updated terminology used in its rules for such order type. *See, e.g.,* Rule 7.31(i)(4).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

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 that the proposed rules would promote competition because they would provide for an additional order type on the Exchange, thereby offering additional trading opportunities for market participants. The Exchange further believes that the proposed rules would not impose any burden on competition that is not necessary or appropriate because they are designed to provide its members with consistency across the Affiliated Exchanges, thereby enabling the Exchange to compete with unaffiliated exchange competitors that similarly operate multiple exchanges on the same trading platforms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and subparagraph (f)(6) of Rule 19b–4 thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) [10] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[11] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Exchange to implement the proposal when the technology associated with the proposed change is available, which is anticipated to be less than 30 days from the date of this filing. The Exchange states that waiver of the operative delay would allow the Exchange to provide a new order type that would provide opportunities for improved executions and promote consistency with the rules of its Affiliated Exchanges. The Commission notes that the operation of the proposed order type is substantively similar to that of order types offered by the Exchange's affiliates. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of such 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–05 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–NYSE–2022–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–05, and should be submitted on or before February 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01705 Filed 1–27–22; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94041; File No. SR–CBOE–2022–002]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule With Respect to Its FINRA Non-Member Processing Registration Fee

January 24, 2022.

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 January 11, 2022, Cboe Exchange, Inc. (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule with respect to its FINRA Non-Member Processing registration fee. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the FINRA Non-Member Processing fee to reflect adjustments to the FINRA registration fees. The applicable fee is collected and retained by FINRA via Web CRD [3] for the registration of employees of Exchange TPH organizations that are not FINRA members (''Non-FINRA members''). The Exchange is merely listing these fees on its Fees Schedule and does not collect or retain this fee.[4]

Today, under the Regulatory Fees section of the Fees Schedule are various fees collected and retained by FINRA via the Web CRD registration system, including certain general registration fees, fingerprint processing fees, and continuing education fees. Specifically, under the general registration fees is the FINRA Non-Member Processing Fee of $100 for all initial, transfer, relicense, or dual registration Form U–4 filings. Now, the Exchange proposes to increase the $100 fee to $125 for such filings. The proposed amendment is made in accordance with a recent FINRA rule change to adjust its fees.[5]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[6] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [8] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to increase the $100 fee for each initial Form U–4 filed for the registration of a representative or principal to $125 in accordance with an adjustment to FINRA's fees.[9] The proposed fees are identical to those adopted by FINRA for use of Web CRD for disclosure and the registration of FINRA members and their associated persons. These costs are borne by FINRA when a Non-FINRA member uses Web CRD.

The Exchange believes that its proposal to increase the $100 fee for each initial Form U–4 filed for the registration of a representative or principal to $125 is equitable and not unfairly discriminatory as the amendment will reflect the current fee that will be assessed by FINRA to all members who require Form U–4 filings. Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

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 that its proposal to increase the $100 fee for each initial Form U–4 filed for the registration of a representative or principal to $125 does not impose an undue burden on competition as the amendment will reflect the current fee that will be assessed by FINRA to all members who require Form U–4 filings. Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and paragraph (f) of Rule 19b–4 [11] 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

[3] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment, and disciplinary histories of registered associated persons of broker-dealers.

[4] The Exchange initially filed the proposed fee changes on January 3, 2022 (SR–CBOE–2022–001). On January 11, 2022, the Exchange withdrew that filing and submitted this filing.

[5] *See* Securities Exchange Act Release No. 90176 (October 14, 2020), 85 FR 66592 (October 20, 2020) (SR–FINRA–2020–032) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adjust FINRA Fees To Provide Sustainable Funding for FINRA's Regulatory Mission).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] *Supra* note 5.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2022–002 on the subject line.

Paper Comments

- Send paper comments in triplicate to Vanessa Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2022–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–002 and should be submitted on or before February 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94043; File No. SR–MRX–2022–01]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend References to FINRA Continuing Education Fees

January 24, 2022.

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 January 11, 2022, Nasdaq MRX, LLC (''MRX'' 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 MRX's Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, to reflect adjustments to FINRA Continuing Education Fees.

While the changes proposed herein are effective upon filing, the Exchange has designated the new Maintaining Qualifications Program (''MQP'') Fee, elimination of the $100 Continuing Education Session Fee, and technical amendments to become operative on January 31, 2022. Additionally, the Exchange designates an $18 Continuing Education Regulatory Element Session Fee to become operative on January 1, 2023.[3]

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/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

This proposal amends MRX's Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, to reflect adjustments to FINRA Continuing Education Fees.[4] The FINRA fees are collected and retained by FINRA via Web CRD for the registration of employees of MRX Members that are not FINRA members (''Non-FINRA members''). The Exchange is merely listing these fees on its Pricing Schedule. The Exchange does not collect or retain these fees.

Today, MRX Options 7, Section 5D, provides a list of FINRA Web CRD Fees, Fingerprint Processing Fees, and Continuing Education Fees. The Exchange proposes to amend the Continuing Education Fees within Options 7, Section 5D on behalf of the Exchange. The fees listed within Options 7, Section 5D reflect fees set by FINRA.

Specifically, the Exchange proposes to decrease the $55 Continuing Education Web-based Fee to $18. This amendment is made in accordance with a recent FINRA rule change to adjust to its fees.[5]

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93928 (January 7, 2022) (SR–FINRA–2021–034).

[4] FINRA operates Web CRD, the central licensing and registration system for the U.S. securities industry. FINRA uses Web CRD to maintain the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[5] *See* note 3 above. On September 21, 2021, the SEC approved amendments to FINRA Rules 1210 (Registration Requirements) and 1240 (Continuing Education Requirements) to, among other things, require registered persons to complete the Regulatory Element of CE annually by December 31 of each year, rather than every three years, and to complete Regulatory Element content for each representative or principal registration category that they hold. *See* Securities Exchange Act Release No. 93097 (September 21, 2021), 86 FR 53358

Continued

FINRA currently charges a fee of $55 to each individual who completes the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. In conjunction with the amendments to transition to an annual Regulatory Element requirement, FINRA amended the Continuing Education Regulatory Element Session Fee from $55 to $18.[6] FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the $18 Continuing Education Regulatory Element Session Fee as of January 1, 2023 to coincide with the effective date of the transition to an annual Regulatory Element requirement.[7]

The Exchange proposes to eliminate the $100.00 continuing education fee for each individual who is required to complete the S101 or S201. This fee applied to continuing education programs administered at test centers. In 2015, FINRA filed to end test center delivery of the Regulatory Element.[8] Effective October 1, 2015, Web-based delivery has been available for the Regulatory Element. The revised fee of $18 is a Web-based delivery. The Exchange proposes to remove the outdated continuing education fee of $100 from its Pricing Schedule related to test center delivery.

The Exchange also proposes to adopt a new Maintaining Qualifications Program (''MQP'') Fee of $100 fee for each individual electing to participate in the continuing education program, following the termination of a registration category, under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the MQP within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed annual fee would be assessed at the time an eligible individual elects to participate in the continuing education program under FINRA Rule 1240(c) and thereafter annually each year that the individual continues in the program. This fee is paid directly to FINRA. FINRA indicated in the Continuing Education Fee Filing that it would begin assessing the $100 MQP fee as of January 31, 2022.

With respect to the rule text, the current $55 Continuing Education Fee is being reworded to reflect the elimination of the $100 fee and renamed the ''Continuing Education Regulatory Element Session Fee.'' The $55 will remain in effect until January 1, 2023 so it is being retained in the Pricing Scheduled with a note that ''*This fee will be amended on January 1, 2023 as noted below*.''

The FINRA Fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA member. Accordingly, the proposed fees mirror those currently assessed by FINRA.

Technical Amendment

The Exchange also proposes to make a technical amendment within the FINRA Web CRD Fees to the following sentence, ''$110-For the additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment or certification of one of more disclosure events or proceedings.'' The Exchange proposes to change the word ''of'' to ''or.''

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 Sections 6(b)(4) and 6(b)(5) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes it is reasonable to decrease the $55 Continuing Education Regulatory Element Session Fee for all Registrations to $18 in accordance with an adjustment to FINRA's fees.[11] The Exchange's rule text will reflect the current rates for continuing education that will be assessed by FINRA as of January 1, 2023. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

The Exchange believes eliminating the outdated $100 fee for continuing education is reasonable as test center delivery of the Regulatory Element was phased out in 2016 and the continuing education programs are no longer offered at testing centers.[12]

The Exchange believes that it is reasonable to adopt a new MQP Fee of $100 for each individual electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Individuals who elect to participate in the program within two years from the termination of a registration would also be assessed any accrued annual fee. The proposed fee is identical to a fee adopted by FINRA related to its continuing education. The costs are borne by FINRA when a Non-FINRA member engages in continuing education.

Further, the proposal is also equitable and not unfairly discriminatory because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make a technical amendment within the FINRA Web CRD Fees is reasonable, equitable and not unfairly discriminatory as it is a non-substantive amendment.

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 Exchange does not believe that this proposal creates an unnecessary or inappropriate inter-market burden on competition as FINRA's fees apply to all market participants. Specifically, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition as the decreased

(September 27, 2021) (Order Approving File No. SR–FINRA–2021–015). The Regulatory Element is administered by FINRA and focuses on regulatory requirements and industry standards. The proposed rule change also included amendments to the Firm Element training, which is provided by each firm annually to its registered persons and focuses on securities products, services and strategies the firm offers, firm policies and industry trends.

[6] FINRA notes that the proposed $18 annual fee is comparable to the current $55 fee over a three-year period. Moreover, the proposed fee for the annual Regulatory Element would be the same for all registered persons, regardless of the amount of annual content that they would be required to complete (that is, an individual who holds multiple registrations would be subject to the same proposed $18 annual fee as an individual who holds a single registration). *See* note 3 above.

[7] The Exchange would file to remove the rule text concerning the $55 fee once the $18 fee becomes operative.

[8] *See* Securities Exchange Act Release No. 75581 (July 31, 2015), 80 FR 47018 (August 6, 2015) (SR–FINRA–2015–015) (Order Approving a Proposed Rule Change to Provide a Web-based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements). FINRA phased out the test center delivery as of July 1, 2016. *See* FINRA Information Notice dated May 16, 2016 (*https://www.finra.org/rules-guidance/notices/information-notice-051616*).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4) and (5).

[11] *See* note 3 above.

[12] *See* note 8 above.

Continuing Education Regulatory Element Session Fee for all Registrations of $18 will be assessed by FINRA to all Members who are required to complete the Regulatory Element of the Continuing Education Requirements pursuant to Exchange General 4, Section 1240. Likewise, with respect to the $100 MQP Fee, the Exchange does not believe that this proposal creates an unnecessary or inappropriate intra-market burden on competition because the fee will be assessed by FINRA to all individuals electing to participate in the continuing education program under FINRA Rule 1240(c) for each year that such individual is participating in the program. Finally, eliminating the outdated $100 fee for continuing education does not create an unnecessary or inappropriate intra-market burden on competition as test center delivery of the Regulatory Element was phased out and the continuing education programs are no longer offered at testing centers.[13] Further, the proposal does not impose an undue burden on competition because the Exchange will not be collecting or retaining these fees, therefore, the Exchange will not be in a position to apply them in an inequitable or unfairly discriminatory manner.

Technical Amendment

The Exchange's proposal to make a technical amendment within the FINRA Web CRD Fees does not impose an undue burden on competition as it is a non-substantive amendment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) 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 (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MRX–2022–01 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–MRX–2022–01. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–MRX–2022–01 and should be submitted on or before February 18, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–01707 Filed 1–27–22; 8:45 am]

BILLING CODE 8011–01–P

[13] *See* note 8 above.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17326 and #17327; Delaware Disaster Number DE–00028]

Administrative Declaration of a Disaster for the State of Delaware

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Delaware dated 01/24/2022.

Incident: Remnants of Hurricane Ida.

Incident Period: 09/01/2021 through 09/07/2021.

DATES: Issued on 01/24/2022.

Physical Loan Application Deadline Date: 03/25/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 10/24/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, 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 Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: New Castle.

Contiguous Counties:

Delaware: Kent.

Maryland: Cecil, Kent.

New Jersey: Gloucester, Salem.

Pennsylvania: Chester, Delaware.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.125
Homeowners without Credit Available Elsewhere	1.563
Businesses with Credit Available Elsewhere	5.710

	Percent
Businesses without Credit Available Elsewhere	2.855
Non-Profit Organizations with Credit Available Elsewhere	2.000
Non-Profit Organizations without Credit Available Elsewhere	2.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.855
Non-Profit Organizations without Credit Available Elsewhere	2.000

The number assigned to this disaster for physical damage is 17326 8 and for economic injury is 17327 0.

The States which received an EIDL Declaration # are Delaware, Maryland, New Jersey, Pennsylvania.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2022–01687 Filed 1–27–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17325; Massachusetts Disaster Number MA–00083 Declaration of Economic Injury]

Administrative Declaration of an Economic Injury Disaster for the Commonwealth of Massachusetts

AGENCY: Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the Commonwealth of Massachusetts dated 01/24/2022.

Incident: 4-Alarm fire in the town of Longmeadow.

Incident Period: 11/23/2021.

DATES: Issued on 01/24/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 10/24/2022.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, 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 Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations. The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Hampden.

Contiguous Counties:

Massachusetts: Berkshire, Hampshire, Worcester.

Connecticut: Hartford, Litchfield, Tolland.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	2.830
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for economic injury is 173250.

The States which received an EIDL Declaration #17325 are Connecticut, Massachusetts.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2022–01686 Filed 1–27–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice; request for comments.

SUMMARY: The Small Business Administration will submit the information collection described below 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. SBA is publishing this notice to allow all interested members of the public 30 days to provide comments on the collection of information.

DATES: Submit comments on or before February 28, 2022.

ADDRESSES: Written comments and recommendations for this information collection request should be submitted through ''*www.reginfo.gov/public/do/PRAMain.*'' Find this information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then selecting ''Only Show ICR for Public Comment.'' This information collection can be identified by the title and/or OMB Control Number identified below.

FOR FURTHER INFORMATION CONTACT: Adrienne Grierson, Program Manager, at *adrienne.grierson@sba.gov;* 202–205–6573, or Curtis B. Rich, Management Analyst, 202–205–7030; *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 1102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136, authorized SBA to guarantee loans made by banks or other financial institutions under a new temporary 7(a) program titled the ''Paycheck Protection Program'' (''PPP'') to small businesses, certain non-profit organizations, veterans' organizations, Tribal business concerns, independent contractors and self-employed individuals adversely impacted by the Coronavirus Disease (COVID–19) Emergency. This authority initially expired on August 8, 2020. The Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act (Economic Aid Act), Public Law 116–260, renewed SBA's authority to make PPP loans until March 31, 2021, and added authority for second draw PPP loans under § 7(a)(37) of the Small Business Act. The program authority was further extended until June 30, 2021, by the PPP Extension Act of 2021, Public Law 117–6.

This information collection is currently approved for the PPP Loan Program under the emergency procedures authorized by 5 U.S.C. 3507(j) and 5 CFR 1320.13. This approval will expire on January 31, 2022. Although SBA's PPP program authority has expired, this information collection is still needed for the following reasons: (1) PPP borrowers may apply for forgiveness of their loans up to the date of loan maturity, which may be as late as 2026; and (2) SBA may review a PPP loan at any time. Therefore, as required by the Paperwork Reduction Act, SBA is publishing this notice as a prerequisite to seeking OMB's approval to ensure this information collection is available for use beyond January 31, 2022. SBA did not receive any comments in response to the notice published at 86 FR 35144 on July 1, 2021. This notice provides another opportunity for the public to submit comments on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Title: Affiliation Worksheet.

Form Number: SBA Form 3511.

OMB Control Number: 3245–0416.
Description of respondents: Paycheck Protection Program Borrowers and Lenders.
Estimated number of respondents (Borrowers): 37,500.
Estimated time per response: 45 minutes.
Estimated number of respondents (Lenders): 5,000.
Estimated time per response: 15 minutes.
Total estimated annual responses: 42,500.
Total Estimated Annual Hour Burden: 37,500 hours.

Curtis B. Rich,

Management Analyst.

[FR Doc. 2022–01755 Filed 1–27–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before March 29, 2022.

ADDRESSES: Send all comments to Mary Frias, Loan Specialist, Office of Financial Assistance, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Mary Frias, Loan Specialist, Office of Financial Assistance, *mary.frias@sba.gov*, 202–401–8234, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: The servicing agent agreement is executed by the borrower, and the certified development company as the loan servicing agent. The agreement is primarily used by the certified development company as the loan servicing agent and acknowledges the imposition of various fees allowed in SBA's 504 loan program.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0193.
Title: Servicing Agent Agreement.
Description of Respondents: SBA Borrowers.
Form Number: SBA Form 1506.
Total Estimated Annual Responses: 6,151.
Total Estimated Annual Hour Burden: 6,151.

Curtis Rich,

Management Analyst.

[FR Doc. 2022–01745 Filed 1–27–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before March 29, 2022.

ADDRESSES: Send all comments to Cynthia Pitts, Director, Office of Disaster Assistance, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Director, Office of Disaster Assistance, *Cynthia.pitts@sba.gov*, 202–205–7570, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: A team of Quality Assurance staff at the Disaster Assistance Center (DASC) will conduct a brief telephone survey of customers to determine their satisfaction with the services received from the (DASC) and the Field Operations Centers. The result will help the Agency to improve where necessary, the delivery of critical financial assistance to disaster victims.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number 3245–0370.
Title: Disaster Assistance Customer Satisfaction Survey.
Description of Respondents: Disaster Customers satisfaction with service received.
Form Number: SBA Form 2313FOC, 2313CSC.
Total Estimated Annual Responses: 2,400.
Total Estimated Annual Hour Burden: 199.

Curtis Rich,

Management Analyst.

[FR Doc. 2022–01766 Filed 1–27–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before March 28, 2022.

ADDRESSES: Send all comments to Cynthia Pitts, Director, Office of Disaster Assistance, Small Business Administration, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Director, Office of Disaster Assistance, *Cynthia.pitts@sba.gov*, 202–205–7570, or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Prior to Small Business Administration (SBA) approval of subsequent loan

disbursement, disaster loan borrowers are required to submit information to demonstrate that they used loan proceeds for authorized purposes only and to make certain certification regarding current financial condition and previously reported compensation paid in connection with the loan.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0110.
Title: Borrower's Progress Certification.
Description of Respondents: Disaster loan Borrowers.
Form Number: SBA Form 1366.
Total Estimated Annual Responses: 14,218.
Total Estimated Annual Hour Burden: 7,106.

Curtis Rich,

Management Analyst.

[FR Doc. 2022–01726 Filed 1–27–22; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before March 29, 2022.

ADDRESSES: Send all comments to Michael Donadieu, Senior Examiner, Office of SBIC Examinations, OII, Small Business Administration Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Michael Donadieu, Senior Examiner, Office of SBIC Examinations, OII, 202–205–7281, *michael.donadieu@sba.gov,* or Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Form 857 is used by SBA examiners to obtain information about financing provided by small business investment companies (SBICs). This information, which is collected directly from the financed small business, provides independent confirmation of information reported to SBA by SBICs, as well as additional information not reported by SBICs.

OMB Control Number 3245–0109

Title: ''Request for Information Concerning Portfolio Financing''.
Description of Respondents: Small Business Investment Companies.
Form Number: 857.
Annual Responses: 2,250.
Annual Burden: 2,250.

Curtis Rich,

Management Analyst.

[FR Doc. 2022–01723 Filed 1–27–22; 8:45 am]

BILLING CODE 8026–03–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Conforming Amendments to Product Exclusion Extensions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Notice.

SUMMARY: Effective January 27, 2022, the U.S. International Trade Commission (USITC) will implement certain changes to statistical reporting categories in the Harmonized Tariff Schedule of the United States (HTSUS). As a result of these changes, USTR is making three conforming amendments to product exclusion extensions in the above-titled investigation under Section 301.

DATES: The conforming amendments in the Annex to this notice are effective January 27, 2022.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Associate General Counsel Philip Butler or Assistant General Counsel Rachel Hasandras at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusion identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Effective January 27, 2022, the USITC, in accordance with Presidential Proclamation 10326 of December 23, 2021, will implement certain changes in ten digit statistical reporting categories of the HTSUS in accordance with its responsibility to update the HTSUS to conform to amendments adopted by the World Customs Organization. Three of the currently applicable product exclusions in the Section 301 investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, as set out at 85 FR 85831 (December 29, 2020), 86 FR 13785 (March 10, 2021), and 86 FR 63438 (November 16, 2021) are based on the amended statistical reporting categories.

B. Technical Amendments to Exclusion Extensions

The Annex to this notice conforms three existing product exclusions with the January 27, 2022 changes to ten digit statistical reporting categories in the HTSUS. In particular, the Annex makes a technical amendment to U.S. notes 20(sss)(i)(1), 20(sss)(iii)(14), and 20(iii)(15) to subchapter III of chapter 99 of the HTSUS, as set out in the Annexes to the notices published at 85 FR 85831 (December 29, 2020), 86 FR 13785 (March 10, 2021), and 86 FR 63438 (November 16, 2021).

Annex

Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on [January 27, 2022] and before 11:59 p.m. eastern daylight time on [May 31, 2022]:

1. Note 20(sss)(i)(1) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is amended by deleting ''8421.39.8090'' and by inserting ''8421.39.8090 prior to January 27, 2022; described in statistical reporting number 8421.39.0190 effective January 27, 2022'' in lieu thereof;

2. Note 20(sss)(iii)(14) to subchapter III of chapter 99 of the HTSUS is amended by deleting ''3824.99.9297'' and by inserting ''3824.99.9297 prior to January 27, 2022; described in statistical reporting number 3824.99.9397 effective January 27, 2022'' in lieu thereof; and

3. Note 20(sss)(iii)(15) to subchapter III of chapter 99 of the HTSUS is amended by deleting ''3824.99.9297'' and by inserting ''3824.99.9297 prior to January 27, 2022; described in statistical

reporting number 3824.99.9397 effective January 27, 2022'' in lieu thereof.

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2022–01732 Filed 1–27–22; 8:45 am]

BILLING CODE 3390–F2–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0098; Notice 2]

Toyota Motor North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition.

SUMMARY: Toyota Motor North America, Inc., (Toyota) has determined that certain model year (MY) 2019 Toyota Tacoma motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 209, *Seat Belt Assemblies.* Toyota filed a noncompliance report dated September 5, 2019. Toyota subsequently petitioned NHTSA on September 27, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces the grant of Toyota's petition.

FOR FURTHER INFORMATION CONTACT: Jack Chern, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–0661, *jack.chern@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

Toyota has determined that certain MY 2019 Toyota Tacoma Double Cab motor vehicles do not fully comply with paragraph S4.1 of FMVSS No. 209, *Seat Belt Assemblies* (49 CFR 571.209). Toyota filed a noncompliance report dated September 5, 2019 pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Toyota subsequently petitioned NHTSA on September 27, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Toyota's petition was published with a 30-day public comment period, on January 3, 2020, in the **Federal Register** (85 FR 415). Three comments were received. To view the petition and all supporting documents, log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2019–0098.''

II. Vehicles Involved

Approximately 70 MY 2019 Toyota Tacoma Double Cab motor vehicles, manufactured between July 25, 2019, and July 30, 2019, are potentially involved.

III. Noncompliance

Toyota explains that the noncompliance is that the subject vehicles are missing seat belt labels on the rear center seat belt assemblies and therefore, do not meet the requirements set forth in paragraph S4.1 of FMVSS No. 209. Specifically, the label which is sewn to the rear center seat belt may have been mistakenly removed by a worker while scanning the code on the label.

IV. Rule Requirements

Paragraph S4.1(j) of FMVSS No. 209 includes the requirements relevant to this petition. Each seat belt assembly shall be permanently and legibly marked or labeled with the year of manufacture, model, and name or trademark of manufacturer or distributor, or of importer if manufactured outside the United States.

V. Summary of Toyota's Petition

The following views and arguments presented in this section are the views and arguments provided by Toyota. They do not reflect the views of the agency.

Toyota described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

Toyota submitted the following views and arguments in support of the petition:

1. The noncompliant seat belt assemblies were properly installed, and due to Toyota's replacement parts ordering systems, improper replacement seat belt assembly selection and installation would not be likely to occur:

Toyota stated that the primary purpose of the seat belt label required by S4.1(j) of FMVSS No. 209 is to identify the seat belt in the event it needs to be replaced. Toyota contends that there are other means to identify the seat belt without looking at the label, and these methods are equally effective in identifying the correct seat belt to install in a vehicle in the event a replacement is needed.

According to Toyota, all the noncomplying seat belts were installed as original equipment in the subject vehicles and are unique to the Tacoma rear center seat; they cannot be properly installed in any other Tacoma seating positions and are not used on any other Toyota or Lexus models (Service replacement parts are not affected and contain required labels). Toyota also states that manufacturing processes and the unique properties of this center rear belt assembly match the correct rear center seat belt with the rear seat that is tied to a specific VIN. Toyota states this assures that an incorrect seat belt will not be installed in a vehicle during its assembly. If a seat belt replacement is needed, the service parts system would also preclude the purchase and installation of an improper replacement seat belt assembly. Toyota's petition contends that seat belt assembly service parts are ordered through the Toyota authorized dealership system using the seat belt assembly part number or the VIN and that replacement parts for the subject seat belt assemblies are not distributed through the general automotive aftermarket; they are only sold by Toyota dealers. Toyota also states that the seat belt retractor has a separate label with the supplier part number, which can further help identify the seat belt during replacement.

The Toyota petition further states that when a purchaser orders a seat belt replacement part, the installation instruction, usage, and maintenance instructions are included in the service parts packaging and clearly identify that the seat belt is for a Toyota Tacoma and identify the seat belt installation location. According to Toyota, these instructions comply with paragraph S4.1(k) of FMVSS No. 209.

Given the purpose of paragraph S4.1(j) of FMVSS No. 209 Toyota believes there are alternative methods as noted above that can be used to identify seat belts if they need to be replaced.

Therefore, Toyota states that the noncompliant seat belts as installed in the vehicle do not present a safety risk, and the chance of an incorrect seat belt being installed in a vehicle is essentially zero.

2. In the event of a recall the seat belt installed in each vehicle can be identified based on the VIN:

Another purpose of the labeling requirement in the standard is to allow for easier identification of a seat belt in

the event a safety recall is initiated. Toyota states that traceability in the Toyota production system ensures the seat belts can be easily identified without the label specified in paragraph S4.1(j) of FMVSS No. 209.

Toyota again stated that each seat section and the center rear seat belt has a label with a code which is scanned into the seat supplier's system and tied to the VIN for traceability. In the event of a safety recall for this part, Toyota believes the VIN is a sufficient means of identifying the potentially affected vehicles. Therefore, Toyota states the absence of the label specified in the standard poses no risk to motor vehicle safety.

3. The seat belt complies with all other requirements of FMVSS No. 209:

The noncomplying seat belt assemblies may lack the required marking or labeling, but Toyota states all of the seat belt assemblies meet all other requirements of the standard. According to Toyota, there is no impact to performance, functionality, or occupant safety.

4. Toyota is unaware of any owner complaints, field reports, or allegations of hazardous circumstances concerning missing seat belt labels in the subject vehicles:

Toyota has searched its records for reports or other information concerning the rear center seat belts in the subject vehicles. No owner complaints, field reports, or allegations of hazardous circumstances concerning missing seat belt labels were found.

5. Toyota believes NHTSA has granted similar petitions for inconsequential noncompliance:

Toyota cited four FMVSS No. 209 petitions for inconsequential noncompliance related to seat belt assemblies:

- Chrysler Corporation, 57 FR 45865 (October 5, 1992)
- TRW Inc., 58 FR 7171 (February 4, 1993)
- Bombardier Motor Corporation of America, 65 FR 60238 (October 10, 2000)
- Oreion, 80 FR 5616 (November 21, 2014)

VI. Public Comments

Three comments were received. One was from Mr. Edward Thomas. The other two were from Toyota. Mr. Thomas stated his belief that Toyota's petition should be denied for the following reasons:

1. The four petitions that Toyota cites as being similar are not equivalent or substantially similar to Toyota's case. In only one of the cited cases was the label missing, and that case (Bomardier) involved a low speed vehicle which was only sold by that company in the U.S. market. In the cited cases involving Oreion, another low speed vehicle, only the production date was missing from the label. In TRW's case, about 40 vehicles had labels with model numbers for the front right and front left reversed. Only the Chrysler case involved a substantial number of vehicles, and there, the correct part number appeared on the belt assembly; the only missing information is information that is no longer required by FMVSS 209.

2. In addition to content, S4.1(j) of FMVSS No. 209 requires that the seat belt assembly be permanently marked or labeled. If a label can be mistakenly removed, then it likely did not meet the permanency requirement.

3. Some consideration should be given to the fact that at some point many of subject vehicles will end up in a salvage yard where the belts will be removed and offered for sale. Without the labels, the chances of them being installed in different seating positions and vehicles is increased.

4. The number of vehicles involved were manufactured over a six-day period. A recall to correct the noncompliance should not pose and undue hardship on the world's largest and wealthiest auto manufacturer. The seat belt assemblies do not need to be replaced, a simple label with the required information could be applied to the retractor housing in order to bring vehicles into compliance.

Toyota submitted a comment on June 24, 2020, to offer supplemental reasoning in support of its petition because Toyota filed a separate noncompliance report on May 4, 2020, indicating that certain replacement seat belt assemblies may not have been packaged with an installation instruction sheet or may have been packaged with an incorrect instruction sheet intended for a different seat belt assembly. The aforementioned 70 Tacoma vehicles are also affected by the noncompliance report filed by Toyota on May 4, 2020.

Because the label is sewn to the rear center seatbelt and has been removed while scanning the code on the label, NHTSA inquired if ripping the label off would weaken the webbing at the stitch location. Therefore, on December 7, 2020, NHTSA requested Toyota provide additional information about how the label was removed and whether it affects the webbing strength. In response to the agency's request, Toyota conducted additional testing and analysis to demonstrate that there is no weakening effect on the seat belt stitching after removing the label by tearing. Toyota held an online meeting on December 17, 2020, to show its findings to the agency and subsequently, submitted the supplemental information discussed during the online meeting into the docket on December 21, 2020.[1] Toyota concluded in this submission that the pull forces needed to tear the label are much lower than the force needed to affect the seat belt stitching.

VII. NHTSA's Analysis

1. General Principles

Congress passed the National Traffic and Motor Vehicle Safety Act of 1966 (the ''Safety Act'') with the express purpose of reducing motor vehicle accidents, deaths, injuries, and property damage. 49 U.S.C. 30101. To this end, the Safety Act empowers the Secretary of Transportation to establish and enforce mandatory FMVSS 49 U.S.C. 30111. The Secretary has delegated this authority to NHTSA. 49 CFR 1.95.

NHTSA adopts an FMVSS only after the agency has determined that the performance requirements are objective, practicable, and meet the need for motor vehicle safety. *See* 49 U.S.C. 30111(a). Thus, there is a general presumption that the failure of a motor vehicle or item of motor vehicle equipment to comply with an FMVSS increases the risk to motor vehicle safety beyond the level deemed appropriate by NHTSA through the rulemaking process. To protect the public from such risks, manufacturers whose products fail to comply with an FMVSS are normally required to conduct a safety recall under which they must notify owners, purchasers, and dealers of the noncompliance and provide a free remedy. 49 U.S.C. 30118–30120. However, Congress has recognized that, under some limited circumstances, a noncompliance could be ''inconsequential'' to motor vehicle safety. It, therefore, established a procedure under which NHTSA may consider whether it is appropriate to exempt a manufacturer from its notification and remedy (*i.e.,* recall) obligations. 49 U.S.C. 30118(d) & 30120(h). The agency's regulations governing the filing and consideration of petitions for inconsequentiality exemptions are set out at 49 CFR part 556.

Under the Safety Act and Part 556, inconsequentiality exemptions may be granted only in response to a petition from a manufacturer, and then only after

[1] *see Toyota submission of supplemental information to NHTSA–2019–0098; https://www.regulations.gov/document?D=NHTSA-2019-0098-0005.*

notice in the **Federal Register** and an opportunity for interested members of the public to present information, views, and arguments on the petition. In addition to considering public comments, the agency will draw upon its own understanding of safety-related systems and its experience in deciding the merits of a petition. An absence of opposing argument and data from the public does not require NHTSA to grant a manufacturer's petition.

Neither the Safety Act nor Part 556 defines the term ''inconsequential.'' The agency determines whether a particular noncompliance is inconsequential to motor vehicle safety based upon the specific facts before it in a particular petition. In some instances, NHTSA has determined that a manufacturer met its burden of demonstrating that a noncompliance is inconsequential to safety. For example, a label intended to provide safety advice to an owner or occupant may have a misspelled word, or it may be printed in the wrong format or the wrong type size. Where a manufacturer has shown that the discrepancy with the safety requirement should not lead to any misunderstanding, NHTSA has granted an inconsequentiality exemption, especially where other sources of correct information are available. *See, e.g.,* General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, 81 FR 92963 (December 20, 2016).

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more substantial and difficult to meet. Accordingly, the agency has not found many such noncompliances inconsequential.[2] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[3] NHTSA also does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [4] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [5]

Arguments that only a small number of vehicles or items of motor vehicle equipment are affected have also not justified granting an inconsequentiality petition.[6] Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant or a consumer who is exposed to the consequence of that noncompliance.[7] These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

2. Analysis and Response to the Public Comment From Mr. Thomas

In response to the public comment from Mr. Thomas,[8]

a. NHTSA agrees with Mr. Thomas that the four petitions that Toyota cites are not equivalent or substantially similar to Toyota's case. An important consideration in determining inconsequentiality is the safety risk posed to individuals. NHTSA uses the prior petitions cited by the manufacturer as a reference only and does not depend upon the prior petitions for its basis for determining whether to grant or deny an inconsequential petition. The facts of any petition are almost always unique, requiring each petition to be considered on its own merits. In this case, it does not have any impact on the agency's decision-making process.

b. S4.1(j) of FMVSS 209 requires that the seat belt assembly be ''permanently'' marked or labeled. NHTSA has never defined ''permanently affixed'' as part of a regulation; but specifically, NHTSA has said that a label is permanent if it cannot be removed without destroying or defacing it and that the label should remain legible for the expected life of the product under normal conditions. Depending on where the label is affixed, various methods of attachment, such as sewing or heat transfer graphics, may meet these criteria.[9] Toyota's marking label is sewn to the rear center seat belt, which may meet the ''permanency'' criteria.

c. Mr. Thomas contended that a possible safety consequence of the noncompliance would occur if the subject vehicles end up in a salvage yard where the belts will be removed and offered for sale, and without the labels, the chances of them being installed in different seating positions and vehicles is increased. According to Toyota, all the noncomplying seat belts were installed as original equipment in the subject vehicles and are unique to the Tacoma rear center seat; they cannot be properly installed in any other Tacoma seating positions and are not used on any other Toyota or Lexus models. Toyota further explained that these seat belt assemblies installed in another seating position or vehicle would not fit properly, meaning that there would be both visual and physical incompatibilities. Such incompatibilities would include color mismatch, slack in the webbing, incorrect webbing length to allow proper functioning, incompatible bracketry, and/or an incorrect installation angle that would prevent the webbing from being retracted from the assembly altogether. In addition,

[2] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[3] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[4] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[5] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[6] *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance,* 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

[7] *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance,* 64 FR 29408, 29409 (June 1, 1999).

[8] *See Edward Thomas Response to NHTSA–2019–0098; https://www.regulations.gov/document?D=NHTSA-2019-0098-0003.*

[9] *See Interpretation Letter to Mr. Todd Mitchell, 3/19/2001; https://isearch.nhtsa.gov/files/22512.rbm.html.*

service replacement parts are not affected and contain required labels. Therefore, because these seat belt assemblies were configured specifically for installation in the subject vehicles, NHTSA does not find the likelihood that they will be removed from the subject vehicles and installed in other seating position or vehicles to be a safety concern based on the specific facts of this case.

d. Mr. Thomas stated that the number of vehicles involved (70 maximum) were manufactured over a six-day period (July 25–30, 2019). A recall to correct the noncompliance should not pose an undue hardship on the world's largest and wealthiest auto manufacturer. In general, an important consideration in determining inconsequentiality is the safety risk posed to individuals, not the quantity of vehicles affected. Since all the seat belt assemblies meet all other performance requirements of the standard, neither a small nor a big number of affected vehicles will play a decisive factor in the agency's justification to grant or deny an inconsequentiality petition. Mr. Thomas also stated that the seat belt assemblies do not need to be replaced; a simple label with the required information could be applied to the retractor housing in order to bring the vehicles into compliance. Toyota has stated that the seat belt retractor indeed has a separate label with the supplier part number, which can further help identify the seat belt during replacement.

3. Analysis and Response to the Comments From Toyota

Toyota filed a separate noncompliance report on May 4, 2020, indicating that certain replacement seat belt assemblies may not have been packaged with an installation instruction sheet or may have been packaged with an incorrect instruction sheet intended for a different seatbelt assembly. Because of this additional noncompliance report, Toyota submitted a comment on June 24, 2020,[10] to offer supplemental reasoning in support of its petition. While some of the replacement assemblies covered by the May 4, 2020, noncompliance report are designed to be installed on the same model/MY Tacoma vehicles as the 70 Tacoma vehicles that are the subject of its September 27, 2019, petition, Toyota stated that it checked the service history and CARFAX reports on all 70 of these Tacoma vehicles and none of them have replaced the rear center seat belt according to that information. As the replacement seat belt assemblies in Toyota part distribution centers that are affected by the issue described in the May 4, 2020, noncompliance report have been held, and their distribution prevented, it is highly unlikely that any of the aforementioned 70 Tacoma vehicles could be repaired using a replacement assembly affected by this missing or incorrect instruction sheet. Since the replacement seat belt assemblies of the affected 70 Tacoma vehicles have been held and their distribution prevented, NHTSA agrees that any future replacement assembly will not be affected by this missing or incorrect instruction sheet.

Because the label is sewn to the rear center seat belt and has been removed while scanning the code on the label, NHTSA requested that Toyota provide additional information on December 7, 2020, about how the label was removed and whether it affects the webbing strength. In response, Toyota submitted another comment on December 21, 2020,[11] explaining that they conducted additional testing and analysis to show that there is no visible effect on the seat belt stitching after removing the label by tearing it from where it was stitched. Measured pull forces in Toyota's testing also indicate that the label tears at a much lower pull force than the force required to tear apart the seat belt stitching. The agency agrees that the removal of the label would not affect the webbing strength at the stitch location.

NHTSA also believes that should the seat belts be the subject of a recall, the combination of traceability in the Toyota production system, along with the additional markings on the seat belt assemblies, would ensure that the seat belts can be easily identified without the label specified in paragraph S4.1(j) of FMVSS No. 209.

Toyota also stated that each seat section, and the center rear seat belt, has a label with a code which is scanned into the seat supplier's system and tied to each affected vehicle's VIN for traceability. In the event of a safety recall for this part, Toyota believes the VIN is a sufficient means of identifying the potentially affected vehicles. Therefore, the agency agrees that, for the facts specific to this petition, the absence of the label specified in the standard poses no risk to motor vehicle safety.

[10] *See Toyota Motor North America—Comments; https://www.regulations.gov/document?D=NHTSA-2019-0098-0004.*

[11] *See Toyota Comments 12–21–2020; https://www.regulations.gov/document?D=NHTSA-2019-0098-0005.*

VIII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that Toyota has met its burden of persuasion that the subject FMVSS No. 209 noncompliance in the affected vehicles is inconsequential to motor vehicle safety. Accordingly, Toyota's petition is hereby granted and Toyota is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject vehicles that Toyota no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Toyota notified them that the subject noncompliance existed.

Finally, NHTSA would like to make clear that granting this petition in no way indicates a judgement by the agency that there is not a safety need for the FMVSS requirement(s) in question. In addition, the granting of the current petition in no way indicates NHTSA's judgment in any future inconsequential noncompliance petition, regardless of the level of similarity with the current petition request.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–01794 Filed 1–27–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Notice of Final Federal Agency Actions on Proposed Highway Projects in Texas

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

ACTION: Notice of limitation on claims for judicial review of actions by TxDOT and Federal agencies.

SUMMARY: This notice announces actions taken by TxDOT and Federal agencies that are final. The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried-out by TxDOT pursuant to an assignment agreement executed by FHWA and TxDOT. The actions relate to various proposed highway projects in the State of Texas. These actions grant licenses, permits, and approvals for the projects.

DATES: By this notice, TxDOT is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of TxDOT and Federal agency actions on the highway projects will be barred unless the claim is filed on or before the deadline. For the projects listed below, the deadline is 150 days from the date of publication. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Patrick Lee, Environmental Affairs Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701; telephone: (512) 416–2358; email: *Patrick.Lee@txdot.gov.* TxDOT's normal business hours are 8:00 a.m.–5:00 p.m. (central time), Monday through Friday.

SUPPLEMENTARY INFORMATION: The environmental review, consultation, and other actions required by applicable Federal environmental laws for these projects are being, or have been, carried-out by TxDOT pursuant to 23 U.S.C. 327 and a Memorandum of Understanding dated December 9, 2019, and executed by FHWA and TxDOT.

Notice is hereby given that TxDOT and Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the highway projects in the State of Texas that are listed below.

The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion (CE), Environmental Assessment (EA), or Environmental Impact Statement (EIS) issued in connection with the projects and in other key project documents. The CE, EA, or EIS and other key documents for the listed projects are available by contacting the local TxDOT office at the address or telephone number provided for each project below.

This notice applies to all TxDOT and Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [54 U.S.C. 300101 *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [54 U.S.C. 312501 *et seq.*]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209].

7. *Wetlands and Water Resources:* Clean Water Act [33 U.S.C. 1251–1377] (Section 404, Section 401, Section 319); Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(m), 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128].

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

The projects subject to this notice are:

1. The Woodrow Road widening project extends from FM 1730 (Slide Road) to US 87 in Lubbock County, Texas. TxDOT plans to widen Woodrow Road by converting the existing two-way rural roadway to a five-lane urban facility with right-turn lanes at major intersections. Shared-use paths and sidewalks with ADA ramps will be constructed throughout the project. This project is approximately 4.75 miles in length and will improve transportation infrastructure to current design standards and improve mobility in southern Lubbock County. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on September 7, 2021, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Lubbock District Office at 135 Slaton Road, Lubbock, Texas 79404; telephone (806)748–4472.

2. SH 30 from 2,225-ft west of Gibbons Creek to 2,225-ft east of Gibbons Creek, Grimes County, Texas. The project would replace a bridge on SH 30 at Gibbons Creek. The proposed structure would be 86-ft wide and 550-ft long and would incorporate bridge and approach rails that meet current standards. The proposed bridge would be shifted slightly north of the current alignment and the project would require 3.854 ac of new right-of-way. The purpose of the proposed project is to improve safety by bringing the bridge and approaches up to current standards. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in, the Categorical Exclusion Determination issued on September 23, 2021 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Bryan District Office at 2591 North Earl Rudder Fwy, Bryan, TX 77803; telephone (979)778–9764.

3. Center Street from Kohlers Crossing to Burleson Street, Hays County. The project proposes to replace existing UPRR rail siding through downtown Kyle from Kohlers Crossing to Burleson Street. The project is approximately two miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical

Exclusion Determination issued on October 1, 2021, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone 512–832–7000.

4. FM 1560 from FM 471 to SH 16 in Bexar County, Texas. The project includes expanding the existing roadway from two to four lanes with a raised median or center turn lane and constructing bike lanes and sidewalks along the entire length of the project. The project is approximately 5.2 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on October 7, 2021, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT San Antonio District Office at 4615 NW Loop 410, San Antonio, TX 78229; telephone (210) 615–5839.

5. William Cannon Drive from McKinney Falls Parkway to Running Water Drive, Travis County. The project will improve William Cannon Drive from a two-lane undivided urban roadway to a four-lane divided urban roadway with bicycle and pedestrian accommodations. The project is approximately 0.88 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on October 13, 2021, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone 512–832–7000.

6. SH 80 from SH 123 to BU 181E, in Karnes County, Texas. The purpose of the project is to improve mobility along SH 80 by widening and rehabilitating SH 80 between SH 123 and BU 181E. The proposed project would involve widening and reconstruction of the main lanes, adding a continuous center left turn lane, and including pedestrian accommodations and replacement of traffic signals in portions of the project area, for approximately 1.8 miles. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on October 15, 2021 and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting TxDOT at the address provided above or the TxDOT Corpus Christi District Office at 1701 South Padre Island Drive, Corpus Christi, TX 78416; telephone (361) 808–2500.

7. IH 45 Frontage Road Conversion and Ramp Relocation, 1.6 Miles North of FM 27 to 1.5 Miles South of US 84, Freestone County, Texas. Construction includes ramp reconfiguration, frontage road rehabilitation, frontage road realignment, new location frontage road, and intersection improvements. The project would encompass 107.8 acres of disturbed construction activity. This project would require approximately 6.44 acres of new ROW along the east side of the existing ROW. There are four proposed northbound new location ramps as follows: Exit ramps to Church Street, US 84, and FM 27. Also, a re-constructed entrance ramp from FM 27. There are five proposed southbound ramps as follows: New location, entrance ramp from Church Street, and new location exit ramps to Church Street, to US 84, to FM 27 with a 2-way westbound frontage road, and a new location exit ramp to the 2-way west frontage road north of the FM 27 exit ramp. All ramps would consist of a 14-ft travel lane with 6-ft outside shoulders and 2-ft inside shoulders. The IH 45 east side Frontage Road will be realigned at US 84 and FM 27. The remaining existing IH 45 East Frontage Road pavement will be rehabilitated. The IH 45 east side Frontage Road will be extended from Church Street to US 84. The IH 45 west side Frontage Road will be realigned at Church Street, US 84, and FM 27. The remaining existing IH 45 west side Frontage Road pavement will be rehabilitated. Between US 84 and FM 27 the east and west frontage roads would consist of two 12-ft one-way travel lanes with 4-ft inside and outside shoulders, and the outside shoulder would be bounded with curb and gutter. Behind the curb sections there may be an offset of approximately 0 to 5 ft, and 10-ft shared use path. Both the IH 45 east side and west side frontage roads will be converted to one-way operation from Church Street to FM 27. Two-way operation will remain south of Church Street and north of FM 27 on the west side frontage road. Both east side and west side frontage roads would consist of two 12-ft travel lanes with 4-ft shoulders bounded by open ditches. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on October 22, 2021, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Bryan District at 2591 N Earl Rudder Fwy, Bryan, TX 77803; telephone (979) 778–9764.

8. Interstate Highway 35 (I–35), from north of SE Inner Loop to south of RM 1431 (southbound), Williamson County, Texas. This project will take place in the cities of Georgetown and Round Rock along 4.4 miles of I–35. The project will involve various improvements to I–35, SE Inner Loop, and Westinghouse Road. The project includes: Removing the Westinghouse Road bridge and constructing a new I–35 bridge over Westinghouse Road; constructing westbound to southbound Continuous Flow Intersection at Westinghouse Road; improving intersection at I–35 and SE Inner Loop; improve existing southbound I–35 frontage road from north of SE Inner Loop to RM 1431; reversing entrance/exit ramps along the southbound I–35 frontage road between SE Inner Loop and RM 1431; and improving bicycle and pedestrian sidewalks and paths. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Categorical Exclusion Determination issued on November 9, 2021, and other documents in the TxDOT project file. The Categorical Exclusion Determination and other documents in the TxDOT project file are available by contacting the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone: (512) 832–7000.

9. US 59 Loop North from International Blvd. to 0.12 miles south of East Corridor Rd. in Webb County, Texas. This proposed project would upgrade the existing US 59 roadway to a full urban interstate expressway with three 12-ft. wide main lanes with 4-ft. wide inside shoulders and 10-ft. wide outside shoulders in each direction separated by an approximately 3-ft. tall concrete traffic barrier. One-direction frontage roads would consist of three 12-foot lanes with 4-foot wide inside shoulders and 2-foot wide outside shoulders. There would be main lane overpasses at each of the major arterial street intersections at (from north to south) Shiloh Road, Del Mar Boulevard, University Drive, and Jacaman Road. Storm water drainage would typically be via a mix of grass-lined open ditches and underground separate storm sewers that would outfall into storm water detention ponds that will be constructed adjacent to the proposed project. The

actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA) the Finding of No Significant Impact (FONSI) issued on 9/01/2021, and other documents in the TxDOT project file. The EA, FONSI and other documents in the TxDOT project file are available by contacting the TxDOT Laredo District Office at 1817 Bob Bullock Loop, Laredo, TX 78043, ATTN Raul Leal-Laredo District Public Information Officer; telephone: 956–712–7416; email: *Raul.Leal@txdot.gov.* The EA can also be viewed and downloaded from the following website: *https://www.txdot.gov/inside-txdot/projects/studies/laredo/092021.html.*

10. I–35 Capital Express North from SH 45N to US 290E, Travis and Williamson Counties. The project will add one non-tolled managed lane in each direction, reconstruct intersections and bridges to accommodate the additional lane and increase east/west mobility, add a diverging diamond interchange at Wells Branch Parkway, improve bicycle and pedestrian accommodations along I–35 frontage roads and at east/west crossings and make additional safety and mobility improvements. The project is approximately 11.5 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), Finding of No Significant Impact (FONSI) issued on December 17, 2021 and other documents in the TxDOT project file. The EA, FONSI and other documents in the TxDOT project file are available by contacting the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone: 512–832–7000. The EA and FONSI can also be viewed and downloaded from the following website: *https://my35capex.com/.*

11. I–35 Capital Express South from US 290W/SH 71 to SH 45SE, Travis and Hays Counties. The project would add two non-tolled high-occupancy managed lanes in each direction. The managed lanes would be elevated from north of Stassney Lane to south of William Cannon Drive. Additionally, the project would reconstruct bridges, add auxiliary lanes, improve bicycle and pedestrian accommodations along I–35 frontage roads and includes other safety and mobility improvements. The project is approximately 10 miles in length. The actions by TxDOT and Federal agencies and the laws under which such actions were taken are described in the Final Environmental Assessment (EA), Finding of No Significant Impact (FONSI) issued on December 21, 2021, and other documents in the TxDOT project file. The EA, FONSI and other documents in the TxDOT project file are available by contacting the TxDOT Austin District Office at 7901 North I–35, Austin, TX 78753; telephone: 512–832–7000. The EA and FONSI can also be viewed and downloaded from the following website: *https://my35capex.com/.*

Authority: 23 U.S.C. 139(l)(1).

Michael T. Leary,

Director, Planning and Program Development, Federal Highway Administration.

[FR Doc. 2022–01448 Filed 1–27–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (PRA). An agency may not conduct or sponsor, and respondents are not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning renewal of its information collection titled ''Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks'' (Guidance).

DATES: Comments must be received by March 29, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, Office of the Comptroller of the Currency, Attention: 1557–0246, 400 7th Street SW, suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0246'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period. You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' dropdown. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0246'' or ''Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public

submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed renewal of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing this notice.

Description: On December 16, 2009, the OCC, FDIC, FRB, and NCUA sought comment on proposed Guidance,[1] which they subsequently issued in final form on August 17, 2010.[2] The Guidance focuses on the need to provide adequate information to consumers about reverse mortgage products, to provide qualified independent counseling to consumers considering these products, and to avoid potential conflicts of interest. The Guidance also addresses related policies, procedures, internal controls, and third party risk management.

- The information collection requirements contained in the Guidance address the implementation of policies and procedures, training, and program maintenance. Institutions offering reverse mortgages should have written policies and procedures that prohibit the practice of directing a consumer to a particular counseling agency or contacting a counselor on the consumer's behalf.
- Policies should be clear so that originators do not have an inappropriate incentive to sell other products that appear linked to the granting of a mortgage.
- Legal and compliance reviews should include oversight of compensation programs so that lending personnel are not improperly encouraged to direct consumers to particular products.
- Training should be designed so that relevant lending personnel are able to convey information to consumers about product terms and risks in a timely, accurate, and balanced manner.

Title of Information Collection: Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks.

OMB Control No.: 1557–0246.

Affected Public: National banks, Federal savings associations, subsidiaries of national banks and Federal savings associations, and Federal branches or agencies of foreign banks.

Type of Review: Regular.

Estimated Number of Respondents: 12.

Frequency of Response: On occasion.

Total Estimated Annual Burden: 136 hours.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–01700 Filed 1–27–22; 8:45 am]

BILLING CODE 4810–33–P

[1] 74 FR 66652.

[2] 75 FR 50801.

DEPARTMENT OF THE TREASURY

Open Meeting of the Federal Advisory Committee on Insurance

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: This notice announces that the U.S. Department of the Treasury's Federal Advisory Committee on Insurance (FACI) will meet via videoconference on Thursday, February 17, 2022 from 12:00 p.m.–3:30 p.m. Eastern Time. The meeting is open to the public. The FACI provides non-binding recommendation and advice to the Federal Insurance Office (FIO) in the U.S. Department of Treasury.

DATES: The meeting will be held via videoconference on Thursday, February 17, 2022, from 12:00 p.m.–3:30 p.m. Eastern Time.

Attendance: The meeting will be held via videoconference and is open to the public. The public can attend remotely via live webcast: *www.yorkcast.com/treasury/events/2022/02/17/faci.* The webcast will also be available through the FACI's website: *https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/federal-insurance-office/federal-advisory-committee-on-insurance-faci.* Please refer to the FACI website for up-to-date information on this meeting. Requests for reasonable accommodations under Section 504 of the Rehabilitation Act should be directed to Snider Page, Office of Civil Rights and Diversity, Department of the Treasury at (202) 622–0341, or *snider.page@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Jigar Gandhi, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220, at (202) 622–3220 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. app. 10(a)(2), through implementing regulations at 41 CFR 102–3.150.

Public Comment: Members of the public wishing to comment on the business of the FACI are invited to submit written statements by either of the following methods:

Electronic Statements

- Send electronic comments to *faci@treasury.gov.*

Paper Statements

- Send paper statements in triplicate to the Federal Advisory Committee on Insurance, U.S. Department of the Treasury, 1500 Pennsylvania Ave. NW, Room 1410 MT, Washington, DC 20220.

In general, the Department of the Treasury will make submitted comments available upon request without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. Requests for public comments can be submitted via email to *faci@treasury.gov.* The Department of the Treasury will also make such statements available for public inspection and copying in the Department of the Treasury's Library, 720 Madison Place NW, Room 1020, Washington, DC 20220, on official business days between the hours of 10:00 a.m. and 5:00 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–2000. All statements received, including attachments and other

supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Tentative Agenda/Topics for Discussion: This will be the first FACI meeting of 2022. In this meeting, the FACI will continue to discuss topics related to climate-related financial risk and the insurance sector. The FACI will also receive status updates from each of its subcommittees and from FIO on its activities, and consider any new business.

Dated: January 24, 2022.

Steven Seitz,

Director, Federal Insurance Office.

[FR Doc. 2022–01690 Filed 1–27–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Determinations Regarding Certain Nonbank Financial Companies

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before March 29, 2022.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by the following method:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number TREAS–DO–2022–0002 and the specific Office of Management and Budget (OMB) control number 1505–0244.

FOR FURTHER INFORMATION CONTACT: For questions related to these programs, please contact Dennis Lee by emailing *dennis.lee@treasury.gov,* or calling (202) 622–7785. Additionally, you can view the information collection requests at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: Determinations Regarding Certain Nonbank Financial Companies.

OMB Control Number: 1505–0244.

Type of Review: Extension without change of a currently approved collection.

Description: Section 113 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''DFA'') (Pub. L. 111–203) provides the Financial Stability Oversight Council (the ''Council'') the authority to require that a nonbank financial company be supervised by the Board of Governors of the Federal Reserve System and be subject to prudential standards in accordance with Title I of the DFA if the Council determines that material financial distress at the firm, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the firm, could pose a threat to the financial stability of the United States. The information collected in § 1310.20 from state and federal regulatory agencies and from nonbank financial companies will be used generally by the Council to carry out its duties under Title I of the Dodd-Frank Act. The collections of information in §§ 1310.21, 1310.22 and 1310.23 provide an opportunity for a nonbank financial company to request a hearing or submit written materials to the Council concerning whether, in the company's view, material financial distress at the company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the company, could pose a threat to the financial stability of the United States.

Form: None.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1.

Frequency of Response: On occasion.

Estimated Total Number of Annual Responses: 1.

Estimated Time per Response: 20 hours.

Estimated Total Annual Burden Hours: 20.

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. 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.*)

Dated: January 24, 2022.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2022–01698 Filed 1–27–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; CARES Act Air Carrier Loan and Payroll Support Program

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests 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. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before February 28, 2022.

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 submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Title: CARES Act Air Carrier Loan and Payroll Support Programs.

OMB Control Number: 1505–0263.

Type of Review: Extension of a currently approved collection.

Description: On March 27, 2020, the President signed the ''Coronavirus Aid, Relief, and Economic Security Act'' or the ''CARES Act'' (Pub. L. 116–136), which provides emergency assistance and health care response for individuals, families and businesses affected by the COVID–19 pandemic, and provides emergency appropriations

to support executive branch agency operations during the COVID–19 pandemic. The CARES Act authorized the Secretary of the Treasury to make loans, loan guarantees, and other investments that do not exceed $500 billion in the aggregate to provide liquidity to eligible businesses, States, and municipalities related to losses incurred as a result of coronavirus. Section 4003(b)(1)–(3) authorized the Secretary to make loans and loan guarantees available to passenger air carriers and cargo air carriers, as well as certain related businesses, and businesses critical to maintaining national security. Section 4112 authorized the Secretary to provide payroll support totaling $32 billion to air carriers and certain contractors (PSP1). While Treasury is no longer accepting loan program or PSP1 applications, both programs include ongoing compliance reporting and recordkeeping requirements.

On December 27, 2020, the President signed the Consolidated Appropriations Act, 2021 or the ''Appropriations Act,'' which provides additional emergency assistance and health care response for individuals, families and businesses affected by the COVID–19 pandemic. Subtitle A of Title IV of Division N of the Appropriations Act (the PSP Extension Law) authorizes the Secretary to provide financial assistance totaling $16 billion to passenger air carriers and certain contractors (PSP2).

On March 11, 2021, the President signed the American Rescue Plan Act, 2021, which provided additional emergency assistance and economic relief in response to the COVID–19 pandemic. Subtitle C of Title VII of the American Rescue Plan Act authorizes the Secretary to provide financial assistance totaling $15 billion to passenger air carriers and certain contractors that received financial assistance under PSP2 (PSP3).

As part of the loan, PSP1, PSP2, and PSP3 agreements, applicants will need to maintain records for a period of five years or more, depending on the agreement type and period of performance, as well as submit compliance reports quarterly to ensure funding is used in accordance with the agreements and aid statutory reporting requirements.

Form: Applications, Agreements, and associated Forms; Compliance Reporting Forms.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 1,300.

Frequency of Response: Quarterly.

Estimated Total Number of Annual Responses: 3,400.

Estimated Time per Response: 4.25 hours.

Estimated Total Annual Burden Hours: 13,070.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: January 24, 2022.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2022–01807 Filed 1–27–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF VETERANS AFFAIRS

Loan Guaranty: Specially Adapted Housing Assistive Technology Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Funding Opportunity VA–SAHAT–22–07.

SUMMARY: The Department of Veterans Affairs (VA) is publishing the announcement of the availability of funds for the Specially Adapted Housing Assistive Technology (SAHAT) Grant Program for Fiscal Year (FY) 2022. The objective of the grant is to encourage the development of new assistive technologies for specially adapted housing (SAH). This notice is intended to provide applicants with the information necessary to apply for the SAHAT Grant Program. VA strongly recommends referring to the SAHAT Grant Program regulation in conjunction with this notice. The registration process described in this notice applies only to applicants who will register to submit project applications for FY 2022 SAHAT Grant Program funds.

DATES: Applications for the SAHAT Grant Program must be submitted through *www.Grants.gov* by 11:59 p.m. Eastern Standard Time on March 11, 2022. Awards made for the SAHAT Grant Program will fund operations for FY 2022. The SAHAT Grant Program application package for funding opportunity VA–SAHAT–22–07 is available through *www.Grants.gov* and is listed as VA-Specially Adapted Housing Assistive Technology Grant Program. Applications may not be sent by mail, email, or facsimile. All application materials must be in a format compatible with the *www.Grants.gov* application submission tool. Applications must be submitted as a complete package. Materials arriving separately will not be included in the application package for consideration and may result in the application being rejected. Technical assistance with the preparation of an initial SAHAT Grant Program application is available by contacting the program official listed below.

FOR FURTHER INFORMATION CONTACT: Jason Latona, Chief, Specially Adapted Housing, Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, 202–461–9201 or *Jason.Latona@va.gov.* This is not a toll-free telephone number.

SUPPLEMENTARY INFORMATION: This notice is divided into eight sections. Section I provides a summary of and background information on the SAHAT Grant Program as well as the statutory authority, desired outcomes, funding priorities, definitions and delegation of authority. Section II covers award information, including funding availability and the anticipated start date of the SAHAT Grant Program. Section III provides detailed information on eligibility and the threshold criteria for submitting an application. Section IV provides detailed application and submission information, including how to request an application, application content and submission dates and times. Section V describes the review process, scoring criteria and selection process. Section VI provides award administration information such as award notices and reporting requirements. Section VII lists agency contact information. Section VIII provides additional information related to the SAHAT Grant Program. This notice includes citations from 38 CFR part 36, and VA Financial Policy, Volume X Grants Management, which applicants and stakeholders are expected to read to increase their knowledge and understanding of the SAHAT Grant Program.

I. Program Description

A. Summary

Pursuant to the Veterans' Benefits Act of 2010 (Pub. L. 111–275, § 203), the Secretary of Veterans Affairs, through the Loan Guaranty Service (LGY) of the Veterans Benefits Administration (VBA), is authorized to provide grants of financial assistance to develop new assistive technology. The objective of the SAHAT Grant Program is to encourage the development of new assistive technologies for adapted housing.

B. Background

LGY currently administers the SAH Grant Program. Through this program, LGY provides funds to eligible Veterans and Service members with certain

service-connected disabilities to help purchase or construct an adapted home, or modify an existing home, to allow them to live more independently. Please see 38 U.S.C. 2101(a)(2)(B) and (C) and 38 U.S.C. 2101(b)(2) for a list of qualifying service-connected disabilities. Currently, most SAH adaptations involve structural modifications such as ramps; wider hallways and doorways; roll-in showers; and other accessible bathroom features, etc. For more detailed information about the SAH Grant Program, please visit *http://www.benefits.va.gov/homeloans/adaptedhousing.asp.*

VA acknowledges that there are many emerging technologies and improvements in building materials that could improve home adaptions or otherwise enhance a Veteran's or Service member's ability to live independently. Therefore, in 38 CFR 36.4412(b)(2), VA has defined ''new assistive technology'' as an advancement that the Secretary determines could aid or enhance the ability of an eligible individual, as defined in 38 CFR 36.4401, to live in an adapted home. New assistive technology can include advancements in new-to-market technologies, as well as new variations on existing technologies. Examples of the latter might include modifying an existing software application for use with a smart home device; upgrading an existing shower pan design to support wheelchairs; using existing modular construction methods to improve bathroom accessibility; or using existing proximity technology to develop an advanced application tailored to blind users.

Please Note: SAHAT funding does not support the construction or modification of residential dwellings for accessibility. Veterans and Service members interested in receiving assistance to adapt a home are encouraged to review the following fact sheet: *https://www.prosthetics.va.gov/factsheet/PSAS-FactSheet-Housing-Adaptation-Programs.pdf* to identify Home Adaptation programs offered by VA.

C. Statutory Authority

Public Law 111–275, the Veterans' Benefits Act of 2010, was enacted on October 13, 2010. Section 203 of the Act added 38 U.S.C. 2108 to establish the SAHAT Grant Program. The Act authorized VA to provide grants of up to $200,000 per fiscal year, through September 30, 2016, to a ''person or entity'' for the development of specially adapted housing assistive technologies. For the purpose of this notice, VA refers to such persons or entities as grantees or grant recipients, and the terms are interchangeable.

On October 1, 2020, the Continuing Appropriations Act, 2021 and Other Extensions Act was enacted (Pub. L. 116–159, § 5201). Section 5201 of Pub. L. 116–159 extended the authority for VA to provide grants in the manner listed above through September 30, 2022 (see 38 U.S.C. 2108 and 38 CFR 36.4412).

D. Desired Outcomes and Funding Priorities

Grantees will be expected to leverage grant funds to develop new assistive technologies for SAH. In 38 CFR 36.4412(f)(2), VA set out the scoring criteria and the maximum points allowed for each criterion. As explained in the preambles to both the proposed and final rules, while the scoring framework is set out in the regulation text, each notice will address the scoring priorities for that particular grant cycle (79 FR 53146, 53148, September 8, 2014; 80 FR 55763, 55764, September 17, 2014). For FY 2022, the Secretary has identified the categories of innovation and unmet needs as top priorities. These categories are further described as scoring criteria 1 and 2 in Section V(A) of this notice. Although VA encourages innovation across a wide range of specialties, VA is, in this grant cycle, particularly interested in technologies that could help blinded Veterans optimize their independence (*e.g.,* mobile applications, safety devices, etc.). VA also has particular interest in applications that either demonstrate innovative approaches in the design and building of adaptive living spaces or would lead to new products and techniques that expedite the modification of existing spaces, so as to reduce the impact that adaptive projects can have on a Veteran's quality of life during the construction phase. VA notes that applications addressing these categories of special interest are not guaranteed selection, but they would, on initial review, be categorized as meeting the priorities for this grant cycle.

Additional information regarding how these priorities will be scored and considered in the final selection is contained in Section V(A) of this notice.

E. Definitions

Definitions of terms used in the SAHAT Grant Program are found at 38 CFR 36.4412(b).

F. Delegation of Authority

Pursuant to 38 CFR 36.4412(i), certain VA employees appointed to or lawfully fulfilling specific positions within VBA are delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to the SAHAT Grant Program authorized by 38 U.S.C. 2108.

G. Assistance Listings

The listings include the following: 64.051 Specially Adapted Housing Assistive Technology Grant Program; 64.106 Specially Adapted Housing for Disabled Veterans; and 64.118 Veterans Housing Direct Loans for Certain Disabled Veterans.

II. Federal Award Information

A. Funding Availability

Funding will be provided as an assistance agreement in the form of grants. The number of assistance agreements VA will fund as a result of this notice will be based on the quality of the technology grant applications received and the availability of funding. However, the maximum amount of assistance a technology grant applicant may receive in any fiscal year is limited to $200,000.

B. Additional Funding Information

Funding for these projects is not guaranteed and is subject to the availability of funds and the evaluation of technology grant applications based on the criteria in this announcement. In appropriate circumstances, VA reserves the right to partially fund technology grant applications by funding discrete portions or phases of proposed projects that relate to adapted housing. Award of funding through this competition is not a guarantee of future funding. The SAHAT Grant Program is administered annually and does not guarantee subsequent awards. Renewal grants to provide new assistive technology will not be considered under this announcement.

C. Start Date

As discussed in Section VI(A) of this notice, the SAHAT Grant Program Office expects to announce grant recipients by April 1, 2022. The anticipated start date for funding grants awarded under this announcement is therefore after April 1, 2022.

III. Eligibility Information

A. Eligible Applicants

As authorized by 38 U.S.C. 2108, the Secretary may provide a grant to a ''person or entity'' for the development of specially adapted housing assistive technologies.

B. Cost Sharing or Matching

There is no cost sharing, matching, or cost participation for the SAHAT Grant Program.

C. Threshold Criteria

All technology grant applicants and applications must meet the threshold criteria set forth below. Failure to meet any of the following threshold criteria in the application will result in the automatic disqualification for funding consideration. Ineligible participants will be notified within 30 days of the finding of disqualification for award consideration based on the following threshold criteria:

1. Projects funded under this notice must involve new assistive technologies that the Secretary determines could aid or enhance the ability of a Veteran or Service member to live in an adapted home.

2. Projects funded under this notice must not be used for the completion of work which was to have been completed under a prior grant.

3. Applications in which the technology grant applicant is requesting assistance funds in excess of $200,000 will not be reviewed.

4. Applications that do not comply with the application and submission information requirements provided in Section IV of this notice will be rejected.

5. Applications submitted via mail, email, or facsimile will not be reviewed.

6. Applications must be received through *www.Grants.gov,* as specified in Section IV of this announcement, on or before the application deadline, as specified in the **DATES** section of this announcement. Applications received through *www.Grants.gov* after the application deadline will be considered late and will not be reviewed.

7. Technology grant applicants that have an outstanding obligation that is in arrears to the Federal Government or have an overdue or unsatisfactory response to an audit will be deemed ineligible.

8. Technology grant applicants in default by failing to meet the requirements for any previous Federal assistance will be deemed ineligible.

9. Applications submitted by entities deemed ineligible will not be reviewed.

10. Applications with project dates that extend past June 30, 2023, (this period does not include the 120-day closeout period) will not be reviewed.

All technology grant recipients, including individuals and entities formed as for-profit entities, will be subject to the rules on Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, as found at 2 CFR part 200 (see 2 CFR 200.101(a)). Where the Secretary determines that 2 CFR part 200 is not applicable or where the Secretary determines that additional requirements are necessary due to the uniqueness of a situation, the Secretary will apply the same standard applicable to exceptions under 2 CFR 200.102.

IV. Application and Submission Information

A. Address To Request Application Package

Technology grant applicants may download the application package from *www.Grants.gov.* Questions regarding the application process should be referred to the following program official: Oscar Hines (Program Manager), Specially Adapted Housing Program, *Oscar.Hines@va.gov*, 202–461–8316 (not a toll-free number).

B. Content and Form of Application Submission

The SAHAT Grant Program application package provided at *www.Grants.gov* (Funding Opportunity Number: VA–SAHAT–22–07) contains electronic versions of the application forms that are required. Additional attachments to satisfy the required application information may be provided; however, letters of support included with the application will not be reviewed. All technology grant applications must consist of the following:

1. Standard Forms (SF) 424, 424A and 424B. SF–424, SF–424A and SF–424B require general information about the applicant and proposed project. The project budget should be described in SF–424A. Please do not include leveraged resources in SF–424A.

2. VA Form 26–0967: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.

3. VA Form 26–0967a: Scoring Criteria for SAHAT Grants.

4. Applications: In addition to the forms listed above, each technology grant application must include the following information:

a. A project description, including the goals and objectives of the project, what the project is expected to achieve and how the project will benefit Veterans and Service members;

b. An estimated schedule including the length of time (not to extend past June 30, 2023) needed to accomplish tasks and objectives for the project;

c. A description of what the project proposes to demonstrate and how this new technology will aid or enhance the ability of Veterans and Service members to live in an adapted home. The following link has additional information regarding adapted homes: *http://www.benefits.va.gov/homeloans/adaptedhousing.asp;* and

d. Each technology grant applicant is responsible for ensuring that the application addresses each of the scoring criteria listed in Section V(A) of this notice.

C. System for Award Management (SAM)

Each technology grant applicant, unless the applicant is an individual or Federal awarding agency that is excepted from these requirements under 2 CFR 25.110(b) or (c), or has an exception approved by VA under 2 CFR 25.110(d), is required to:

1. Be registered in SAM prior to submitting an application;

2. Provide a valid SAM Unique Entity Identifier number in the application; and

3. Continue to maintain an active SAM registration with current information at all times during which the technology grant applicant has an active Federal award or an application under consideration by VA.

VA will not make an award to an applicant until the applicant has complied with all applicable SAM requirements. If the applicant has not fully complied with the requirements by the time VA is ready to make an award, VA will determine the applicant is not qualified to receive a Federal award and will use this determination as a basis for making the award to another applicant.

D. Submission Dates and Times

Applications for the SAHAT Grant Program must be submitted through *www.Grants.gov* to be transmitted to VA by 11:59 p.m. Eastern Standard Time on the application deadline, as specified in the **DATES** section of this announcement. Submissions received after this application deadline will be considered late and will not be reviewed or considered. Submissions by email, mail, or fax will not be accepted.

Applications submitted through *www.Grants.gov* must be submitted by an individual registered with *www.Grants.gov* and authorized to sign applications for Federal assistance. For more information and to complete the registration process, visit *www.Grants.gov.* Technology grant applicants are responsible for ensuring that the registration process does not hinder timely submission of the application.

It is the responsibility of grant applicants to ensure a complete application is submitted via

www.Grants.gov. Applicants are encouraged to periodically review the ''Version History Tab'' of the funding opportunity announcement in *www.Grants.gov* to identify if any modifications have been made to the funding announcement and/or opportunity package. Upon initial download of the funding opportunity package, applicants will be asked to provide an email address that will allow *www.Grants.gov* to send the applicant an email message in the event this funding opportunity package is changed and/or republished on *www.Grants.gov* prior to the posted closing date.

E. Confidential Business Information

It is recommended that confidential business information (CBI) not be included in the application. However, if CBI is included in an application, applicants should clearly indicate which portion or portions of their application they are claiming as CBI. See 2 CFR 200.334–200.338 (addressing access to a non-Federal entity's records pertinent to a Federal award).

F. Intergovernmental Review

This section is not applicable to the SAHAT Grant Program.

G. Funding Restrictions

The SAHAT Grant Program does not allow reimbursement of pre-award costs.

V. Application Review Information

Each eligible proposal (based on the Section III threshold eligibility review) will be evaluated according to the criteria established by the Secretary and provided below in Section A.

A. Scoring Criteria

The Secretary will score technology grant applications based on the scoring criteria listed below. As indicated in Section I of this notice, the Secretary is placing the greatest emphasis on criteria 1 and 2. This emphasis does not establish new scoring criteria but is designed to assist technology grant applicants in understanding how scores will be weighted and ultimately considered in the final selection process. A technology grant application must receive a minimum aggregate score of 70 to receive further consideration for an award. Instructions for completion of the scoring criteria are listed on VA Form 26–0967a. This form is included in the application package materials on *www.Grants.gov.* The scoring criteria and maximum points are as follows:

1. A description of how the new assistive technology is innovative, to include an explanation of how it involves advancements in new-to-market technologies, new variations on existing technologies, or both (up to 50 points);

2. An explanation of how the new assistive technology will meet a specific, unmet need among eligible individuals, to include whether and how the new assistive technology fits within a category of special emphasis for FY 2022, as explained in Section I(D) of this notice (up to 50 points);

3. An explanation of how the new assistive technology is specifically designed to promote the ability of eligible individuals to live more independently (up to 30 points);

4. A description of the new assistive technology's concept, size and scope (up to 30 points);

5. An implementation plan with major milestones for bringing the new assistive technology into production and to the market. Such milestones must be meaningful and achievable within a specific timeframe (up to 30 points); and

6. An explanation of what uniquely positions the technology grant applicant in the marketplace. This can include a focus on characteristics such as the economic reliability of the technology grant applicant, the technology grant applicant's status as a minority or Veteran-owned business, or other characteristics that the technology grant applicant wants to include to show how it will help protect the interests of, or further the mission of, VA and the program (up to 20 points).

B. Review and Selection Process

Eligible applications will be evaluated by a review panel comprising five VA employees. The review panel will score applications using the scoring criteria provided in Section V(A) and refer to the selecting official those applications that receive a minimum aggregate score of 70. In determining which applications to approve, the selecting official will take into account the review panel score, the priorities described in this Notice of Funding Opportunity, the governing statute, 38 U.S.C. 2108, the governing regulation, 38 CFR 36.4412 and the VA Financial Policy, Volume X Grants Management, Chapter 4 Grants Application and Award Process, *https://www.va.gov/finance/docs/VA-FinancialPolicyVolumeXChapter04.pdf.* VA will review and consider applications for funding pursuant to this notice of funding opportunity in accordance with Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, except as noted.

VI. Award Administration Information

A. Award Notices

Although subject to change, the SAHAT Grant Program Office expects to announce grant recipients by April 1, 2022. Prior to executing any funding agreement, VA will contact successful applicants; make known the amount of proposed funding; and verify the applicant's desire to receive the funding. Any communication between the SAHAT Grant Program Office and successful applicants prior to the issuance of an award notice is not authorization to begin project activities. Once VA verifies that the grant applicant is still seeking funding, VA will issue a signed and dated award notice. This will begin the performance period. VA expects that the performance period should not last longer than 12 months. The award notice will be sent by U.S. mail or electronic means to the organization listed on the SF–424. All applicants will be notified by letter or email, sent by U.S. mail or electronic means to the address listed on the SF–424.

B. Administrative and National Policy Requirements

This section is not applicable to the SAHAT Grant Program.

C. Reporting

VA places great emphasis on the responsibility and accountability of grantees. Grantees must agree to cooperate with any Federal evaluation of the program and provide the following:

1. Quarterly Progress Reports: These reports will be submitted electronically and outline how grant funds were used, describe program progress and describe any barriers and measurable outcomes. The format for quarterly reporting will be provided to grantees upon grant award.

2. Quarterly Financial Reports: These reports will be submitted electronically using the SF–425-Federal Financial Report.

3. Grantee Closeout Report: This final report will be submitted electronically and will detail the assistive technology developed. The grantee's Closeout Report must be submitted to the SAHAT Grant Program Office not later than 120 days after the date the performance period ends.

VII. Agency Contact(s)

For additional general information about this announcement contact the following program official: Oscar Hines (Program Manager), Specially Adapted

Housing Program, *Oscar.Hines@va.gov*, 202–461–8316 (not a toll-free number).

Mailed correspondence, which should not include application material, should be sent to the following address: Loan Guaranty Service, VA Central Office, Attn: Oscar Hines (262), 810 Vermont Avenue NW, Washington, DC 20420.

All correspondence with VA concerning this announcement should reference the funding opportunity title and funding opportunity number listed at the top of this solicitation. Once the announcement deadline has passed, VA staff may not discuss this competition with applicants until the application review process has been completed.

VIII. Other Information

Section 2108 authorizes VA to provide grants for the development of new assistive technologies through September 30, 2022. Additional information related to the SAHAT Grant Program administered by LGY is available at: *http://www.benefits.va.gov/homeloans/adaptedhousing.asp.*

The SAHAT Grant is not a Veterans' benefit. As such, the decisions of the Secretary are final and not subject to the same appeal rights as decisions related to Veterans' benefits. The Secretary does not have a duty to assist technology grant applicants in obtaining a grant.

Grantees will receive payments electronically through the U.S. Department of Health and Human Services Payment Management System (PMS). All grant recipients should adhere to PMS user policies.

IX. Notices of Funding Opportunity

In accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws and relevant Executive guidance, the Federal awarding agency will review and consider applications for funding pursuant to this notice of funding opportunity in accordance with the Guidance for Grants and Agreements in title 2 CFR

Signing Authority: Denis McDonough, Secretary of Veterans Affairs, approved this document on January 18, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Jeffrey M. Martin,

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

[FR Doc. 2022–01575 Filed 1–27–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0674]

Agency Information Collection Activity Under OMB Review: Notice of Disagreement: Appeal to the Board of Veterans' Appeals

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Board of Veterans' Appeals (BVA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0674.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0674'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 115–55; 38 U.S.C. 5104B, 5108, 5701, 5901, 7103, 7104, 7105, 7107.

Title: Decision Review Request: Board Appeal (Notice of Disagreement) and Appeal to the Board of Veterans' Appeals, VA Form 10182 and VA Form 9.

OMB Control Number: 2900–0674.

Type of Review: Revision of a currently approved collection.

Abstract: Appellate review of the denial of VA benefits may only be initiated by the filing of a Notice of Disagreement with the Board. 38 U.S.C. 7105(a). *VA Form 10182 Decision Review Request: Board Appeal (Notice of Disagreement)* is required to initiate Board review of an appeal in the modernized review system as implemented by the Veterans Appeals Improvement and Modernization Act of 2017 (AMA). The *VA Form 9 Appeal to Board of Veterans' Appeals* may be used to complete a legacy appeal to the Board. The completed form becomes the ''substantive appeal'' (or ''formal appeal''), which is required by the pre-AMA version of 38 U.S.C. 7105(a) and (d)(3) to complete an appeal to the Board. Additionally, the proposed information collections allow for withdrawal of services by a representative, requests for changes in hearing dates and methods under 38 U.S.C. 7107, and motions for reconsideration pursuant to 38 U.S.C. 7103(a).

The Board is requesting to revise the currently approved OMB Control No. 2900–0674 to include an updated VA Form 10182 Notice of Disagreement. Proposed revisions to the VA Form 10182 Notice of Disagreement include: (1) Removal of the requirement to provide a social security number; (2) inclusion of checkboxes to indicate a preferred method of hearing; (3) inclusion of a checkbox to indicate whether the decision for which appeal is being sought was issued by the Veterans Health Administration (VHA); (4) provision of a list of examples of common issues a claimant may disagree with including service connection, disability evaluation, or and effective date of award; (5) inclusion of a checkbox to request an extension of the deadline to file a Notice of Disagreement; (6) removal of the checkbox used to indicate whether the Notice of Disagreement has been filed in response to a Statement of the Case or Supplemental Statement of the Case issued under the legacy appeals process; (7) replacement of the checkbox for indicating the claimant ''is homeless'' to indicate whether the claimant is ''experiencing homelessness''; (8) a clarified description of the window of time within which to submit evidence on the Evidence Submission docket; and (9) adding a subpart to Part III for issues the appellant wishes to include in the VA Form 10182 that need to be listed on additional sheets. Proposed revisions also include updated instructions for completing the Notice of Disagreement.

There is a decrease in the respondent burden because the associated control number originally included the nonstandard legacy Notice of Disagreement. Consistent with the wind-down of legacy appeals following implementation of the AMA, the Board is not seeking renewal of the nonstandard legacy Notice of Disagreement under this control number.

An agency may not conduct or sponsor, and a person is not required to

respond to a collection of information, unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 217 on November 15, 2021, pages 63107 and 63108.

Affected Public: Individuals and households.

Estimated Annual Burden: 64,805 hours.

Estimated Average Burden per Respondent: 37 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 126,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–01677 Filed 1–27–22; 8:45 am]

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FEDERAL REGISTER

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No. 19 January 28, 2022

Part II

Department of Homeland Security

8 CFR Parts 214 and 274a

Department of Labor

Employment and Training Administration

20 CFR Part 655

Exercise of Time-Limited Authority To Increase the Fiscal Year 2022 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers; Temporary Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 274a

[CIS No. 2708–21]

RIN 1615–AC77

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

[DOL Docket No. ETA–2022–0001]

RIN 1205–AC09

Exercise of Time-Limited Authority To Increase the Fiscal Year 2022 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS), and Employment and Training Administration and Wage and Hour Division, U.S. Department of Labor (DOL).

ACTION: Temporary rule.

SUMMARY: The Secretary of Homeland Security, in consultation with the Secretary of Labor, is exercising his time-limited Fiscal Year (FY) 2022 authority and increasing the total number of noncitizens who may receive an H–2B nonimmigrant visa by authorizing the issuance of no more than 20,000 additional visas during FY 2022 for positions with start dates on or before March 31, 2022, to those businesses that are suffering irreparable harm or will suffer impending irreparable harm, as attested by the employer on a new attestation form. In addition to making additional visas available under the FY 2022 time-limited authority, DHS is exercising its general H–2B regulatory authority to again provide temporary portability flexibility by allowing H–2B workers who are already in the United States to begin work immediately after an H–2B petition (supported by a valid temporary labor certification) is received by USCIS, and before it is approved.

DATES:

Effective dates: The amendments to title 8 of the Code of Federal Regulations in this rule are effective from January 28, 2022 through January 28, 2025. The amendments to title 20 of the Code of Federal Regulations in this rule are effective from January 28, 2022 through September 30, 2022, except for 20 CFR 655.69 which is effective from January 28, 2022 through September 30, 2025.

Petition dates: DHS will not accept any H–2B petition under the provisions related to the supplemental numerical allocation after March 31, 2022, and the provisions related to portability are only available to petitioners and H–2B nonimmigrant workers initiating employment through the end of July 27, 2022.

Comment dates: The Office of Foreign Labor Certification within the U.S. Department of Labor will be accepting comments in connection with the new information collection Form ETA–9142B–CAA–5 associated with this rule until March 29, 2022.

ADDRESSES: You may submit written comments on the new information collection Form ETA–9142B–CAA–5, identified by Regulatory Information Number (RIN) 1205–AC09 electronically by the following method:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the instructions on the website for submitting comments.

Instructions: Include the agency's name and the RIN 1205–AC09 in your submission. All comments received will become a matter of public record and will be posted without change to *https://www.regulations.gov.* Please do not include any personally identifiable information or confidential business information you do not want publicly disclosed.

FOR FURTHER INFORMATION CONTACT: Regarding 8 CFR parts 214 and 274a: Charles L. Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 5900 Capital Gateway Drive, Camp Springs, MD 20746; telephone 240–721–3000 (this is not a toll-free number).

Regarding 20 CFR part 655 and Form ETA–9142B–CAA–5: Brian D. Pasternak, Administrator, Office of Foreign Labor Certification, Employment and Training Administration, Department of Labor, 200 Constitution Ave. NW, Room N–5311, Washington, DC 20210, telephone (202) 693–8200 (this is not a toll-free number).

Individuals with hearing or speech impairments may access the telephone numbers above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary

FY 2022 H–2B Supplemental Cap

With this temporary final rule (TFR), the Secretary of Homeland Security, following consultation with the Secretary of Labor, is authorizing the immediate release of an additional 20,000 H–2B visas for FY 2022 positions with start dates on or before March 31, 2022, subject to certain conditions. The 20,000 visas are divided into two allocations, as follows:

- 13,500 visas limited to returning workers, regardless of country of nationality, in other words, those workers who were issued H–2B visas or held H–2B status in fiscal years 2019, 2020, or 2021; and
- 6,500 visas reserved for nationals of El Salvador, Guatemala, and Honduras (Northern Triangle countries) and Haiti as attested by the petitioner (regardless of whether such nationals are returning workers).

To qualify for the FY 2022 supplemental cap provided by this temporary final rule, eligible petitioners must:

- Meet all existing H–2B eligibility requirements, including obtaining an approved temporary labor certification (TLC) from DOL before filing the Form

I–129, Petition for Nonimmigrant Worker, with USCIS;

- Properly file the Form I–129, Petition for Nonimmigrant Worker, with USCIS on or before March 31, 2022, requesting an employment start date on or before March 31, 2022;
- Submit an attestation affirming, under penalty of perjury, that the employer is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on the petition, and that they are seeking to employ returning workers only, unless the H–2B worker is a Salvadoran, Guatemalan, Honduran, or Haitian national and counted towards the 6,500 cap; and
- Agree to comply with all applicable labor and employment laws, including health and safety laws pertaining to COVID–19, as well as any rights to time off or paid time off to stay up-to-date with COVID–19 vaccinations,[1] or to reimbursement for travel to and from the nearest available vaccination site, and notify the workers in a language understood by the worker as necessary or reasonable, of equal access of nonimmigrants to COVID–19 vaccines and vaccination distribution sites.

Employers filing an H–2B petition 45 or more days after the certified start date on the TLC, must attest to engaging in the following additional steps to recruit U.S. workers:

- No later than 1 business day after filing the petition, place a new job order with the relevant State Workforce Agency (SWA) for at least 15 calendar days;
- Contact the nearest American Job Center serving the geographic area where work will commence and request staff assistance in recruiting qualified U.S. workers;
- Contact the employer's former U.S. workers, including those the employer furloughed or laid off beginning on January 1, 2020, and until the date the H–2B petition is filed, disclose the terms of the job order and solicit their return to the job;
- Provide written notification of the job opportunity to the bargaining representative for the employer's employees in the occupation and area of employment, or post notice of the job opportunity at the anticipated worksite if there is no bargaining representative; and
- Hire any qualified U.S. worker who applies or is referred for the job opportunity until the later of either (1) the date on which the last H–2B worker departs for the place of employment, or (2) 30 days after the last date of the SWA job order posting.

Petitioners filing H–2B petitions under this FY 2022 supplemental cap must retain documentation of compliance with the attestation requirements for 3 years from the date the TLC was approved, and must provide the documents and records upon the request of DHS or DOL, as well as fully cooperate with any compliance reviews such as audits. Both DHS and DOL intend to conduct a significant number of post-adjudication audits to ascertain compliance with the attestation requirements of this TFR.

Falsifying information in attestation(s) can result not only in penalties relating to perjury, but can also result in, among other things, a finding of fraud or willful misrepresentation; denial or revocation of the H–2B petition requesting supplemental workers; and debarment by DOL and DHS from the H–2 program. Falsifying information also may subject a petitioner/employer to other criminal penalties.

DHS will not approve H–2B petitions filed in connection with the FY 2022 supplemental cap authority on or after October 1, 2022, but DHS does not anticipate that petitions filed in connection with this rule will remain pending until the end of FY 2022, given the March 31, 2022 filing deadline.

H–2B Portability

In addition to exercising time-limited authority to make additional FY 2022 H–2B visas available for positions with start dates on or before March 31, 2022, DHS is providing additional flexibilities to H–2B petitioners under its general programmatic authority by allowing nonimmigrant workers in the United States[2] in valid H–2B status and who are beneficiaries of non-frivolous H–2B petitions received on or after January 28, 2022, or who are the beneficiaries of non-frivolous H–2B petitions that are pending as of January 28, 2022, to begin work with a new employer after an H–2B petition (supported by a valid TLC) is filed and before the petition is approved, generally for a period of up to 60 days. However, such employment authorization would end 15 days after USCIS denies the H–2B petition or such petition is withdrawn. This H–2B portability ends 180 days after the effective date of this rule, in other words, after the date this rule is published in the **Federal Register**. This provision clarifies portability eligibility for beneficiaries of pending petitions.

II. Background

A. Legal Framework

The Immigration and Nationality Act (INA), as amended, establishes the H–2B nonimmigrant classification for a nonagricultural temporary worker ''having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform . . . temporary [non-agricultural] service or labor if unemployed persons capable of performing such service or labor cannot be found in this country.'' INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b). Employers must petition the Department of Homeland Security (DHS) for classification of prospective temporary workers as H–2B nonimmigrants. INA section 214(c)(1), 8 U.S.C. 1184(c)(1). Generally, DHS must approve this petition before the beneficiary can be considered eligible for an H–2B visa. In addition, the INA requires that ''[t]he question of importing any alien as [an H–2B] nonimmigrant . . . in any specific case or specific cases shall be determined by [DHS],[3] after consultation with appropriate agencies of the Government.'' INA section 214(c)(1), 8 U.S.C. 1184(c)(1). The INA generally charges the Secretary of Homeland Security with the administration and enforcement of the immigration laws, and provides that the Secretary ''shall establish such regulations . . . and perform such other acts as he deems necessary for carrying out his authority'' under the INA. *See* INA section 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3); *see also* 6 U.S.C. 202(4) (charging the Secretary with ''[e]stablishing and administering rules . . . governing the granting of visas or other forms of permission . . . to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States''). With respect to nonimmigrants in particular, the INA provides that ''[t]he admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as

[1] The term ''COVID–19 vaccinations'' also includes COVID–19 booster shots.

[2] The term ''United States'' includes the continental United States, Alaska, Hawaii, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands. INA section 101(a)(38), 8 U.S.C. 1101(a)(38).

[3] As of March 1, 2003, in accordance with section 1517 of Title XV of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135, any reference to the Attorney General in a provision of the Immigration and Nationality Act describing functions which were transferred from the Attorney General or other Department of Justice official to the Department of Homeland Security by the HSA ''shall be deemed to refer to the Secretary'' of Homeland Security. *See* 6 U.S.C. 557 (2003) (codifying HSA, Title XV, sec. 1517); 6 U.S.C. 542 note; 8 U.S.C. 1551 note.

the [Secretary] may by regulations prescribe.'' INA section 214(a)(1), 8 U.S.C. 1184(a)(1); *see also* INA section 274A(a)(1) and (h)(3), 8 U.S.C. 1324a(a)(1) and (h)(3) (prohibiting employment of noncitizen [4] not authorized for employment). The Secretary may designate officers or employees to take and consider evidence concerning any matter which is material or relevant to the enforcement of the INA. INA sections 287(a)(1), (b), 8 U.S.C. 1357(a)(1), (b) and INA section 235(d)(3), 8 U.S.C. 1225(d)(3).

Finally, under section 101 of HSA, 6 U.S.C. 111(b)(1)(F), a primary mission of DHS is to ''ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.''

DHS regulations provide that an H–2B petition for temporary employment in the United States must be accompanied by an approved TLC from the U.S. Department of Labor (DOL), issued pursuant to regulations established at 20 CFR part 655, or from the Guam Department of Labor if the workers will be employed on Guam. 8 CFR 214.2(h)(6)(iii)(A) and (C) through (E), (h)(6)(iv)(A); *see also* INA section 103(a)(6), 8 U.S.C. 1103(a)(6). The TLC serves as DHS's consultation with DOL with respect to whether a qualified U.S. worker is available to fill the petitioning H–2B employer's job opportunity and whether a foreign worker's employment in the job opportunity will adversely affect the wages and working conditions of similarly-employed U.S. workers. *See* INA section 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(6)(iii)(A) and (D).

In order to determine whether to issue a TLC, the Departments have established regulatory procedures under which DOL certifies whether a qualified U.S. worker is available to fill the job opportunity described in the employer's petition for a temporary nonagricultural worker, and whether a foreign worker's employment in the job opportunity will adversely affect the wages or working conditions of similarly employed U.S. workers. *See* 20 CFR part 655, subpart A. The regulations establish the process by which employers obtain a TLC and rights and obligations of workers and employers.

Once the petition is approved, under the INA and current DHS regulations, H–2B workers do not have employment authorization outside of the validity period listed on the approved petition unless otherwise authorized, and the workers are limited to employment with the H–2B petitioner. *See* 8 U.S.C. 1184(c)(1), 8 CFR 274a.12(b)(9). An employer or U.S. agent generally may submit a new H–2B petition, with a new, approved TLC, to USCIS to request an extension of H–2B nonimmigrant status for the validity of the TLC or for a period of up to 1 year. 8 CFR 214.2(h)(15)(ii)(C). Except as provided for in this rule, and except for certain professional athletes being traded among organizations,[5] H–2B workers seeking to extend their status with a new employer may not begin employment with the new employer until the new H–2B petition is approved.

The INA also authorizes DHS to impose appropriate remedies against an employer for a substantial failure to meet the terms and conditions of employing an H–2B nonimmigrant worker, or for a willful misrepresentation of a material fact in a petition for an H–2B nonimmigrant worker. INA section 214(c)(14)(A), 8 U.S.C. 1184(c)(14)(A). The INA expressly authorizes DHS to delegate certain enforcement authority to DOL. INA section 214(c)(14)(B), 8 U.S.C. 1184(c)(14)(B); *see also* INA section 103(a)(6), 8 U.S.C. 1103(a)(6). DHS has delegated its authority under INA section 214(c)(14)(A)(i), 8 U.S.C. 1184(c)(14)(A)(i) to DOL. *See* DHS, Delegation of Authority to DOL under Section 214(c)(14)(A) of the INA (Jan. 16, 2009); *see also* 8 CFR 214.2(h)(6)(ix) (stating that DOL may investigate employers to enforce compliance with the conditions of an H–2B petition and a DOL-approved TLC). This enforcement authority has been delegated within DOL to the Wage and Hour Division (WHD), and is governed by regulations at 29 CFR part 503.

B. H–2B Numerical Limitations Under the INA

The INA sets the annual number of noncitizens who may be issued H–2B visas or otherwise provided H–2B nonimmigrant status to perform temporary nonagricultural work at 66,000, to be distributed semi-annually beginning in October and April. *See* INA sections 214(g)(1)(B) and (g)(10), 8 U.S.C. 1184(g)(1)(B) and (g)(10). With certain exceptions, described below, up to 33,000 noncitizens may be issued H–2B visas or provided H–2B nonimmigrant status in the first half of a fiscal year, and the remaining annual allocation, including any unused nonimmigrant H–2B visas from the first half of a fiscal year, will be available for employers seeking to hire H–2B workers during the second half of the fiscal year.[6] If insufficient petitions are approved to use all H–2B numbers in a given fiscal year, the unused numbers cannot be carried over for petition approvals for employment start dates beginning on or after the start of the next fiscal year.

In FYs 2005, 2006, 2007, and 2016, Congress exempted H–2B workers identified as returning workers from the annual H–2B cap of 66,000.[7] A returning worker is defined by statute as an H–2B worker who was previously counted against the annual H–2B cap during a designated period of time. For example, Congress designated that returning workers for FY 2016 needed to have been counted against the cap during FY 2013, 2014, or 2015.[8] DHS and the Department of State (DOS) worked together to confirm that all workers requested under the returning worker provision in fact were eligible for exemption from the annual cap (in other words, were issued an H–2B visa or provided H–2B status during one of the prior 3 fiscal years) and were otherwise eligible for H–2B classification.

Because of the strong demand for H–2B visas in recent years, the statutorily-limited semi-annual visa allocation, the DOL regulatory requirement that employers apply for a TLC 75 to 90 days before the start date of work,[9] and the DHS regulatory requirement that all H–2B petitions be accompanied by an approved TLC,[10] employers that wish to obtain visas for their workers under the semi-annual allotment must act early to receive a TLC and file a petition with U.S. Citizenship and Immigration Services (USCIS). As a result, the date on which USCIS has received sufficient H–2B petitions to reach the first half of the fiscal year statutory cap has been

[4] For purposes of this discussion, the Departments use the term ''noncitizen'' colloquially to be synonymous with the term ''alien'' as it is used in the Immigration and Nationality Act.

[5] *See* 8 CFR 214.2(h)(6)(vii) and 8 CFR 274a.12(b)(9).

[6] The Federal Government's fiscal year runs from October 1 of the prior year through September 30 of the year being described. For example, fiscal year 2022 is from October 1, 2021, through September 30, 2022.

[7] INA section 214(g)(9)(A), 8 U.S.C. 1184(g)(9)(A), *see also* Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. V, sec 565; John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109–364, div. A, tit. X, sec. 1074, (2006); Save Our Small and Seasonal Businesses Act of 2005, Public Law 109–13, div. B, tit. IV, sec. 402.

[8] *See* Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. V, sec 565.

[9] 20 CFR 655.15(b).

[10] *See* 8 CFR 214.2(h)(5)(i)(A).

trending earlier in recent years.[11] As of December 1, 2021, DOL's Office of Foreign Labor Certification (OFLC) reports having certified TLC applications for 65,717 H–2B workers with expected start dates between October 1, 2021, and March 1, 2022.[12] In addition, for fiscal year 2022, for the first time in more than a decade, USCIS received sufficient H–2B petitions to reach the first half of the fiscal year statutory cap before the start of the fiscal year—this year the last receipt date for the first half of the fiscal year was September 30, 2021, and last year it was November 16, 2020—a month and a half earlier.[13] This early date continues to reflect an ongoing trend of higher H–2B demand in the first half of the fiscal year compared to the statutorily authorized level. Congress, in recognition of historical and current demand: (1) Allowed for additional H–2B workers through the FY 2016 reauthorization of the returning worker cap exemption; [14] and (2) for the last 6 fiscal years authorized supplemental caps under section 543 of Division F of the Consolidated Appropriations Act, 2017, Public Law 115–31 (FY 2017 Omnibus); section 205 of Division M of the Consolidated Appropriations Act, 2018, Public Law 115–141 (FY 2018 Omnibus); section 105 of Division H of the Consolidated Appropriations Act, 2019, Public Law 116–6 (FY 2019 Omnibus); section 105 of Division I of the Further Consolidated Appropriations Act, 2020, Public Law 116–94 (FY 2020 Omnibus); [15] section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116–260 (FY 2021), and section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116–260 (FY 2021 Omnibus), and sections 101 and 106(3) of Division A of Public Law 117–43, Continuing Appropriations Act, 2022, and section 101 of Division A of Public Law 117–70, Further Continuing Appropriations Act, 2022 through February 18, 2022 (together, FY 2022 authority), which is discussed below.

C. FY 2021 Omnibus and FY 2022 Public Laws 117–43 and 117–70

On December 27, 2020, then-President Donald Trump signed the FY 2021 Omnibus which contains a provision, section 105 of Division O (section 105), permitting the Secretary of Homeland Security, under certain circumstances and after consultation with the Secretary of Labor, to increase the number of H–2B visas available to U.S. employers, notwithstanding the otherwise-established statutory numerical limitation set forth in the INA. Specifically, section 105 provides that ''the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in [FY] 2021 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor,'' may increase the total number of noncitizens who may receive an H–2B visa in FY 2021 by not more than the highest number of H–2B nonimmigrants who participated in the H–2B returning worker program in any fiscal year in which returning workers were exempt from the H–2B numerical limitation.[16] The Secretary of Homeland Security consulted with the Secretary of Labor and, on May 25, 2021, published a temporary final rule implementing the authority contained in section 105.[17]

On December 3, 2021, Congress passed Public Law 117–70,[18] which authorizes the Secretary of Homeland Security to increase the number of H–2B visas available to U.S. employers in FY 2022 under the same terms and conditions authorized in section 105 of Division O of the FY 2021 Omnibus. The authority in Public Law 117–70 permits the Secretary of Homeland Security, after consultation with the Secretary of Labor, to provide additional H–2B visas for FY 2022, notwithstanding the otherwise-established statutory numerical limitation set forth in the INA, for eligible employers whose employment needs for FY 2022 cannot be met under the general fiscal year statutory cap.[19] Under the Public Law 117–70 authority, DHS and DOL are jointly publishing this temporary final rule to authorize the issuance of no more than 20,000 additional visas during FY 2022 for positions with start dates on or before March 31, 2022, to those businesses that are suffering irreparable harm or will suffer impending irreparable harm, as attested by the employer on a new attestation form. The authority to approve H–2B petitions under this FY 2022 supplemental cap expires at the end of that fiscal year. Therefore, USCIS will not approve H–2B petitions filed in connection with the FY 2022

[11] In fiscal years 2017 through 2021, USCIS received a sufficient number of H–2B petitions to reach or exceed the relevant first half statutory cap on January 10, 2017, December 15, 2017, December 6, 2018, November 15, 2019, and November 16, 2020, respectively. *See https://www.uscis.gov/archive/uscis-reaches-the-h-2b-cap-for-the-first-half-of-fiscal-year-2017* (Jan. 13, 2017); *https://www.uscis.gov/archive/uscis-reaches-h-2b-cap-for-first-half-of-fy-2018* (Dec. 21, 2017); *https://www.uscis.gov/news/news-releases/uscis-reaches-h-2b-cap-for-first-half-of-fy-2019* (Dec. 12, 2018); *https://www.uscis.gov/news/news-releases/uscis-reaches-h-2b-cap-for-first-half-of-fy-2020* (Nov. 20, 2019); *https://www.uscis.gov/news/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2021* (Nov. 18, 2020).

[12] Information provided by DOL OFLC via email sent December 2, 2021.

[13] On October 12, 2021, USCIS announced that it had received sufficient petitions to reach the congressionally mandated cap on H–2B visas for temporary nonagricultural workers for the first half of fiscal year 2022, and that September 30, 2021 was the final receipt date for new cap-subject H–2B worker petitions requesting an employment start date before April 1, 2022. *See https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2022* (Oct 12, 2021). November 16, 2020 was the last receipt date for the first half of FY 2020. *See https://www.uscis.gov/news/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2021* (Nov. 18, 2020).

[14] INA section 214(g)(9)(a), 8 U.S.C. 1184(g)(9)(a), as revised by the Consolidated Appropriations Act of 2016 (Pub. L. 114–113). This program expired on September 30, 2016.

[15] DHS, after consulting with DOL, did not publish a temporary final rule supplementing the H–2B cap for FY 2020 pursuant to the Further Consolidated Appropriations Act, 2020, Public Law 116–94.

[16] The highest number of returning workers in any such fiscal year was 64,716, which represents the number of beneficiaries covered by H–2B returning worker petitions that were approved for FY 2007. DHS also considered using an alternative approach, under which DHS measured the number of H–2B returning workers admitted at the ports of entry (66,792 for FY 2007).

[17] Temporary Rule, *Exercise of Time-Limited Authority To Increase the Fiscal Year 2021 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers,* 86 FR 28198 (May 25, 2021).

[18] Public Law 117–70 Further Extending Government Funding Act, Division A ''Further Continuing Appropriations Act, 2022'', section 101 (Dec. 3, 2021) changing the Public Law 117–43 expiration date in section 106(3) from Dec. 3, 2021 to Feb. 18, 2022, and Public Law 117–43 Extending Government Funding and Delivering Emergency Assistance Act, Division A ''Continuing Appropriations Act, 2022'', Section 101 and 106(3) (Oct. 3, 2021) providing DHS funding and authorities, including authority under section 105 of title I of Division O of Public Law 116–260, through December 3, 2021.

[19] Appropriations and authorities provided by the continuing resolutions are available for the needs of the entire fiscal year to which the continuing resolution applies, although DHS's ability to obligate funds or exercise such authorities may lapse at the sunset of such resolution. *See, e.g.,* Comments on Due Date and Amount of District of Columbia's Contributions to Special Employee Retirement Funds, B–271304 (Comp. Gen. Mar. 19, 1996) (explaining that ''a continuing resolution appropriates the full annual amount regardless of its period of duration. . . . Standard continuing resolution language makes it clear that the appropriations are available to the extent and in the manner which would be provided by the pertinent appropriations act that has yet to be enacted (unless otherwise provided in the continuing resolution).''). Consistent with this principle, DHS interprets the current continuing resolution to provide DHS with the ability to authorize additional H–2B visa numbers with respect to all of FY 2022 subject to the same terms and conditions as the FY 2021 authority at any time before the continuing resolution expires, notwithstanding the reference to FY 2021 in the FY 2021 Omnibus.

supplemental cap authority on or after October 1, 2022. Given the March 31, 2022 filing cutoff, USCIS will process H–2B petitions filed under this rule that request premium processing in line with the USCIS premium processing rules,[20] and all other H–2B petitions filed under this rule in the normal manner. Accordingly, DHS does not anticipate that petitions filed in connection with this rule will remain pending until the end of FY 2022.

As noted above, since FY 2017, Congress has enacted a series of public laws providing the Secretary of Homeland Security with the discretionary authority to increase the H–2B cap beyond that set forth in section 214 of the INA. The previous four statutory provisions were materially identical to section 105 of the FY 2021 Omnibus, which is the same authority provided for FY 2022 by the recent continuing resolutions. During each fiscal year from FY 2017 through FY 2019, the Secretary of Homeland Security, after consulting with the Secretary of Labor, determined that the needs of some American businesses could not be satisfied in such year with U.S. workers who were willing, qualified, and able to perform temporary nonagricultural labor. On the basis of these determinations, on July 19, 2017, and May 31, 2018, DHS and DOL jointly published temporary final rules for FY 2017 and FY 2018, respectively, each of which allowed an increase of up to 15,000 additional H–2B visas for those businesses that attested that if they did not receive all of the workers requested on the Petition for a Nonimmigrant Worker (Form I–129), they were likely to suffer irreparable harm, in other words, suffer a permanent and severe financial loss.[21] A total of 12,294 H–2B workers were approved for H–2B classification under petitions filed pursuant to the FY 2017 supplemental cap increase.[22] In FY 2018, USCIS received petitions for more than 15,000 beneficiaries during the first 5 business days of filing for the supplemental cap, and held a lottery on June 7, 2018. The total number of H–2B workers approved toward the FY 2018 supplemental cap increase was 15,788.[23] The vast majority of the H–2B petitions received under the FY 2017 and FY 2018 supplemental caps requested premium processing [24] and were adjudicated within 15 calendar days.

On May 8, 2019, DHS and DOL jointly published a temporary final rule authorizing an increase of up to 30,000 additional H–2B visas for the remainder of FY 2019. The additional visas were limited to returning workers who had been counted against the H–2B cap or were otherwise granted H–2B status in the previous 3 fiscal years, and for those businesses that attested to a level of need such that, if they did not receive all of the workers requested on the Form I–129, they were likely to suffer irreparable harm, in other words, suffer a permanent and severe financial loss.[25] The Secretary determined that limiting returning workers to those who were issued an H–2B visa or granted H–2B status in the past 3 fiscal years was appropriate, as it mirrored the standard that Congress designated in previous returning worker provisions. On June 5, 2019, approximately 30 days after the supplemental visas became available, USCIS announced that it received sufficient petitions filed pursuant to the FY 2019 supplemental cap increase. USCIS did not conduct a lottery for the FY 2019 supplemental cap increase. The total number of H–2B workers approved towards the FY 2019 supplemental cap increase was 32,666.[26] The vast majority of these petitions requested premium processing and were adjudicated within 15 calendar days.

Although Congress provided the Secretary of Homeland Security with the discretionary authority to increase the H–2B cap in FY 2020, the Secretary did not exercise that authority. DHS initially intended to exercise its authority and, on March 4, 2020, announced that it would make available 35,000 supplemental H–2B visas for the second half of fiscal year.[27] On March 13, 2020, then-President Trump declared a National Emergency concerning COVID–19, a communicable disease caused by the coronavirus SARS–CoV–2.[28] On April 2, 2020, DHS announced that the rule to increase the H–2B cap was on hold due to economic circumstances, and no additional H–2B visas would be released until further notice.[29] DHS also noted that the Department of State had suspended routine visa services.[30]

In FY 2021, although the COVID–19 public health emergency remained in effect, DHS in consultation with DOL determined it was appropriate to increase the H–2B cap coupled with additional protections (for example, post-adjudication audits, investigations, and compliance checks), for FY 2021 based on the demand for H–2B workers in the second half of FY 2021, as well as other factors that were occurring at that time, including the continuing economic growth, the improving job market, and increased visa processing capacity by the Department of State. Accordingly, on May 25, 2021, DHS and DOL jointly published a temporary final rule authorizing an increase of up to 22,000 additional H–2B visas for the remainder of FY 2021.[31] The supplemental visas were available only to employers that attested they were likely to suffer irreparable harm without the additional workers. The allocation of 22,000 additional H–2B visas under that rule consisted of 16,000 visas available only to H–2B returning workers from one of the last three fiscal years (FY 2018, 2019, or 2020) and 6,000 visas that were initially reserved for Salvadoran, Guatemalan, and

[20] *See* 8 CFR 103.7(e) (Oct. 1, 2020). This section was amended by a DHS rule published in the **Federal Register** on August 3, 2020 at 85 FR 46788 titled *U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements* with an effective date of October 2, 2021. That rule was preliminarily enjoined. DHS is complying with the terms of the preliminary injunctions and is not enforcing it. *See U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements;* Notification of Preliminary Injunction, 86 FR 7493 (Jan. 18, 2021).

[21] Temporary Rule, *Exercise of Time-Limited Authority To Increase the Fiscal Year 2017 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,* 82 FR 32987, 32998 (July 19, 2017); Temporary Rule, *Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,* 83 FR 24905, 24917 (May 31, 2018).

[22] USCIS data pulled from the Computer Linked Application Information Management System (CLAIMS3) database on Mar. 15, 2021. General information about CLAIMS 3 is available at *https://www.dhs.gov/publication/dhsuscispia-016-computer-linked-application-information-management-system-claims-3-and.*

[23] The number of approved workers exceeded the number of additional visas authorized for FY 2018 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. USCIS data pulled from CLAIMS3 on Mar. 15, 2021.

[24] Premium processing allows for expedited processing for an additional fee. *See* INA 286(u), 8 U.S.C. 1356(u).

[25] Temporary Rule, *Exercise of Time-Limited Authority To Increase the Fiscal Year 2019 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program,* 84 FR 20005, 20021 (May 8, 2019).

[26] The number of approved workers exceeded the number of additional visas authorized for FY 2019 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States. USCIS data pulled from CLAIMS3 on Mar. 15, 2021.

[27] DHS to Improve Integrity of Visa Program for Foreign Workers, March 5, 2020, *https://www.dhs.gov/news/2020/03/05/dhs-improve-integrity-visa-program-foreign-workers.*

[28] Proclamation 9994 of Mar. 13, 2020, *Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak,* 85 FR 15337 (Mar. 18, 2020).

[29] *https://twitter.com/DHSgov/status/1245745115458568192?s=20.*

[30] *Id.*

[31] 86 FR 28198 (May 25, 2021).

Honduran nationals, who were exempt from the returning worker requirement. As of August 13, 2021, USCIS received enough petitions for returning workers to reach the additional 22,000 H–2B visas made available under the FY 2021 H–2B supplemental visa temporary final rule.[32]

Similarly, although the COVID–19 public health emergency is still in effect, DHS in consultation with DOL believes that it is appropriate to increase the H–2B cap for FY 2022 positions with start dates on or before March 31, 2022, based on the demand for H–2B workers in the first half of FY 2022, recent and continuing economic growth, increased labor demand,[33] and increased visa processing capacity by the Department of State. DHS believes it is appropriate to limit the increase for the FY 2022 H–2B cap provided in this temporary final rule to those petitions with start dates on or before March 31, 2022, as data clearly indicates an immediate need for supplemental H–2B visas in FY 2022 for positions with start dates in the first half of the fiscal year, as demonstrated by the FY 2022 first half cap being met even prior to the start of the fiscal year, the earliest the first half H–2B cap has been reached in more than a decade. DHS and DOL also believe that it is appropriate to couple this cap increase with additional workers protections, as described below.

D. Joint Issuance of the Final Rule

As they did in FY 2017, FY 2018, FY 2019, and FY 2021, DHS and DOL (the Departments) have determined that it is appropriate to jointly issue this temporary final rule.[34] The determination to issue the temporary final rule jointly follows conflicting court decisions concerning DOL's authority to independently issue legislative rules to carry out its consultative and delegated functions pertaining to the H–2B program under the INA.[35] Although DHS and DOL each have authority to independently issue rules implementing their respective duties under the H–2B program,[36] the Departments are implementing the numerical increase in this manner to ensure there can be no question about the authority underlying the administration and enforcement of the temporary cap increase. This approach is consistent with rules implementing DOL's general consultative role under INA section 214(c)(1), 8 U.S.C. 1184(c)(1), and delegated functions under INA sections 103(a)(6) and 214(c)(14)(B), 8 U.S.C. 1103(a)(6), 1184(c)(14)(B).[37]

III. Discussion

A. Statutory Determination

Following consultation with the Secretary of Labor, the Secretary of Homeland Security has determined that the needs of some U.S. employers cannot be satisfied in the first half of FY 2022 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor. In accordance with the FY 2022 continuing resolution extending the authority provided in section 105 of the FY 2021 Omnibus, the Secretary of Homeland Security has determined that it is appropriate, for the reasons stated below, to raise the numerical limitation on H–2B nonimmigrant visas for positions with start dates on or before March 31, 2022 up to 20,000 additional visas for those American businesses that attest that they are suffering irreparable harm or will suffer impending irreparable harm, in other words, a permanent and severe financial loss, without the ability to employ all of the H–2B workers requested on their petition. These businesses must retain documentation, as described below, supporting this attestation.

As they did in connection with the FY 2021 H–2B supplemental visa temporary final rule, and consistent with their existing authority, DHS and DOL intend to conduct a significant number of audits with respect to petitions filed under this, and previous TFRs, requesting supplemental H–2B visas, which may be selected at the discretion of the Departments, during the period of temporary need to verify compliance with H–2B program requirements, including the irreparable harm standard as well as other key worker protection provisions implemented through this rule. If an employer's documentation does not meet the irreparable harm standard, or if the employer fails to provide evidence demonstrating irreparable harm or comply with the audit process, this may be considered a substantial violation resulting in an adverse agency action on the employer, including revocation of the petition and/or TLC or program debarment. Some audits conducted of employers that received visas under the supplemental cap in FY 2021 have revealed concerns surrounding their documentation of irreparable harm, recruitment efforts, and compliance with the audit process, which may warrant further review and action.

The Secretary of Homeland Security has also again determined, as in FY 2021, that for certain employers, additional recruitment steps are necessary to confirm that there are no qualified U.S. workers available for the positions. In addition, the Secretary of Homeland Security has determined that the supplemental visas will be limited to returning workers, with the exception that up to 6,500 of the 20,000 visas will be exempt from the returning worker requirement and will be reserved for H–2B workers who are nationals of El Salvador, Guatemala, Honduras, and Haiti.[38] As in FY 2021, these H–2B visas are being reserved for nationals of El Salvador, Guatemala, and Honduras to once again further the objectives of E.O. 14010, which among other initiatives, instructs the Secretary of Homeland Security and the Secretary of State to implement measures to enhance access to visa programs for individuals from the Northern Triangle countries.[39] DHS observed robust employer interest in response to the FY 2021 H–2B supplemental visa allocation for Salvadoran, Guatemalan, and Honduran nationals, with USCIS approving petitions on behalf of 6,805 beneficiaries

[32] *https://www.uscis.gov/news/alerts/cap-reached-for-remaining-h-2b-visas-for-returning-workers-for-fy-2021* (Aug. 19, 2021).

[33] The term ''increased labor demand'' in this context relies on the most recently released figure from the Bureau of Labor Statistics (BLS) survey at the time this TFR was written. The BLS Job Openings and Labor Turnover Survey (JOLTS) reports 11 million job openings in October 2021 (compared to 6.8 million job openings in October 2020). See Bureau of Labor Statistics, Job Openings and Labor Turnover Survey released on December 8, 2021 at *https://www.bls.gov/news.release/archives/jolts_12082021.htm.*

[34] 82 FR 32987 (Jul. 19, 2017); 83 FR 24905 (May 31, 2018); 84 FR 20005 (May 8, 2019); 86 FR 28198 (May 25, 2021).

[35] *See Outdoor Amusement Bus. Ass'n* v. *Dep't of Homeland Sec.,* 983 F.3d 671 (4th Cir. 2020), *cert. denied,* —— S. Ct. ——, 2021 WL 5043596 (2021); *see also Temporary Non-Agricultural Employment of H–2B Aliens in the United States,* 80 FR 24041, 24045 (Apr. 29, 2015).

[36] *See Outdoor Amusement Bus. Ass'n,* 983 F.3d at 684–89.

[37] *See* 8 CFR 214.2(h)(6)(iii)(A) and (C), (h)(6)(iv)(A).

[38] These conditions and limitations are not inconsistent with sections 214(g)(3) (''first in, first out'' H–2B processing) and (g)(10) (fiscal year H–2B allocations) because noncitizens covered by the special allocation under section 105 of the FY 2021 Omnibus are not ''subject to the numerical limitations of [section 214(g)(1).]'' *See, e.g.,* INA section 214(g)(3); INA section 214(g)(10); FY 2021 Omnibus div. O, sec. 105 (''Notwithstanding the numerical limitation set forth in section 214(g)(1)(B) of the [INA] . . . .'').

[39] *See* Section 3(c) of E.O. 14010, Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, signed February 2, 2021, *https://www.govinfo.gov/content/pkg/FR-2021-02-05/pdf/2021-02561.pdf.*

under this allocation.[40] In addition, DHS and the Biden administration have continued to conduct outreach efforts promoting the H–2B program, among others, as a lawful pathway for nationals of El Salvador, Guatemala, and Honduras to work in the United States. The decision to again reserve an allocation of supplemental H–2B visas for these nationals, while providing an exemption from the returning worker requirement, will provide ongoing support for the President's vision of expanding access to lawful pathways for protection and opportunity for individuals from the Northern Triangle countries.[41]

Additionally, with this temporary final rule, the 6,500 supplemental cap allocation exempted from the returning worker requirement is now also available to nationals of Haiti. In also providing this supplemental cap reservation to nationals of Haiti, DHS recognizes the recent challenges, such as political instability, increasing gang-related violence, and a 7.2 magnitude earthquake that have occurred in that country, and believes that the H–2B program will provide a stabilizing lawful channel for Haitian nationals seeking to enter the United States for economic opportunities. As DHS emphasized in its recent notice adding Haiti to the list of countries whose nationals are eligible to participate in the H–2A and H–2B programs, sustainable development and the stability of Haiti is vital to the interests of the United States as a close partner and neighbor.[42]

Similar to the temporary final rules for the FY 2019 and FY 2021 supplemental caps, the Secretary of Homeland Security has also determined to limit the supplemental visas to H–2B returning workers, in other words, workers who were issued H–2B visas or were otherwise granted H–2B status in FY 2019, 2020, or 2021,[43] unless the employer indicates on the new attestation form that it is requesting workers who are nationals of one of the Northern Triangle countries or Haiti and who are therefore counted towards the 6,500 allotment regardless of whether they are new or returning workers. If the 6,500 returning worker exemption cap for Salvadoran, Guatemalan, Honduran, and Haitian nationals has been reached and visas remain available under the returning worker cap, the petition would be rejected and any fees submitted returned to the petitioner. In such a case, a petitioner may continue to request workers who are nationals of one of the Northern Triangle countries or Haiti, but the petitioner must file a new Form I–129 petition, with fee, and attest that these noncitizens will be returning workers, in other words, workers who were issued H–2B visas or were otherwise granted H–2B status in FY 2019, 2020, or 2021. Unlike the temporary final rule for the FY 2021 supplemental cap, if the 6,500 returning worker exemption cap for nationals of the Northern Triangle countries and Haiti remains unfilled, DHS will *not* make unfilled visas reserved for Northern Triangle countries and Haiti available to the general returning worker cap.

The Secretary of Homeland Security's determination to increase the numerical limitation is based, in part, on the conclusion that some businesses are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on their petition. Members of Congress have informed the Secretaries of Homeland Security and Labor about the needs of some U.S. businesses for H–2B workers (after the statutory cap for the relevant half of the fiscal year has been reached) and about the potentially negative impact on state and local economies if the cap is not increased.[44] U.S. businesses, chambers of commerce, employer organizations, and state and local elected officials have also expressed concerns to the DHS and Labor Secretaries regarding the unavailability of H–2B visas after the statutory cap was reached.[45]

After considering the full range of evidence and diverse points of view, the Secretary of Homeland Security has deemed it appropriate to take action to prevent further severe and permanent financial loss for those employers currently suffering irreparable harm and to avoid impending irreparable harm for other employers unable to obtain H–2B workers under the statutory cap, including potential wage and job losses by their U.S. workers, as well as other adverse downstream economic effects.[46] While the previous standard focused on avoidance of irreparable harm in the future, this rule recognizes that some employers may already be suffering irreparable harm, that is severe and permanent financial loss, and so the aim of the revised irreparable harm standard with respect to those employers that will benefit from this TFR is to prevent further severe and permanent financial loss by allowing these employers to also obtain H–2B workers. At the same time, the Secretary of Homeland Security believes it is appropriate to condition receipt of supplemental visas on adherence to additional worker protections, as discussed below.

The decision to afford the benefits of this temporary cap increase to U.S. businesses that need H–2B workers because they are suffering irreparable harm already or will suffer impending irreparable harm, and that will comply with additional worker protections, rather than applying the cap increase to any and all businesses seeking temporary workers, is consistent with DHS's time-limited authority to increase the cap, as explained below. The Secretary of Homeland Security, in implementing section 105 and determining the scope of any such increase, has broad discretion, following consultation with the Secretary of Labor, to identify the business needs that are most relevant, while bearing in mind the need to protect U.S. workers. Within that context, for the below reasons, the Secretary of Homeland Security has determined to allow an overall increase of up to 20,000 additional visas, for positions with start dates on or before March 31, 2022, solely for the businesses facing

[40] While USCIS approved a greater number of beneficiaries from the Northern Triangle countries than the 6,000 visas allocated under the FY 2021 supplemental cap for those countries, the Department of State approved 3,065 visas on behalf of nationals from those countries. *See* DHS, USCIS, Office of Performance and Quality, SAS PME C3 Consolidated, VIBE, DOS Visa Issuance Data queried 11.2021, TRK 8598. This discrepancy can be attributed to adverse impacts on consular processing caused by the COVID–19 pandemic, travel restrictions, as well as lack of readily available processes to efficiently match workers from Norther Triangle countries with U.S. recruiters/employers on an expedited timeline. DHS anticipates that the normalization of consular services, easing of travel restrictions, the issuance of this rule earlier in the fiscal year, as well as the fact that this is the second year that DHS will make a specific allocation available for workers from the Northern Triangle countries, will contribute to greater utilization of available visas under this allocation during FY 2022.

[41] *Id.*

[42] *See Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs,* 86 FR 62559, 62562, *https://www.govinfo.gov/content/pkg/FR-2021-11-10/pdf/2021-24534.pdf* (Nov. 10, 2021).

[43] For purposes of this rule, these returning workers could have been H–2B cap exempt or extended H–2B status in FY 2019, 2020, or 2021. Additionally they may have been previously counted against the annual H–2B cap of 66,000 visas during FY 2019, 2020, or 2021, or the supplemental caps in FY 2019 or FY 2021.

[44] See the docket for this rulemaking for access to these letters.

[45] *Id.*

[46] *See, e.g.,* Impacts of the H–2B Visa Program for Seasonal Workers on Maryland's Seafood Industry and Economy, Maryland Department of Agriculture Seafood Marketing Program and Chesapeake Bay Seafood Industry Association (March 2, 2020), available at *https://mda.maryland.gov/documents/2020-H2B-Impact-Study.pdf* (last visited Dec. 1, 2021).

permanent, severe financial loss or those who will face such loss in the near future.

First, DHS interprets section 105's reference to ''the needs of American businesses'' as describing a need different from the need ordinarily required of employers in petitioning for an H–2B worker. Under the generally applicable H–2B program, each individual H–2B employer must demonstrate that it has a temporary need for the services or labor for which it seeks to hire H–2B workers. *See* 8 CFR 214.2(h)(6)(ii); 20 CFR 655.6. The use of the phrase ''needs of American businesses,'' which is not found in INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b), or the regulations governing the standard H–2B cap, authorizes the Secretary of Homeland Security in allocating additional H–2B visas under section 105 to require that employers establish a need above and beyond the normal standard under the H–2B program, that is, an inability to find sufficient qualified U.S. workers willing and available to perform services or labor and that the employment of the H–2B worker will not adversely affect the wages and working conditions of U.S. workers, *see* 8 CFR 214.2(h)(6)(i)(A). DOL concurs with this interpretation.

Second, the approach set forth in this rule limits the increase in a way that is similar to the implementation of the supplemental caps in fiscal years 2017, 2018, 2019, and 2021, and provides protections against adverse effects on U.S. workers that may result from a cap increase. Although there is not enough time to conduct a more full and formal quantitative analysis of such adverse effects, the Secretary has determined that in the particular circumstances presented here, it is appropriate, within the limits discussed below, to tailor the availability of this temporary cap increase to those businesses that are suffering irreparable harm or will suffer impending irreparable harm, in other words, those facing permanent and severe financial loss.

As noted above, to address the increased and, in some cases, impending need for H–2B workers in positions with start dates on or before March 31, 2022, the Secretary of Homeland Security has determined that employers may petition for supplemental visas on behalf of up to 13,500 workers who were issued an H–2B visa or were otherwise granted H–2B status in FY 2019, 2020, or 2021.[47] The last 3 fiscal years' temporal limitation in the returning worker definition in this temporary rule mirrors the temporal limitation Congress imposed in previous returning worker statutes.[48] Such workers (in other words, those who recently participated in the H–2B program) have previously obtained H–2B visas and therefore have been vetted by DOS, would have departed the United States after their authorized period of stay as generally required by the terms of their nonimmigrant admission, and therefore may obtain their new visas through DOS and begin work more expeditiously.[49] DOS has informed DHS that, in general, H–2B visa applicants who are able to demonstrate clearly that they have previously abided by the terms of their status granted by DHS have a higher visa issuance rate when applying to renew their H–2B visas, as compared with the overall visa applicant pool from a given country. Furthermore, consular officers are authorized to waive the in-person interview requirement for certain H–2B applicants seeking to renew their visa within a specific timeframe of that visa's expiration, and who otherwise meet the strict limitations set out under INA section 222(h), 8 U.S.C. 1202(h). We note that DOS has, in response to the COVID–19 pandemic, expanded interview waiver eligibility to certain first-time H–2 applicants [50] potentially allowing such applicants to be processed with increased efficiency. However, there is no indication that this temporary measure will necessarily affect the overall visa issuance rates of applicants, which DOS has indicated is higher for returning workers who can demonstrate prior compliance with the program.

Limiting the supplemental cap to returning workers is beneficial because these workers have generally followed immigration law in good faith and demonstrated their willingness to return home after they have completed their temporary labor or services or their period of authorized stay, which is a condition of H–2B status. The returning worker condition therefore provides a basis to believe that H–2B workers under this cap increase will again abide by the terms and conditions of their visa or nonimmgrant status. The returning worker condition also benefits employers that seek to re-hire known and trusted workers who have a proven positive employment track record while previously employed as workers in this country. While the Departments recognize that the returning worker requirement may limit to an extent the flexibility of employers that might wish to hire non-returning workers, the requirement provides an important safeguard against H–2B abuse, which DHS considers to be a significant consideration.

In allocating up to 6,500 H–2B visas to nationals of the Northern Triangle countries and Haiti while making the remaining allocation of up to 13,500 H–2B visas available to qualified returning workers, irrespective of their country of nationality, this rule strikes a balance between furthering the U.S. foreign policy interests of creating a comprehensive, whole-of-government framework—of which this allocation is one piece—to address and manage migration from the Northern Triangle countries and Haiti and addressing the needs of certain H–2B employers that are suffering irreparable harm or will suffer impending irreparable harm. The United States has strong foreign policy interests in allocating up to 6,500 supplemental visas only to nationals of the Northern Triangle countries or Haiti and exempting such persons from the returning worker requirement. The Secretary of Homeland Security has determined that both the 6,500 limitation and the exemption from the returning worker requirement for nationals of the Northern Triangle countries is again beneficial in light of

[47] DHS believes that this temporal limitation is appropriate even though H–2B visa issuances and admissions were lower in FY 2020 than in previous years, likely due to the impacts of COVID–19, as DHS believes that there will still be a sufficient number of returning workers available to U.S. employers to use the 13,500 additional visas authorized by this rule.

[48] Consolidated Appropriations Act, 2016, Public Law 114–113, div. F, tit. V, sec 565; John Warner National Defense Authorization Act for Fiscal Year 2007, Public Law 109–364, div. A, tit. X, sec. 1074, (2006); Save Our Small and Seasonal Businesses Act of 2005, Public Law 109–13, div. B, tit. IV, sec. 402.

[49] The previous review of an applicant's qualifications and current evidence of lawful travel to the United States will generally lead to a shorter processing time of a renewal application. In addition, U.S. Department of State consular officers temporarily have flexibility to waive the personal appearance of certain nonimmigrant visa applicants. *See, e.g.,* 86 FR 70735 (Dec. 13, 2021); *see also* DOS website, Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, *https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html* (last updated Dec. 23, 2021).

[50] Some consular sections waive the in-person interview requirement for certain H–2B applicants and who otherwise meet the strict limitations set out under INA section 222(h), 8 U.S.C. 1202(h). The authority allowing for waiver of interview of certain H–2 (temporary agricultural and non-agricultural workers) applicants is extended through the end of 2022. DOS, *Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html* (last updated Dec. 23, 2021).

President Biden's February 2, 2021 E.O. 14010, which instructed the Secretary of Homeland Security and the Secretary of State to implement measures to enhance access for individuals of the Northern Triangle countries to visa programs, as appropriate and consistent with applicable law, and to work toward addressing some of the causes of and managing migration throughout North and Central America. In response to this executive order, DHS seeks to promote and improve safety, security, and economic stability throughout the North and Central American region, and work with these countries to stem the flow of irregular migration in the region and enhance access to visa programs. DHS believes that including nationals of Haiti in this allocation of up to 6,500 supplemental visas will further promote and improve safety, security, and economic stability throughout this region, and is in the interests of the United States as a close partner and neighbor.

The exemption from the returning worker requirement recognizes the small numbers of individuals, approximately 4,400 per year, from the three Northern Triangle countries and Haiti who were previously granted H–2B visas in recent years.[51] Absent this exemption, there may be insufficient workers from these countries, which means that the rule might thereby fail to achieve its intended policy objective to provide additional temporary foreign workers for U.S. employers that are suffering irreparable harm or will suffer impending irreparable harm, while also enhancing access to the H–2B visa classification for individuals from the Northern Triangle countries and Haiti.

Finally, unlike the temporary final rule for the FY 2021 supplemental cap, this rule does *not* make available unfilled visas from the allocation for nationals of the Northern Triangle countries and Haiti to the general supplemental cap for returning workers. As with the supplemental cap for returning workers, USCIS will stop accepting petitions received under the allocation for the Northern Triangle countries and Haiti after March 31, 2022. This end date is intended to provide H–2B employers ample time, should they choose, to petition for, and bring in, workers under the allocation for the Northern Triangle countries and Haiti. This, in turn, provides an opportunity for employers to contribute to our country's efforts to promote and improve safety, security and economic stability in these countries to help stem the flow of irregular migration to the United States.

For all petitions filed under this rule and the H–2B program, generally, employers must establish, among other requirements, that insufficient qualified U.S. workers are available to fill the petitioning H–2B employer's job opportunity and that the foreign worker's employment in the job opportunity will not adversely affect the wages or working conditions of similarly-employed U.S. workers. INA section 214(c)(1), 8 U.S.C. 1184(c)(1); 8 CFR 214.2(h)(6)(iii)(A) and (D); 20 CFR 655.1. To meet this standard of protection for U.S. workers and, in order to be eligible for additional visas under this rule, employers must have applied for and received a valid TLC in accordance with 8 CFR 214.2(h)(6)(iv)(A) and (D) and 20 CFR part 655, subpart A. Under DOL's H–2B regulations, TLCs are valid only for the period of employment certified by DOL and expire on the last day of authorized employment. 20 CFR 655.55(a).

In order to have a valid TLC, therefore, the employment start date on the employer's H–2B petition must not be different from the employment start date certified by DOL on the TLC. *See* 8 CFR 214.2(h)(6)(iv)(D). Under generally applicable DHS regulations, the only exception to this requirement applies when an employer files an amended visa petition, accompanied by a copy of the previously approved TLC and a copy of the initial visa petition approval notice, at a later date to substitute workers as set forth under 8 CFR 214.2(h)(6)(viii)(B). This rule also requires additional recruitment for certain petitioners, as discussed below.

In sum, this rule increases the FY 2022 numerical limitation by up to 20,000 visas for positions with start dates on or before March 31, 2022, but also restricts the availability of those additional visas by prioritizing only the most significant business needs, and limiting eligibility to H–2B returning workers, unless the worker is a national of one of the Northern Triangle countries or Haiti counted towards the 6,500 allocation that are exempt from the returning worker limitation. These provisions are each described in turn below.

B. Numerical Increase and Allocation of Up to 20,000 Visas

The increase of up to 20,000 visas will help address the urgent needs of eligible employers for additional H–2B workers for those employers with employment needs for start dates on or before March 31, 2022.[52] As noted above, DHS is limiting the numerical increase to those petitions with start dates on or before March 31, 2022, because current data supports the need for additional H–2B workers with start dates during that timeframe.[53] The determination to allow up to 20,000 additional H–2B visas reflects a balancing of a number of factors including the demand for H–2B visas for the first half of FY 2022; current economic conditions; the general trend of increased demand for H–2B visas from FY 2017 to FY 2021; H–2B returning worker data; the amount of time remaining for employers to hire and obtain H–2B workers with start dates on or before March 31, 2022; concerns from Congress, state and local elected officials, U.S. businesses, chambers of commerce, and employer organizations expressing a need for additional H–2B workers; and the objectives of E.O. 14010. DHS believes the numerical increase both addresses the needs of U.S. businesses and, as explained in more detail below, furthers the foreign policy interests of the United States.

Section 105 of the FY 2021 Omnibus sets the highest number of H–2B returning workers who were exempt from the cap in certain previous years as the maximum limit for any increase in the H–2B numerical limitation for FY

[51] DOS issued a combined total of approximately 26,630 H–2B visas to nationals of the Northern Triangle countries and Haiti from FY 2015 through FY 2020, or approximately 4,400 per year. DOS Monthly NIV Issuances by Nationality and Visa Class; *https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html* (last visited Dec. 03, 2021).

[52] In contrast with section 214(g)(1) of the INA, 8 U.S.C. 1184(g)(1), which establishes a cap on the number of individuals who may be issued visas *or otherwise provided H–2B status* (emphasis added), and section 214(g)(10) of the INA, 8 U.S.C. 1184(g)(10), which imposes a first half of the fiscal year cap on H–2B issuance with respect to the number of individuals who may be issued visas *or are accorded [H–2B] status*'' (emphasis added), section 105 only authorizes DHS to increase the number of available H–2B *visas.* Accordingly, DHS will not permit individuals authorized for H–2B status pursuant to an H–2B petition approved under section 105 to change to H–2B status from another nonimmigrant status. *See* INA section 248, 8 U.S.C. 1258; *see also* 8 CFR part 248. If a petitioner files a petition seeking H–2B workers in accordance with this rule and requests a change of status on behalf of someone in the United States, the change of status request will be denied, but the petition will be adjudicated in accordance with applicable DHS regulations. Any noncitizen authorized for H–2B status under the approved petition would need to obtain the necessary H–2B visa at a consular post abroad and then seek admission to the United States in H–2B status at a port of entry.

[53] On January 4, 2022, DOL's Office of Foreign Labor Certification announced it had received a total of 7,875 H–2B temporary labor certification applications requesting 136,555 workers with the start date of work of April 1, 2022. *See https://www.dol.gov/agencies/eta/foreign-labor.* DHS is limiting the supplemental H–2B visas provided by this TFR to those employers with start dates of need on or before March 31, 2022, for the reasons described in this TFR.

2021.[54] Consistent with the statute's reference to H–2B returning workers, in determining the appropriate number by which to increase the H–2B numerical limitation, the Secretary of Homeland Security focused on the number of visas allocated to such workers in years in which Congress enacted returning worker exemptions from the H–2B numerical limitation. During each of the years the returning worker provision was in force, U.S. employers' standard business needs for H–2B workers exceeded the statutory 66,000 cap. The highest number of H–2B returning workers approved was 64,716 in FY 2007. In setting the number of additional H–2B visas to be made available in this temporary final rule for those petitioners with start dates on or before March 31, 2022 during FY 2022, DHS considered this number, overall indications of increased need, and the availability of U.S. workers, as discussed below. On the basis of these considerations, DHS determined that it would be appropriate to make available up to 20,000 additional visas under the FY2022 supplemental cap authority. The Secretary further considered the objectives of E.O. 14010, which among other initiatives, instructs the Secretary of Homeland Security and the Secretary of State to implement measures to enhance access to visa programs for individuals from the Northern Triangle countries, as well as to address some of the root causes of and manage migration throughout both North and Central America, including Haiti, and determined that reserving up to 6,500 of the up to 20,000 additional visas and exempting this number from the returning worker requirement for nationals from the Northern Triangle countries or Haiti would be appropriate.

In past years, the number of beneficiaries covered by H–2B petitions filed exceeded the number of additional visas allocated under the three most recent supplemental caps. In FY 2018, USCIS received petitions for approximately 29,000 beneficiaries during the first 5 business days of filing for the 15,000 supplemental cap. USCIS therefore conducted a lottery on June 7, 2018, to randomly select petitions that would be accepted under the supplemental cap. Of the petitions that were selected, USCIS issued approvals for 15,672 beneficiaries.[55] In FY 2019, USCIS received sufficient petitions for the 30,000 supplemental cap on June 5, 2019, but did not conduct a lottery to randomly select petitions that would be accepted under the supplemental cap. Of the petitions received, USCIS issued approvals for 32,717 beneficiaries. In FY 2021, USCIS received a sufficient number of petitions for the 22,000 supplemental cap on August 13, 2021, including a significant number of workers from Northern Triangle countries.[56] Of the petitions received, USCIS issued approvals for 30,211 beneficiaries, including approvals for 6,805 beneficiaries under the allocation for the nationals of the Northern Triangle.[57]

Data for the first half of FY 2022 clearly indicate an immediate need for supplemental H–2B visas in FY 2022 for positions with start dates between October 1, 2021 through March 31, 2022. As of December 1, 2021, DOL's Office of Foreign Labor Certification (OFLC) reports having certified 2,469 TLC applications with requested dates of need in the first half of FY 2022 for 65,717 H–2B visas.[58] Furthermore, as noted above, USCIS received a sufficient number of H–2B petitions to reach the first half of the FY 2022 fiscal year statutory cap prior to the start of the fiscal year.[59]

In addition, although the public health emergency due to COVID–19 still exists,[60] DHS believes that issuing additional H–2B visas for positions with start dates on or before March 31, 2022 is appropriate in the context of the nation's economic recovery from the ongoing pandemic. In March 2020, the U.S. labor market was severely affected by the onset of the COVID–19 pandemic, pushing the national unemployment rate to near record levels and resulting in millions of U.S. workers being displaced from work. In fiscal year 2021, approximately 88 percent of H–2B filings were for positions within just 5 sectors.[61] NAICS 56 (Administrative and Support and Waste Management and Remediation Services) accounted for 41.7% of filings, NAICS 71 (Accommodation and Food Services) accounted for 17.1%, NAICS 72 (Arts, Entertainment, and Recreation) accounted for 14.5%, NAICS 23 (Construction) accounted for 9.5%, and NAICS 11 (Agriculture, Forestry, Fishing and Hunting) accounted for 5% of filings.

Within these industries, DOL data show increased labor demand over the last year. More specifically, DOL data from the Job Openings and Labor Turnover Survey (JOLTS) show that the rate of job openings[62] increased for all 5 industries between October 2020 and October 2021. The job opening rate for NAICS 56[63] increased from 5.7 to 7.9

[54] During fiscal years 2005 to 2007, and 2016, Congress enacted ''returning worker'' exemptions to the H–2B visa cap, allowing workers who were counted against the H–2B cap in one of the three preceding fiscal years not to be counted against the upcoming fiscal year cap. Save Our Small and Seasonal Businesses Act of 2005, Public Law 109–13, Sec. 402 (May 11, 2005); John Warner National Defense Authorization Act, Public Law 109–364, Sec. 1074 (Oct. 17, 2006); Consolidated Appropriations Act of 2016, Public Law 114–113, Sec. 565 (Dec. 18, 2015).

[55] USCIS recognizes it may have received petitions for more than 29,000 supplemental H–2B workers if the cap had not been exceeded within the first 5 days of opening. However, DHS estimates that not all of the 29,000 workers requested under the FY 2018 supplemental cap would have been approved and/or issued visas. For instance, although DHS approved petitions for 15,672 beneficiaries under the FY 2018 cap increase, the Department of State data shows that as of January 15, 2019, it issued only 12,243 visas under that cap increase. Similarly, DHS approved petitions for 12,294 beneficiaries under the FY 2017 cap increase, but the Department of State data shows that it issued only 9,160 visas.

[56] On June 3, USCIS announced that it had received enough petitions to reach the cap for the additional 16,000 H–2B visas made available for returning workers only, but that it would continue accepting petitions for the additional 6,000 visas allotted for nationals of the Northern Triangle countries. *See https://www.uscis.gov/news/alerts/cap-reached-for-additional-returning-worker-h-2b-visas-for-fy-2021* (June 3, 2021). On July 23, 2021, USCIS announced that, because it did not receive enough petitions to reach the allocation for the Northern Triangle countries by the July 8 filing deadline, the few remaining visas were available to H–2B returning workers regardless of their country of origin. *See https://www.uscis.gov/news/alerts/employers-may-file-h-2b-petitions-for-returning-workers-for-fy-2021* (July 23, 2021).

[57] The number of approved workers exceeded the number of additional visas authorized for FY 2018, FY 2019, as well as for FY 2021 to allow for the possibility that some approved workers would either not seek a visa or admission, would not be issued a visa, or would not be admitted to the United States.

[58] Processing Times, *https://flag.dol.gov/processingtimes* (last visited Dec. 2, 2021).

[59] On October 12, 2021, USCIS announced that it had received sufficient petitions to reach the congressionally mandated cap on H–2B visas for temporary nonagricultural workers for the first half of fiscal year 2022, and that Sept. 30, 2021 was the final receipt date for new cap-subject H–2B worker petitions requesting an employment start date before April 1, 2022. *See* USCIS, USCIS Reaches H–2B Cap for First Half of FY 2022, *https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2022* (Oct 12, 2021).

[60] *See* HHS Renewal of Determination That A Public Health Emergency Exists, *https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVDI-15Oct21.aspx* (Oct. 15, 2021).

[61] USCIS analysis of DOL OLFC Performance data.

[62] The JOLTS News Release states that the job openings rate is calculated by dividing the number of job openings by the sum of employment and job openings and multiplying that quotient by 100. See *https://www.bls.gov/news.release/jolts.htm.*

[63] JOLTS data presented here are for the Professional and Business Services Supersector, which is comprised of NAICS 54, NAICS 55 and NAICS 56. *See https://www.bls.gov/iag/tgs/iag60.htm.* As such, the data presented here should be understood to be the best possible proxy for changes in NAICS 56 and not a direct measurement of any specific change in the actual underlying sectors. The latest data available, for November 2021, from the Department of Labor's Current Employment Statistics program indicates that

Continued

while the job opening rate for NAICS 71 went from 5.2 to 7.6. The job opening rate for NAICS 72 went from 6.3 to 10.7 while the rate for NAICS 23 went from 3.3 to 5.2. The job opening rate for NAICS 11 [64] increased from 3.4 to 5.3.

YEAR-OVER-YEAR CHANGE IN JOB OPENING RATE [65]

NAICS 11	NAICS 23	NAICS 56	NAICS 71	NAICS 72
1.9	1.9	2.2	2.4	4.4

The increase in the job openings rate across these industries is a clear indication of increased labor demand within these industries. The Departments believe that the supplemental allocation of H–2B visas described in this temporary final rule will help to meet increased job openings in these industries.

In addition, DOS recently announced that, as worldwide restrictions due to the COVID–19 pandemic begin to ease, and in line with the President's proclamation regarding the safe resumption of international travel,[66] the Bureau of Consular Affairs is focusing on reducing wait times for all consular services at embassies and consulates overseas while also protecting health and safety of staff and applicants.[67] We note, however, that amid growing concern about the COVID Omicron variant, a highly mutated form of the COVID virus that is now documented in dozens of countries and numerous states within the U.S., the Centers for Disease Control and Prevention (CDC) recently tightened testing requirements for international air travel to the United States, which may have an impact on such travel.[68] Given the level of demand for H–2B workers, the continued and projected economic recovery, the continued and projected job growth, and the resumption of visa processing services, DHS believes it is appropriate at this time to release additional visas for positions with start dates on or before March 31, 2022. Further, DHS believes that 20,000 is an appropriate number of visas for the reasons discussed above.

Finally, recognizing the high demand for H–2B visas, it is plausible that the additional H–2B supplemental allocations provided in this rule will be reached before March 31, 2022. Specifically, the following scenarios may still occur:

- The 13,500 supplemental cap visas limited to returning workers that will be immediately available for employers will be reached before March 31, 2022.
- The 6,500 supplemental cap visas limited to nationals of the Northern Triangle countries and Haiti will be reached before March 31, 2022.

DHS regulation, 8 CFR 214.2(h)(6)(xi)(E), reaffirms the use of the processes that are in place when H–2B numerical limitations under INA section 214(g)(1)(B) or (g)(10), 8 U.S.C. 1184(g)(1)(B) or (g)(10), are reached, as applicable to each of the scenarios described above that involve numerical limitations of the supplemental cap. Specifically, for each of the scenarios mentioned above, DHS will monitor petitions received, and make projections of the number of petitions necessary to achieve the projected numerical limit of approvals. USCIS will also notify the public of the dates that USCIS has received the necessary number of petitions (the ''final receipt dates'') for each of these scenarios. The day the public is notified will not control the final receipt dates. Moreover, USCIS may randomly select, via computer-generated selection, from among the petitions received on the final receipt date the remaining number of petitions deemed necessary to generate the numerical limit of approvals for each of the scenarios involving numerical limitations to the supplemental cap. USCIS may, but will not necessarily, conduct a lottery if: The 13,500 supplemental cap visas for returning workers is reached before March 31, 2022; or the 6,500 visas limited to nationals of the Northern Triangle countries and Haiti is reached before March 31, 2022. Finally, similar to the processes applicable to the H–2B semi-annual statutory cap, if the final receipt date is any of the first 5 business days on which petitions subject to the applicable numerical limit may be received (in other words, if the numerical limit is reached on any one of the first 5 business days that filings can be made), USCIS will randomly apply all of the numbers among the petitions received on any of those 5 business days.

C. Returning Workers

Similar to the temporary increases in FY 2019 and FY 2021, the Secretary of Homeland Security has determined that the supplemental visas should be granted to returning workers from the past 3 fiscal years, in order to meet the immediate need for H–2B workers, unless the H–2B worker is a national of one of the Northern Triangle countries or Haiti and is counted towards the separate 6,500 cap for such workers. The Secretary has determined that, for purposes of this program, H–2B returning workers include those individuals who were issued an H–2B visa or were otherwise granted H–2B status in FY 2019, 2020, or 2021. As discussed above, the Secretary determined that limiting returning workers to those who were issued an H–2B visa or granted H–2B status in the past three fiscal years is appropriate as it mirrors the standard that Congress designated in previous returning worker provisions. Returning workers have previously obtained H–2B visas and therefore been vetted by DOS, would have departed the United States after their authorized period of stay as generally required by the terms of their

NAICS 56 accounted for just under 42% of employment in Professional Business Services. All data accessed December 22, 2021.

[64] JOLTS data presented here are for Mining and Logging, which is part of the Natural Resources and Mining Supersector. This supersector is comprised of NAICS 11 (Agriculture, Forestry, Fishing and Hunting) and NAICS 21 (Mining, Quarrying, and Oil and Gas Extraction). *See https://www.bls.gov/iag/tgs/iag10.htm.* As such, the data presented here should be understood to be the best possible proxy for changes in NAICS 11 and not a direct measurement of any specific change in the actual underlying sectors. The latest data available, for November 2021, from the Department of Labor's Current Employment Statistics program indicates that NAICS 11 accounted for just under 7% of employment in Mining and Logging.

[65] Year-over-year change was calculated as the difference between the October 2021 value for the respective industry and the October 2020 value. *See https://www.bls.gov/jlt/#data.* All data accessed December 22, 2021.

[66] Proclamation 10294 of Oct. 25, 2021, *Advancing the Safe Resumption of Global Travel During the COVID-19 Pandemic,* 86 FR 59603 (Oct. 28, 2021).

[67] DOS, Visa Services Operating Status Update, *https://travel.state.gov/content/travel/en/News/visas-news/visa-services-operating-status-update.html* (Nov. 19, 2021).

[68] *See* CDC, Requirement for Proof of Negative COVID–19 Test or Documentation of Recovery from COVID–19, *Requirement for Proof of Negative COVID–19 Test or Documentation of Recovery from COVID–19* (Dec. 2, 2021). Changes made prior to the emergence of Omicron also reflect the evolving nature of the pandemic and potential impacts on international air travel by H–2B workers. *See* 86 FR 59603 (Oct. 28, 2021) (Presidential Proclamation); *see also* 86 FR 61224 (Nov. 5, 2021) (implementing CDC Order).

nonimmigrant admission, and therefore may have a higher likelihood of success in obtaining their new visas through DOS, possibly without a required interview, and begin work more expeditiously.

To ensure compliance with the requirement that additional visas only be made available to returning workers, petitioners seeking H–2B workers under the supplemental cap will be required to attest that each employee requested or instructed to apply for a visa under the FY 2022 supplemental cap was issued an H–2B visa or otherwise granted H–2B status in FY 2019, 2020, or 2021, unless the H–2B worker is a national of one of the Northern Triangle countries or Haiti and is counted towards the 6,500 cap. This attestation will serve as prima facie initial evidence to DHS that each worker, unless a national of one of the Northern Triangle countries or Haiti who is counted against the 6,500 cap, meets the returning worker requirement. DHS and DOS retain the right to review and verify that each beneficiary is in fact a returning worker any time before and after approval of the petition or visa. DHS has authority to review and verify this attestation during the course of an audit or investigation.

D. Returning Worker Exemption for Up to 6,500 Visas for Nationals of Guatemala, El Salvador, and Honduras (Northern Triangle Countries) and Haiti

As described above, the Secretary of Homeland Security has determined that up to 6,500 additional H–2B visas will be limited to workers who are nationals of one of the Northern Triangle countries or Haiti. These 6,500 visas will be exempt from the returning worker requirement. If the 6,500 visa limit has been reached and the 13,500 cap has not, petitioners may continue to request workers who are nationals of one of the Northern Triangle countries or Haiti, but these noncitizens must be specifically requested as returning workers who were issued H–2B visas or were otherwise granted H–2B status in FY 2019, 2020, or 2021.

DHS has determined that reserving 6,500 supplemental H–2B visas for nationals of the Northern Triangle countries or Haiti—a number higher than the average annual number of visas issued to such persons in the past 7 fiscal years—will encourage U.S. employers that are suffering irreparable harm or will suffer impending irreparable harm to seek out workers from such countries, while, at the same time, increase interest among nationals of the Northern Triangle countries and Haiti seeking a legal pathway for temporary employment in the United States. DOS issued a combined total of approximately 26,630 H–2B visas to nationals of the Northern Triangle countries or Haiti from FY 2015 through FY 2020, an average of approximately 4,400 per year.[69] In FY 2021, DOS issued a combined total of more than 6,600 visas to nationals of Northern Triangle countries. This increase is likely due in large part to the additional H–2B visas made available to nationals of these countries by the FY 2021 H–2B supplemental visa temporary final rule.[70] In addition, based in part on the vital U.S. interest of promoting sustainable development and the stability of Haiti, DHS recently added Haiti to the list of countries whose nationals are eligible to participate in the H–2A and H–2B programs.[71] Therefore, as previously stated, DHS has determined that the additional increase in FY 2022 will not only provide U.S. businesses who have been unable to find qualified and available U.S. workers with potential workers, but also promote further expansion of lawful immigration and lawful employment authorization for nationals of Northern Triangle countries and Haiti.

While DHS reiterates the importance of limiting the general supplemental cap exclusively to returning workers, for the reasons stated previously, the Secretary has determined that the exemption from the returning worker requirement for nationals of the Northern Triangle countries or Haiti is beneficial for the following reasons. It strikes a balance between furthering the U.S. foreign policy interests of expanding access to lawful pathways to nationals of the Northern Triangle countries and Haiti seeking economic opportunity in the United States and addressing the needs of certain H–2B employers that are suffering irreparable harm or will suffer impending irreparable harm. This policy initiative would also support the strategies for the region described in E.O. 14010, which directs DHS to implement efforts to expand access to lawful pathways to the United States, including visa programs, as appropriate and consistent with the law through both protection-related and non-protection related programs. E.O. 14010 further directs relevant government agencies to create a comprehensive regional framework to address the causes of migration, and to manage migration throughout North and Central America.[72] The availability of workers from the Northern Triangle countries and Haiti may help provide U.S. employers with additional labor from neighboring countries who are committed to working with the United States and also promote safe and lawful immigration to the United States.

Similar to the discussion above regarding returning workers, DOS will work with the relevant countries to facilitate consular interviews, as required,[73] and channels for reporting incidents of fraud and abuse within the H–2 programs. Further, each country's own consular networks will maintain contact with the workers while in the United States and ensure the workers know their rights and responsibilities under the U.S. immigration laws, which are all valuable protections to the immigration system, U.S. employers, U.S. workers, and workers entering the country on H–2 visas.

Nothing in this rule will limit the authority of DHS or DOS to deny, revoke, or take any other lawful action with respect to an H–2B petition or visa application at any time before or after approval of the H–2B petition or visa application.

E. Business Need Standard—Irreparable Harm and FY 2022 Attestation

To file any H–2B petition under this rule, petitioners must meet all existing H–2B eligibility requirements, including having an approved, valid, and unexpired TLC. *See* 8 CFR 214.2(h)(6) and 20 CFR part 655, subpart A. In addition, the petitioner must submit an attestation to USCIS in which the petitioner affirms, under penalty of

[69] DOS Monthly NIV Issuances by Nationality and Visa Class; *https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/nonimmigrant-visa-statistics.html* (last visited December 1, 2021).

[70] *Id.*

[71] *See Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs,* 86 FR 62559, 62562, *https://www.govinfo.gov/content/pkg/FR-2021-11-10/pdf/2021-24534.pdf* (Nov. 10, 2021).

[72] *See also* National Security Council, Collaborative Migration Management Strategy, *https://www.whitehouse.gov/wp-content/uploads/2021/07/Collaborative-Migration-Management-Strategy.pdf* (July 2021) (stating that ''The United States has strong national security, economic, and humanitarian interests in reducing irregular migration and promoting safe, orderly, and humane migration'' within North and Central America).

[73] As noted previously, some consular sections waive the in-person interview requirement for H–2B applicants whose prior visa expired within a specific timeframe and who otherwise meet the strict limitations set out under INA section 222(h), 8 U.S.C. 1202(h). The authority allowing for waiver of interview of certain H–2 (temporary agricultural and non-agricultural workers) applicants is extended through the end of 2022. Applicants renewing any visa within 48 months of expiration are also eligible for interview waiver. DOS, *Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html* (last updated Dec. 23, 2021).

perjury, that it meets the business need standard. Petitioners must be able to establish that they are suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H–2B workers requested on their petition.[74] The TLC process focuses on establishing whether a petitioner has a temporary need for workers and whether there are U.S. workers who are able, willing, qualified, and available to perform the temporary service or labor, and does not address the harm a petitioner is facing or will face in the absence of such workers; the attestation addresses this question. The attestation must be submitted directly to USCIS, together with Form I–129, the approved and valid TLC,[75] and any other necessary documentation. As in the rules implementing the FY 2017, FY 2018, FY 2019, and FY 2021 temporary cap increases, employers will be required to complete the new attestation form which can be found at: *https://www.foreignlaborcert.doleta.gov/form.cfm.*[76]

In previous years petitioners have only been required to attest that they were likely to suffer irreparable harm if they were unable to employ all of the H–2B workers requested on their I–129 petition submitted under H–2B cap increase rules. The Departments have decided to change this standard. Employers must instead attest that they are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on the petition filed under this rule. This change is designed to focus more directly on the actual irreparable harm employers are suffering or the impending irreparable harm they will suffer as a result of their inability to employ H–2B workers, rather than on just the possibility of such harm.

As noted above, Congress authorized the Secretary of Homeland Security, in consultation with the Secretary of Labor, to increase the total number of H–2B visas available ''upon the determination that the needs of American businesses cannot be satisfied'' with U.S. workers under the statutory visa cap.[77] The new irreparable harm standard in this rule aligns with the determination that Congress requires DHS to make before increasing the number of H–2B visas available to U.S. employers. In particular, requiring employers to attest that they are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the requested H–2B workers is directly relevant to the needs of the business—if an employer is suffering or will suffer irreparable harm, then their needs are not being satisfied. The prior standard, on the other hand, required only that the employer attest that harm was *likely* to occur at some point in the future, which created uncertainty as to whether that employer's needs were truly unmet or would not be met without being able to employ the requested H–2B workers. Because the authority to increase the statutory cap is tied to the needs of businesses, the Departments think it is reasonable for employers to attest that they are suffering irreparable harm or that they will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on their petition. If such employers are unable to attest to such harm and retain and produce documentation of that harm, it calls into question whether their needs cannot in fact be satisfied without the ability to employ H–2B workers. As with employers with a current need, an employer's inability to attest to impending harm calls into question their actual need for the requested H–2B workers.

The change to the irreparable harm standard is also informed by the Departments' experiences in implementing the business need standard. In the Departments' experience, the ''likely to suffer irreparable harm'' standard has been difficult to assess and administer in the context of prior supplemental cap rules. For example, employers have reported confusion with the standard, including some employers that were not able to provide adequate evidence of the prospective ''likelihood of irreparable harm'' when selected for a random audit. The Departments therefore believe that asking employers to provide evidence of harm that is occurring or is impending without the ability to employ all of the H–2B workers requested on their petition is a better means of ensuring compliance.

The attestation form will serve as prima facie initial evidence to DHS that the petitioner's business is suffering irreparable harm or will suffer impending irreparable harm. Any petition requesting H–2B workers under this FY 2022 supplemental cap that is lacking the requisite attestation form may be rejected in accordance with 8 CFR 103.2(a)(7)(ii) or denied in accordance with 8 CFR 103.2(b)(8)(ii), as applicable. Although this regulation does not require submission of evidence at the time of filing of the petition, other than an attestation, the employer must have such evidence on hand and ready to present to DHS or DOL at any time starting with the date of filing the I–129 petition, through the prescribed document retention period discussed below. In fact, as with petitions filed under the FY 2021 Supplemental TFR, the Departments intend to select a significant number of petitions approved for audit examination to verify compliance with program requirements, including the irreparable harm standard and recruitment provisions implemented through this rule. Failure to provide evidence demonstrating irreparable harm or to comply with the audit process may be considered a substantial violation resulting in an adverse agency action on the employer, including revocation of the petition and/or TLC or program debarment. Similarly, failure to cooperate with any compliance review, evaluation, verification, or inspection conducted by DHS or DOL as required by 8 CFR 214.2(h)(6)(xi)(B)(*2*)(*vi*) and (*vii*), respectively, may constitute a violation of the terms and conditions of an approved petition and lead to petition revocation under 8 CFR 214.2(h)(11)(iii)(A)(*3*).

In addition to the statement regarding the irreparable harm standard, the attestation submitted to USCIS will also state that the employer meets all other eligibility criteria for the available visas,

[74] An employer may request fewer workers on the H–2B petition than the number of workers listed on the TLC. *See* Instructions for Petition for Nonimmigrant Worker, providing that ''the total number of workers you request on the petition must not exceed the number of workers approved by the Department of Labor or Guam Department of Labor, if required, on the temporary labor certification.''

[75] Since July 26, 2019, USCIS has been accepting a printed copy of the electronic one-page ETA–9142B, Final Determination: H–2B Temporary Labor Certification Approval, as an original, approved TLC. See, *Notice of DHS's Requirement of the Temporary Labor Certification Final Determination Under the H–2B Temporary Worker Program,* 85 FR 13178, 13179 (Mar. 6, 2020).

[76] This portion of the temporary rule does not apply to workers who have already been counted under the H–2B statutory cap for the first half of fiscal year 2022 (33,000). Further, this portion of the rule does not apply to noncitizens who are exempt from the fiscal year 2022 H–2B statutory cap, including those who are extending their stay in H–2B status. Accordingly, petitioners who are filing on behalf of such workers are not subject to the attestation requirement.

[77] Public Law 117–70 Further Extending Government Funding Act, Division A ''Further Continuing Appropriations Act, 2022'', section 101 (Dec. 3, 2021) changing the Public Law 117–43 expiration date in section 106(3) from Dec. 3, 2021 to Feb. 18, 2022, and Public Law 117–43 Extending Government Funding and Delivering Emergency Assistance Act, Division A ''Continuing Appropriations Act, 2022'', Section 101 and 106(3) (Oct. 3, 2021) providing DHS funding and authorities, including authority under section 105 of title I of Division O of Public Law 116–260, through December 3, 2021.

including the returning worker requirement, unless exempt because the H–2B worker is a national of one of the Northern Triangle countries or Haiti who is counted against the 6,500 visas reserved for such workers; will comply with all assurances, obligations, and conditions of employment set forth in the *Application for Temporary Employment Certification* (Form ETA 9142B and appendices) certified by DOL for the job opportunity (which serves as the TLC); will conduct additional recruitment of U.S. workers in accordance with the requirements of this rule and discussed further below; and will document and retain evidence of such compliance. Because the attestation will be submitted to USCIS as initial evidence with Form I–129, DHS considers the attestation to be evidence that is incorporated into and a part of the petition consistent with 8 CFR 103.2(b)(1). Accordingly, a petition may be denied or revoked, as applicable, based on or related to statements made in the attestation, including but not limited to the following grounds: (1) Because the employer failed to demonstrate employment of all of the requested workers is necessary under the appropriate business need standard; and (2) the employer failed to demonstrate that it requested and/or instructed that each worker petitioned for was a returning worker, or a national of one of the Northern Triangle countries or Haiti, as required by this rule. Any denial or revocation on such basis, however, would be appealable under 8 CFR part 103, consistent with DHS regulations and existing USCIS procedures.

It is the view of the Secretaries of Homeland Security and Labor that requiring a post-TLC attestation to USCIS is the most practical approach, given the time remaining in the first half of FY 2022 and the need to assemble the necessary documentation. In addition, the employer is required to retain documentation, which must be provided upon request by DHS or DOL, supporting the new attestations regarding (1) the irreparable harm standard, (2) the returning worker requirement, or, alternatively, documentation supporting that the H–2B worker(s) requested is a national of one of the Northern Triangle countries or Haiti who is counted against the 6,500 cap (which may be satisfied by the separate Form I–129 that employers are required to file for such workers in accordance with this rule) and (3) a recruitment report for any additional recruitment required under this rule for a period of 3 years. *See* new 20 CFR 655.69. Although the employer must have such documentation on hand at the time it files the petition, the Departments have determined that, if employers were required to submit the attestation form to DOL before filing a petition with DHS, the attendant delays would render any visas unlikely to satisfy the needs of American businesses given processing timeframes and the time remaining in this fiscal year. However, as noted above, the Departments will be conducting audits, investigations and/or post-adjudication compliance reviews on a significant number of H–2B petitions. As part of that process, USCIS may issue a request for additional evidence, a notice of intent to revoke, or a revocation notice, based on the review of such documentation, and DOL's OFLC and WHD will be able to review this documentation and enforce the attestations during the course of an audit examination or investigation. *See* 8 CFR 103.2(b) or 8 CFR 214.2(h)(11).

In accordance with the attestation requirements, under which petitioners attest that they meet the irreparable harm standard, that they are seeking to employ only returning workers (unless exempt as described above), and they meet the document retention requirements at new 20 CFR 655.69, the petitioner must retain documents and records fulfilling their responsibility to demonstrate compliance with this rule for 3 years from the date of the attestation, and must provide the documents and records upon the request of DHS or DOL. With regard to the irreparable harm standard, employers attesting that they are suffering irreparable harm must be able to provide concrete evidence establishing severe and permanent financial loss that is occurring; the scope and severity of the harm must be clearly articulable. Employers attesting that they will suffer impending irreparable harm must be able to demonstrate that severe and permanent financial loss will occur in the near future without access to the supplemental visas; it will not be enough to provide evidence suggesting that such harm may or is likely to occur; rather, the documentary evidence must show that impending harm will occur and document the form of such harm. Supporting evidence may include, but is not limited to, the following types of documentation:

(1) Evidence that the business is suffering or will suffer in the near future permanent and severe financial loss due to the inability to meet financial or existing contractual obligations because they were unable to employ H–2B workers, including evidence of contracts, reservations, orders, or other business arrangements that have been or would be cancelled, and evidence demonstrating an inability to pay debts/bills;

(2) Evidence that the business is suffering or will suffer in the near future permanent and severe financial loss, as compared to prior years, such as financial statements (including profit/loss statements) comparing the employer's period of need to prior years; bank statements, tax returns, or other documents showing evidence of current and past financial condition; and relevant tax records, employment records, or other similar documents showing hours worked and payroll comparisons from prior years to the current year;

(3) Evidence showing the number of workers needed in the previous three seasons (FY 2019, 2020, and 2021) to meet the employer's need as compared to those currently employed or expected to be employed at the beginning of the start date of need. Such evidence must indicate the dates of their employment, and their hours worked (for example, payroll records) and evidence showing the number of H–2B workers it claims are needed, and the workers' actual dates of employment and hours worked;

(4) Evidence that the petitioner is reliant on obtaining a certain number of workers to operate, based on the nature and size of the business, such as documentation showing the number of workers it has needed to maintain its operations in the past, or will in the near future need, including but not limited to: A detailed business plan, copies of purchase orders or other requests for good and services, or other reliable forecast of an impending need for workers; and/or

(5) With respect to satisfying the returning worker requirement, evidence that the employer requested and/or instructed that each of the workers petitioned by the employer in connection with this temporary rule were issued H–2B visas or otherwise granted H–2B status in FY 2019, 2020, or 2021, unless the H–2B worker is a national of one of the Northern Triangle countries or Haiti counted towards the 6,500 cap. Such evidence would include, but is not limited to, a date-stamped written communication from the employer to its agent(s) and/or recruiter(s) that instructs the agent(s) and/or recruiter(s) to only recruit and provide instruction regarding an application for an H–2B visa to those foreign workers who were previously issued an H–2B visa or granted H–2B status in FY 2019, 2020, or 2021.

These examples are not exhaustive, nor will they necessarily establish that the business meets the irreparable harm or returning worker standards; petitioners may retain other types of evidence they believe will satisfy these standards. When an approved petition is selected for audit examination or investigation, DHS or DOL will review all evidence available to it to confirm that the petitioner properly attested to DHS, at the time of filing the petition, that their business was suffering irreparable harm or would suffer impending irreparable harm, and that they petitioned for and employed only returning workers, unless the H–2B worker is a national of one of the Northern Triangle countries or Haiti counted towards the 6,500 cap. If DHS subsequently finds that the evidence does not support the employer's attestations, DHS may deny or, if the petition has already been approved, revoke the petition at any time consistent with existing regulatory authorities. DHS may also, or alternatively, notify DOL. In addition, DOL may independently take enforcement action, including by, among other things, debarring the petitioner from the H–2B program for not less than 1 year or more than 5 years from the date of the final agency decision, which also disqualifies the debarred party from filing any labor certification applications or labor condition applications with DOL for the same period set forth in the final debarment decision. *See, e.g.,* 20 CFR 655.73; 29 CFR 503.20, 503.24.[78]

To the extent that evidence reflects a preference for hiring H–2B workers over U.S. workers, an investigation by additional agencies enforcing employment and labor laws, such as the Immigrant and Employee Rights Section (IER) of the Department of Justice's Civil Rights Division, may also be warranted. *See* INA section 274B, 8 U.S.C. 1324b (prohibiting certain types of employment discrimination based on citizenship status or national origin). Moreover, DHS and DOL may refer potential discrimination to IER pursuant to applicable interagency agreements. *See* IER, Partnerships, *https://www.justice.gov/crt/partnerships* (last visited Nov. 30, 2021). In addition, if members of the public have information that a participating employer may be abusing this program, DHS invites them to notify USCIS by completing the online fraud tip form, *https://www.uscis.gov/report-fraud/uscis-tip-form* (last visited Nov. 30, 2021).[79]

DHS, in exercising its statutory authority under INA section 101(a)(15)(H)(ii)(b), 8 U.S.C. 1101(a)(15)(H)(ii)(b), and section 105 of the FY 2021 Omnibus as extended by Public Law 117–70, is responsible for adjudicating eligibility for H–2B classification. As in all cases, the burden rests with the petitioner to establish eligibility by a preponderance of the evidence. INA section 291, 8 U.S.C. 1361. *Matter of Chawathe,* 25 I&N Dec. 369, 375–76 (AAO 2010). Accordingly, as noted above, where the petition lacks initial evidence, such as a properly completed attestation, DHS may, as applicable, reject the petition in accordance with 8 CFR 103.2(a)(7)(ii) or deny the petition in accordance with 8 CFR 103.2(b)(8)(ii). Further, where the initial evidence submitted with the petition contains inconsistencies or is inconsistent with other evidence in the petition and the underlying TLC, DHS may issue a Request for Evidence, Notice of Intent to Deny, or Denial in accordance with 8 CFR 103.2(b)(8). In addition, where it is determined that an H–2B petition filed pursuant to the FY 2021 Omnibus as extended by Public Law 117–70 was granted erroneously, the H–2B petition approval may be revoked. *See* 8 CFR 214.2(h)(11).

Because of the particular circumstances of this regulation, and because the attestation and other requirements of this rule play a vital role in achieving the purposes of this rule, DHS and DOL intend that the attestation requirement, DOL procedures, and other aspects of this rule be non-severable from the remainder of the rule, including the increase in the numerical allocations.[80] Thus, in the event the attestation requirement or any other part of this rule is enjoined or held invalid, the remainder of the rule, with the exception of the retention requirements being codified in 20 CFR 655.69, is also intended to cease operation in the relevant jurisdiction, without prejudice to workers already present in the United States under this regulation, as consistent with law.

F. Portability

As an additional option for employers that cannot find U.S. workers, this rule allows petitioners to immediately employ certain H–2B workers who are present in the United States in H–2B status without waiting for approval of the H–2B petition. Such workers must be beneficiaries of a non-frivolous H–2B petition requesting an extension of stay received on or after the effective date of this temporary final rule but no later than 180 days after that date.[81] Additionally, petitioners may immediately employ individuals who are beneficiaries of a non-frivolous H–2B petition requesting an extension of the worker's stay that is pending as of the effective date of this temporary final rule without waiting for approval of the H–2B petition. Specifically, the rule allows H–2B nonimmigrant workers to begin employment with a new H–2B employer or agent upon USCIS's receipt of a timely filed, non-frivolous H–2B petition, provided the worker was lawfully admitted to the United States and has not worked without authorization subsequent to such lawful admission. Since every H–2B petition must be accompanied by an approved TLC, all H–2B petitioners must have completed a test of the U.S. labor market, as a result of which DOL determined that there were no qualified U.S. workers available to fill these temporary positions.

This provision is similar to the portability provision in the FY 2021 H–2B supplemental visa temporary final rule. In addition, the provision is similar to temporary flexibilities that DHS has used previously to improve employer access to noncitizen workers during the COVID–19 pandemic.[82] DHS

[78] Pursuant to the statutory provisions governing enforcement of the H–2B program, INA section 214(c)(14), 8 U.S.C. 1184(c)(14), a violation exists under the H–2B program where there has been a willful misrepresentation of a material fact in the petition or a substantial failure to meet any of the terms and conditions of the petition. A substantial failure is a willful failure to comply that constitutes a significant deviation from the terms and conditions. *See, e.g.,* 29 CFR 503.19.

[79] DHS may publicly disclose information regarding the H–2B program consistent with applicable law and regulations. For information about DHS disclosure of information contained in a system of records, *see https://www.dhs.gov/system-records-notices-sorns.* Additional general information about DHS privacy policy generally can be accessed at *https://www.dhs.gov/policy.*

[80] The Departments' intentions with respect to non-severability extend to all features of this rule other than the portability provision, which is described in the section below.

[81] Aliens who are the beneficiaries of petitions filed on the basis of 8 CFR 214.1(c)(4) are not eligible to port to a new employer under 8 CFR 214.2(h)(27).

[82] 86 FR 28198 (May 25, 2021). On May 14, 2020, DHS published a temporary final rule in the **Federal Register** to amend certain H–2B requirements to help H–2B petitioners seeking workers to perform temporary nonagricultural services or labor essential to the U.S. food supply chain. 85 FR 28843 (May 14, 2020). In addition, on April 20, 2020, DHS issued a temporary final rule which, among other flexibilities, allowed H–2A workers to change employers and begin work before USCIS approved the new H–2A petition for the new employer. 85 FR 21739. DHS has subsequently extended that portability provision for H–2A workers through two additional temporary final rules, on August 20, 2020, and December 18, 2020, which have been effective for H–2A petitions that were received on or after August 19, 2020 through December 17, 2020, and on or after December 18,

recognizes the possibility that some beneficiaries were lawfully admitted and were in valid H–2B status at the time of the petition submission but such status may have lapsed during the pendency of the petition. Accordingly, DHS added the provision extending portability flexibility to petitioners to immediately employ beneficiaries of pending non-frivolous H–2B extension of stay petitions as of the effective date of this temporary final rule. *See* new 8 CFR 214.2(h)(27)(iii)(B). This provision is intended to mitigate the harm that petitioners may experience resulting from the COVID–19 pandemic by allowing petitioners to employ such H–2B workers so long as they were lawfully admitted to the United States and if they have not worked unlawfully after their admission. In the context of this rule, DHS believes this flexibility will help some U.S. employers address the challenges related to the limitations imposed by the cap, as well as due to the ongoing disruptions caused by the COVID–19 pandemic. The pandemic has resulted in a variety of travel restrictions and visa processing limitations to mitigate the spread of COVID–19.

In addition to resulting in a devastating loss of life, the worldwide pandemic of COVID–19 has impacted the United States in myriad ways, disrupting daily life, travel, and the operation of individual businesses and the economy at large. On January 31, 2020, the Secretary of the U.S. Department of Health and Human Services (HHS) declared a public health emergency dating back to January 27, 2020, under section 319 of the Public Health Service Act (42 U.S.C. 247d).[83] This determination that a public health emergency exists due to COVID–19 has subsequently been renewed seven times: On April 21, 2020, on July 23, 2020, on October 2, 2020, on January 7, 2021, on April 15, 2021, on July 19, 2021 and most recently on October 15, 2021, effective October 18, 2021.[84] On March 13, 2020, then-President Trump declared a National Emergency concerning the COVID–19 outbreak to control the spread of the virus in the United States.[85] The proclamation declared that the emergency began on March 1, 2020. DOS temporarily suspended routine immigrant and nonimmigrant visa services at all U.S. Embassies and Consulates on March 20, 2020, and subsequently announced a phased resumption of visa services in which it would continue to provide emergency and mission critical visa services and resume routine visa services as local conditions and resources allowed.[86] Based on the importance of the H–2A temporary agricultural worker and H–2B temporary nonagricultural worker programs, DOS indicated it would continue processing H–2A and H–2B cases to the extent possible, as permitted by post resources and local government restrictions, and expanded the categories of H–2 visa applicants whose applications can be adjudicated without an in-person interview.[87] Although routine visa services have resumed [88] subject to local conditions and restrictions, and DOS has expanded visa interview waiver eligibility,[89] the COVID–19 pandemic continues to have a significant impact on visa processing at embassies and consulates around the world.[90] And as noted above, growing concern about the COVID Omicron variant recently prompted tightened testing requirements for international air travel to the United States, which may have an impact on such travel.

Further, due to the possibility that some H–2B workers may be unavailable due to travel restrictions, to include those intended to limit the spread of COVID–19, or visa processing delays or may become unavailable due to COVID–19 related illness, U.S. employers that have approved H–2B petitions or who will be filing H–2B petitions in accordance with this rule might not receive all of the workers requested to fill the temporary positions.

DHS is strongly committed not only to protecting U.S. workers and helping U.S. businesses receive the documented workers authorized to perform temporary nonagricultural services or labor that they need, but also to protecting the rights and interests of H–2B workers (consistent with Executive Order 13563 and in particular its reference to ''equity,'' ''fairness,'' and ''human dignity''). In the FY 2020 DHS Further Consolidated Appropriations Act (Pub. L. 116–94), Congress directed DHS to provide options to improve the H–2A and H–2B visa programs, to include options that would protect worker rights.[91] DHS has determined that providing H–2B nonimmigrant workers with the flexibility of being able to begin work with a new H–2B petitioner immediately and avoid a potential job loss or loss of income while the new H–2B petition is pending, provides some certainty to H–2B workers who may have found themselves in situations that warrant a change in employers.[92] Providing that flexibility is also equitable and fair.

Portability for H–2B workers provides these noncitizens with the option of not having to worry about job loss or loss of income between the time they leave a current employer and while they await approved employment with a new U.S. employer or agent. DHS believes this flexibility (job portability) not only protects H–2B workers but also provides an alternative to H–2B petitioners who have not been able to find U.S. workers and who have not been able to obtain H–2B workers subject to the statutory or

2020 through June 16, 2021, respectively. 85 FR 51304 and 85 FR 82291.

[83] HHS, *Determination of Public Health Emergency,* 85 FR 7316 (Feb. 7, 2020).

[84] *See* HHS Renewal of Determination That A Public Health Emergency Exists, *https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVDI-15Oct21.aspx* (Oct. 15, 2021).

[85] Proclamation 9994 of Mar. 13, 2020, *Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak,* 85 FR 15337 (Mar. 18, 2020).

[86] DOS, *Suspension of Routine Visa Services, https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html* (last updated July 22, 2020).

[87] DOS, *Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html* (last updated Dec. 23, 2021).

[88] DOS, Visa Services Operating Status Update, *https://travel.state.gov/content/travel/en/News/visas-news/visa-services-operating-status-update.html* (last updated Nov. 19, 2021).

[89] DOS, Expansion of Interview Waiver Eligibility, *https://travel.state.gov/content/travel/en/News/visas-news/expansion-of-interview-waiver-eligibility.html* (last updated Mar. 11, 2021).

[90] Celia Belin, Travel is resuming, but not for everyone, Brookings, *https://www.brookings.edu/blog/order-from-chaos/2021/11/08/travel-is-resuming-but-not-for-everyone/* (Nov. 8, 2021).

[91] The Joint Explanatory Statement accompanying the *Fiscal Year* (FY) *2020 Department of Homeland Security* (DHS) *Further Consolidated Appropriations Act* (Pub. L. 116–94) states, ''Not later than 120 days after the date of enactment of this Act, DHS, the Department of Labor, the Department of State, and the United States Digital Service are directed to report on options to improve the execution of the H–2A and H–2B visa programs, including: Processing efficiencies; combatting human trafficking; protecting worker rights; and reducing employer burden, to include the disadvantages imposed on such employers due to the current semiannual distribution of H–2B visas on October 1 and April 1 of each fiscal year. USCIS is encouraged to leverage prior year materials relating to the issuance of additional H–2B visas, to include previous temporary final rules, to improve processing efficiencies.''

[92] The White House, The National Action Plan to Combat Human Trafficking, Priority Action 1.5.3, at p. 25 (Dec. 2021); The White House, The National Action Plan to Combat Human Trafficking, Priority Action 1.6.3, at p. 20–21 (2020) (Stating that ''[w]orkers sometimes find themselves in abusive work situations, but because their immigration status is dependent on continued employment with the employer in whose name the visa has been issued, workers may be left with few options to leave that situation.'') By providing the option of changing employers without risking job loss or a loss of income through the publication of this rule, DHS believes that H–2B workers may be more likely to leave abusive work situations, and thereby are afforded greater worker protections.

supplemental caps who have the skills to perform the job duties. In that sense as well, it is equitable and fair.

DHS is making this flexibility available for a 180-day period in order to provide stability for H–2B employers amidst continuing uncertainties surrounding the COVID–19 pandemic. This period is justified especially given the possible future impacts of COVID–19 variants and uncertainty regarding the duration of vaccine-gained immunity and how effective currently approved vaccines will be in responding to future COVID–19 variants.[93] DHS will continue to monitor the evolving health crisis caused by COVID–19 and may address it in future rules.

G. COVID–19 Worker Protections

It is the policy of DHS and its Federal partners to support equal access to the COVID–19 vaccines and vaccine distribution sites, irrespective of an individuals' immigration status.[94] This policy promotes fairness and equity (see Executive Order 13563). Accordingly, DHS and DOL encourage all individuals, regardless of their immigration status, to receive the COVID–19 vaccine. U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection do not conduct enforcement operations at or near vaccine distribution sites or clinics. Consistent with ICE's protected areas policy, ICE does not and will not carry out enforcement operations in or near a medical or mental healthcare facility, such as a hospital, doctor's office, health clinic, vaccination or testing site, urgent care center, site that serves pregnant individuals, or community health center.[95]

This TFR reflects that policy by providing as follows:

Supplemental H–2B Visas: With respect to petitioners who wish to qualify to receive supplemental H–2B visas pursuant to the FY 2021 Omnibus as extended by Public Law 117–70, the Departments are using the DOL Form ETA–9142–B–CAA–5 to support equal access to vaccines in two ways. First, the Departments are requiring such petitioners to attest on the DOL Form ETA–9142–B–CAA–5 that, consistent with such petitioners' obligations under generally applicable H–2B regulations, they will comply with all Federal, State, and local employment-related laws and regulations, including, where applicable, health and safety laws and laws related to COVID–19 worker protections; any right to time off or paid time off for COVID–19 vaccination, or to reimbursement for travel to and from the nearest available vaccination site *See* new 8 CFR 214.2(h)(6)(xi)(B)(*2*)(*iv*) and 20 CFR 655.64(a)(4). Second, the Departments are requiring such petitioners to also attest that they will notify any H–2B workers approved under the supplemental cap, in a language understood by the worker as necessary or reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID–19 vaccines and vaccine distribution sites. WHD has published a poster for employers' optional use for this notification.[96] Because the attestation will be submitted to USCIS as initial evidence with Form I–129, DHS considers the attestation to be evidence that is incorporated into and a part of the petition consistent with 8 CFR 103.2(b)(1). Accordingly, a petition may be denied or revoked, as applicable, based on or related to statements made in the attestation, including, but not limited to, because the employer violated an applicable employment-related law or regulation, or failed to notify workers regarding equal access to COVID–19 vaccines and vaccine distribution sites.

Other H–2B Employers: While there is no additional attestation with respect to H–2B petitioners that do not avail themselves of the supplemental H–2B visas made available under this rule, the Departments remind all H–2B employers that they must comply with all Federal, State, and local employment-related laws and regulations, including, where applicable, health and safety laws and laws related to COVID–19 worker protections; any right to time off or paid time off for COVID–19 vaccination, or to reimbursement for travel to and from the nearest available vaccination site. Failure to comply with such laws and regulations would be contrary to the attestation 7 on ETA 9142B—Appendix B, and therefore may be a basis for DHS to revoke the petition under 8 CFR 214.2(h)(11)(iii)(A)(*3*) for violating terms and conditions of the approved petition.[97] This obligation is also reflected as a condition of H–2B portability under this rule. *See* new 8 CFR 214.2(h)(27)(iii)(C).

President Biden, in his speech to Joint Session of Congress on April 21, 2021, made the following statement: ''[T]oday, I'm announcing a program to address [the issue of COVID vaccinations] . . . nationwide. I'm calling on every employer, large and small, in every state, to give employees the time off they need, with pay, to get vaccinated and any time they need, with pay, to recover if they are feeling under the weather after the shot.'' [98] More recently, President Biden reiterated his call on employers to provide paid time off to their employees to get booster shots.[99] Consistent with the President's statements, the Departments strongly urge, but do not require, that all employers seeking H–2B workers under either the Supplemental Cap or portability sections of the TFR, make every effort to ensure that all their workers, including nonimmigrant workers, be afforded an opportunity to take the time off needed to receive their COVID–19 vaccinations, as well as time off, with pay, to recover from any temporary side effect. In Proclamation 10294 of October 25, 2021, the President barred the entry of nonimmigrants into the United States via air transportation unless they are fully vaccinated against COVID–19, with certain exceptions.[100] On January 22, 2022, similar requirements entered into force at land ports of entry and ferry terminals.[101] The Departments therefore expect that H–2B nonimmigrants who enter the United States via air transportation under this rule will generally be fully vaccinated against COVID–19. The

[93] *See* CDC, What You Need to Know about Variants, *https://www.cdc.gov/coronavirus/2019-ncov/variants/variant.html* (last updated Dec. 13, 2021); CDC, Key Things to Know About COVID–19 Vaccines, *https://www.cdc.gov/coronavirus/2019-ncov/vaccines/keythingstoknow.html* (last updated Jan. 12, 2022).

[94] *See* DHS, Statement on Equal Access to COVID–19 Vaccines and Vaccine Distribution Sites, *https://www.dhs.gov/news/2021/02/01/dhs-statement-equal-access-covid-19-vaccines-and-vaccine-distribution-sites* (Feb. 1, 2021) (last accessed Nov. 30, 2021).

[95] *See* ICE, FAQs: Protected Areas and Courthouse Arrests, *https://www.ice.gov/about-ice/ero/protected-areas* (last visited Jan. 11, 2022).

[96] See, *Employee Rights—H–2B Workers and COVID–19 https://www.dol.gov/sites/dolgov/files/WHD/posters/H2B_COVID.pdf* (English); *https://www.dol.gov/sites/dolgov/files/WHD/posters/H2B_COVID_SPA.pdf* (Spanish) (Last visited Dec. 22, 2021).

[97] During the period of employment specified on the Temporary Labor Certification, the employer must comply with all applicable Federal, State and local employment-related laws and regulations, including health and safety laws. 20 CFR 655.20(z). By submitting the Temporary Labor Certification as evidence supporting the petition, it is incorporated into and considered part of the benefit request under 8 CFR 103.2(b)(1).

[98] *See https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/04/21/remarks-by-president-biden-on-the-covid-19-response-and-the-state-of-vaccinations-2/* (April 21, 2021).

[99] *See https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/02/fact-sheet-president-biden-announces-new-actions-to-protect-americans-against-the-delta-and-omicron-variants-as-we-battle-covid-19-this-winter/* (December 2, 2021).

[100] *See* 86 FR 59603 (Oct. 28, 2021) (Presidential Proclamation); *see also* 86 FR 61224 (Nov. 5, 2021) (implementing CDC Order).

[101] *See* 87 FR 3425 (Jan. 24, 2022) (restrictions at United States-Mexico border); 87 FR 3429 (Jan. 24, 2022) (restrictions at United States-Canada border).

Departments note, however, that some H–2B nonimmigrants (such as nonimmigrants who are already in the United States) may not yet be vaccinated or may nonetheless be eligible for booster shots.

As noted, Executive Order 13563 refers to fairness, equity, and human dignity, and such efforts, on the part of employers, would be consistent with those commitments.

Petitioners otherwise are strongly encouraged to facilitate and provide flexibilities, to the greatest extent possible, to all workers who wish to receive COVID–19 vaccinations.

H. DHS Petition Procedures

To petition for H–2B workers under this rule, the petitioner must file a Form I–129 in accordance with applicable regulations and form instructions, an unexpired TLC, and the attestation form described above. All H–2B petitions must state the nationality of all the requested H–2B workers, whether named or unnamed, even if there are beneficiaries from more than one country. *See* 8 CFR 214.2(h)(2)(iii). If filing multiple Forms I–129 based on the same TLC (for instance, one requesting returning workers and another requesting workers who are nationals of one of the Northern Triangle countries or Haiti), each H–2B petition must include a copy of the TLC and reference all previously-filed or concurrently filed petitions associated with the same TLC. The total number of requested workers may not exceed the total number of workers indicated on the approved TLC. Petitioners seeking H–2B classification for nationals of the Northern Triangle countries or Haiti under the 6,500 visa allocation that are exempt from the returning worker provision must file a separate Form I–129 for those nationals of the Northern Triangle countries and Haiti only. *See* new 8 CFR 214.2(h)(6)(xi). In this regard, a petition must be filed with a single Form ETA–9142–B–CAA–5 that clearly indicates that the petitioner is only requesting nationals from a Northern Triangle country or Haiti who are exempt from the returning worker requirement. Specifically, if the petitioner checks Box #5 of Form ETA–9142–B–CAA–5, then the petition accompanying that form *must* be filed only on behalf of nationals of one or more of the Northern Triangle countries or Haiti, and not other countries. In such a case if the Form I–129 petition is requesting beneficiaries from countries other than Northern Triangle countries or Haiti, then USCIS may reject, issue a request for evidence, notice of intent to deny, or denial, or, in the case of a non-frivolous petition, a partial approval limiting the petition to the number of beneficiaries who are from one of the Northern Triangle countries or Haiti. Requiring the filing of separate petitions to request returning workers and to request workers who are nationals of the Northern Triangle countries or Haiti is necessary to ensure the operational capability to properly calculate and manage the respective additional cap allocations and to ensure that all corresponding visa issuances are limited to qualifying applicants, particularly when such petitions request unnamed beneficiaries or are relied upon for subsequent requests to substitute beneficiaries in accordance with 8 CFR 214.2(h)(6)(viii). The attestations must be filed on Form ETA–9142–B–CAA–5, Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 105 of Division O of the Further Consolidated Appropriations Act, 2021 Public Law 116–260, and Public Laws 117–43 and 117–70. *See* 20 CFR 655.64. Petitioners are required to retain a copy of such attestations and all supporting evidence for 3 years from the date the associated TLC was approved, consistent with 20 CFR 655.56 and 29 CFR 503.17. *See* new 20 CFR 655.69. Petitions submitted to DHS pursuant to the FY 2021 Omnibus, as extended by Public Law 117–43 and Public Law 117–70, will be processed in the order in which they were received, and pursuant to processes in place for when numerical limitations are reached under INA section 214(g)(1)(B) or (g)(10), 8 U.S.C. 1184(g)(1)(B) or (g)(10).

Consistent with the intent of this rule to address urgent demand from employers for H–2B workers with start dates in the first half of the fiscal year, USCIS will not accept petitions received after March 31, 2022. *See* new 8 CFR 214.2(h)(6)(xi)(C). Such petitions will be rejected and the filing fees will be returned. DHS believes it is appropriate to set a final filing date that aligns with the final employment start date allowed under this rule, as petitioners under the supplemental allocation will attest to a need for H–2B workers to start on or before March 31, 2022, without whom they are suffering irreparable harm or will suffer impending irreparable harm.[102]

Based on the time-limited authority granted to DHS by Public Law 117–43 and Public Law 117–70, on the same terms as section 105 of the under the FY 2021 Omnibus, DHS is notifying the public that petitions seeking a visa under this rule filed on or before March 31, 2022, may not be approved by USCIS on or after October 1, 2022. *See* new 8 CFR 214.2(h)(6)(xi). Petitions pending with USCIS that are not approved before October 1, 2022 will be denied and any fees will not be refunded. *See* new 8 CFR 214.2(h)(6)(xi).

Petitioners may choose to request premium processing of their petitions under 8 CFR 103.7(e), which allows for expedited processing for an additional fee.

I. DOL Procedures

As noted above, all employers are required to have an approved and valid TLC from DOL in order to file a Form I–129 petition with DHS. *See* 8 CFR 214.2(h)(6)(iv)(A) and (D). The standards and procedures governing the submission and processing of *Applications for Temporary Employment Certification* for employers seeking to hire H–2B workers are set forth in 20 CFR part 655, subpart A. An employer that seeks to hire H–2B workers must request a TLC in compliance with the application filing requirements set forth in 20 CFR 655.15 and meet all the requirements of 20 CFR part 655, subpart A, to obtain a valid TLC, including the criteria for certification set forth in 20 CFR 655.51. *See* 20 CFR 655.64(a) and 655.50(b). Employers with an approved TLC have conducted recruitment, as set forth in 20 CFR 655.40 through 655.48, to determine whether U.S. workers are qualified and available to perform the work for which H–2B workers are sought.

The H–2B regulations require that, among other things, an employer seeking to hire H–2B workers in a non-emergency situation must file a completed *Application for Temporary Employment Certification* with the National Processing Center (NPC) designated by the OFLC Administrator no more than 90 calendar days and no fewer than 75 calendar days before the employer's date of need (*i.e.,* start date for the work). *See* 20 CFR 655.15.

Under 20 CFR 655.17, an employer may request a waiver of the time period(s) for filing an *Application for*

[102] Conversely, DHS believes that allowing petitioners to file these petitions during the second half of the fiscal year would be inconsistent with the intent to address the already-exceeded first half demand for H–2B workers without whom employers would be suffering irreparable harm. Allowing petitioners to file so far after their start date of need could call into question the petitioner's period of temporary need for the services or labor to be performed, as well as petitioners' attestations regarding the irreparable harm they are suffering or the impending irreparable harm they stand to suffer without the ability to employ all of the requested workers for that period of need.

Temporary Employment Certification based on ''good and substantial'' cause, provided that the employer has sufficient time to thoroughly test the domestic labor market on an expedited basis and the OFLC certifying officer (CO) has sufficient time to make a final determination as required by the regulation. To rely on this provision, as the Departments explained in the 2015 H–2B Interim Final Rule,[103] the employer must provide the OFLC CO with detailed information describing the ''good and substantial cause'' necessitating the waiver. Such cause may include the substantial loss of U.S. workers due to Acts of God, or a similar unforeseeable human-made catastrophic event that is wholly outside the employer's control, unforeseeable changes in market conditions, or pandemic health issues. Thus, to ensure an adequate test of the domestic labor market and to protect the integrity of the H–2B program, the Departments clearly intended that use of emergency procedures must be narrowly construed and permitted in extraordinary and unforeseeable catastrophic circumstances that have a direct impact on the employer's need for the specific services or labor to be performed. Even under the existing H–2B statutory visa cap structure, DOL considers USCIS' announcement(s) that the statutory cap(s) on H–2B visas has been reached, which may occur with regularity every six months depending on H–2B visa need, as foreseeable, and therefore not within the meaning of ''good and substantial cause'' that would justify a request for emergency procedures.[104] Accordingly, employers cannot rely solely on the supplemental H–2B visas made available through this rule as good and substantial cause to use emergency procedures under 20 CFR 655.17.

In addition to the recruitment already conducted in connection with a valid TLC, in order to ensure the recruitment has not become stale, employers that wish to obtain visas for their workers under 8 CFR 214.2(h)(6)(xi), and who file an I–129 petition 45 or more days after the certified start date of work on the TLC must conduct additional recruitment for U.S. workers. This is particularly important as U.S. workers continue to reenter the workforce as they become vaccinated. As noted in the 2015 H–2B Interim Final Rule, U.S. workers seeking employment in temporary or seasonal nonagricultural jobs typically do not search for work months in advance, and cannot make commitments about their availability for employment far in advance of the work start date. *See* 80 FR 24041, 24061, 24071. Given that the temporary labor certification process generally begins 75 to 90 days in advance of the employer's start date of work, employer recruitment efforts typically occur between 40 and 60 days before that date with an obligation to provide employment to any qualified U.S. worker who applies until 21 days before the date of need. Therefore, employers with TLCs containing a start date of work on October 1, 2021, likely conducted their positive recruitment beginning around late-July and ending around mid-August 2021, and continued to consider U.S. worker applicants and referrals only until September 10, 2021.

In order to provide U.S. workers a realistic opportunity to pursue jobs for which employers will be seeking foreign workers under this rule, the Departments have determined that if employers file an I–129 petition 45 or more days after their dates of need, they have not conducted recruitment recently enough for the DOL to reasonably conclude that there are currently an insufficient number of U.S. workers who are qualified, willing, and available to perform the work absent taking additional, positive recruitment steps. The 45-day threshold for additional recruitment identified in this rule reflects a timeframe between the end of the employer's recruitment and filing of the petition similar to that provided under the FY 2018, FY 2019, and FY 2021 H–2B supplemental cap rules.

An employer that files an I–129 petition under 8 CFR 214.2(h)(6)(xi) fewer than 45 days after the certified start date of work on the TLC must submit the TLC and a completed Form ETA–9142B–CAA–5, but is not required to conduct recruitment for U.S. workers beyond the recruitment already conducted as a condition of certification. Only those employers with still-valid TLCs with a start date of work that is 45 or more days before the date they file a petition will be required to conduct recruitment in addition to that conducted prior to being granted labor certification and attest that the recruitment will be conducted, as follows.

Employers that are required to engage in new recruitment must place a new job order for the job opportunity with the State Workforce Agency (SWA) serving the area of intended employment no later than the next business day after submitting an I–129 petition for H–2B workers to USCIS, and inform the SWA that the job order is being placed in connection with a previously submitted and certified *Application for Temporary Employment Certification* for H–2B workers by providing the SWA with the unique OFLC TLC case number.

The job order must contain the job assurances and contents set forth in 20 CFR 655.18 for recruitment of U.S. workers at the place of employment, and remain posted for at least 15 calendar days. The employer must also follow all applicable SWA instructions for posting job orders and receive applications in all forms allowed by the SWA, including online applications. The Departments have concluded that keeping the job order posted for a period of 15 calendar days, during the period the employer is conducting the additional recruitment steps explained below, will effectively ensure U.S. workers are apprised of the job opportunity and are referred for employment, if they are willing, qualified, and available to perform the work. The 15 calendar day period also is consistent with the employer-conducted recruitment activity period applicable under 20 CFR 655.40(b).

Once the SWA places the new job order on its public labor exchange system, the SWA will perform its normal employment service activities by circulating the job order for intrastate clearance, and in interstate clearance by providing a copy of the job order to other SWAs with jurisdiction over listed worksites as well as those States the OFLC CO designated in the original Notice of Acceptance issued under 20 CFR 655.33. Where the occupation or industry is traditionally or customarily unionized, the SWA will also circulate a copy of the new job order to the central office of the State Federation of Labor in the State(s) in which work will be performed, and the office(s) of local union(s) representing workers in the same or substantially equivalent job classification in the area(s) in which work will be performed, consistent with its current obligation under 20 CFR 655.33(b)(5). Common H–2B occupations or industries that are traditionally or customarily unionized include, but are not limited to, those covering construction and extraction, manufacturing, food and hospitality, transportation and distribution, and other production related services. To facilitate an effective dissemination of

[103] Interim Final Rule, *Temporary Non-Agricultural Employment of H–2B Aliens in the United States,* 80 FR 24041 (Apr. 29, 2015) (2015 H–2B Interim Final Rule).

[104] *See* U.S. Department of Labor, Employment and Training Administration, Office of Foreign Labor Certification, 2015 H–2B Interim Final Rule FAQs, *Round 12: Job Order and Application Filing and Processing, Emergency Procedures and Post-Certification Amendments.* Retrieved December 18, 2021, from *https://www.dol.gov/sites/dolgov/files/ETA/oflc/pdfs/H-2B_2015_IFR_FAQs_Round12.pdf.*

these job opportunities, DOL encourages union(s) or hiring halls representing workers in occupations typically used in the H–2B program to proactively contact and establish partnerships with SWAs in order to obtain timely information on available temporary job opportunities. This will aid the SWAs' prompt and effective outreach under the rule. DOL's OFLC maintains a comprehensive directory of contact information for each SWA at *https://www.dol.gov/agencies/eta/foreign-labor/contact.*

The employer also must conduct additional recruitment steps during the period of time the SWA is actively circulating the job order for intrastate clearance. First, the employer must contact, by email or other electronic means, the nearest American Job Center(s) (AJC) serving the area of intended employment where work will commence to request staff assistance to advertise and recruit U.S. workers for the job opportunity. AJCs bring together a variety of programs providing a wide range of employment and training services for U.S. workers, including job search services and assistance for prospective workers and recruitment services for employers through the Wagner-Peyser Program. Therefore, AJCs can offer assistance to employers with recruitment of U.S. workers, and contact with local AJCs will facilitate contemporaneous and effective recruitment activities that can broaden dissemination of the employer's job opportunity through connections with other partner programs within the One-Stop System to locate qualified U.S. workers to fill the employer's labor need. For example, the local AJC, working in concert with the SWA, can coordinate efforts to contact community-based organizations in the geographic area that serve potentially qualified workers or, when a job opportunity is in an occupation or industry that is traditionally or customarily unionized, the local AJC may be better positioned to identify and circulate the job order to appropriate local union(s) or hiring hall(s), consistent with 20 CFR 655.33(b)(5). In addition, as a partner program in the One-Stop System, AJCs are connected with the State's unemployment insurance program, thus an employer's connection with the AJC will help facilitate knowledge of the job opportunity to U.S. workers actively seeking employment. When contacting the AJC(s), the employer must provide staff with the job order number or, if the job order number is unavailable, a copy of the job order.

To increase navigability and to make the process as convenient as possible, DOL offers an online service for employers to locate the nearest local AJC at *https://www.careeronestop.org/* and by selecting the ''Find Local Help'' feature on the main homepage. This feature will navigate the employer to a search function called ''Find an American Job Center'' where the city, state or zip code covering the geographic area where work will commence can be entered. Once entered and the search function is executed, the online service will return a listing of the name(s) of the AJC(s) serving that geographic area as well as a contact option(s) and an indication as to whether the AJC is a ''comprehensive'' or ''affiliate'' center. Employers must contact the nearest ''comprehensive'' AJC serving the area of intended employment where work will commence or, where a ''comprehensive'' AJC is not available, the nearest ''affiliate'' AJC. A ''comprehensive'' AJC tends to be a large office that offers the full range of employment and business services, and an ''affiliate'' AJC typically is a smaller office that offers a self-service career center, conducts hiring events, and provides workshops or other select employment services for workers. Because a ''comprehensive'' AJC may not be available in many geographic areas, particularly among rural communities, this rule permits employers to contact the nearest ''affiliate'' AJC serving the area of intended employment where a ''comprehensive'' AJC is not available. As explained on the locator website, some AJCs may continue to offer virtual or remote services due to the pandemic with physical office locations temporarily closed for in-person and mail processing services. Therefore, this rule requires that employers utilize available electronic methods for the nearest AJC to meet the contact and disclosure requirements in this rule.

Second, during the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) for intrastate clearance, the employer must make reasonable efforts to contact (by mail or other effective means) its former U.S. workers that it employed in the occupation at the place of employment (except those who were dismissed for cause or who abandoned the worksite) during the period beginning January 1, 2020, until the date the I–129 petition required under 8 CFR 214.2(h)(6)(xi) is submitted. Among the employees the employer must contact are those who have been furloughed or laid off during this period. The employer must disclose to its former employees the terms of the job order, and solicit their return to the job. The contact and disclosures required by this paragraph must be provided in a language understood by the worker, as necessary or reasonable.

Furloughed employees are employees the employer laid off (as the term is defined in 20 CFR 655.5 and 29 CFR 503.4), but the layoff is intended to last for a temporary period of time. This recruitment step will help ensure notice of the job opportunity is disseminated broadly to U.S. workers who were laid off or furloughed during the COVID–19 outbreak and who may be seeking employment as the economy continues to recover and as more people are vaccinated. While this requirement goes beyond the requirement at 20 CFR 655.43, the Departments believe it is appropriate given the evolving conditions of the U.S. labor market, as described above, and the increased likelihood that qualified U.S. workers will make themselves available for these job opportunities.

Third, as the employer was required to do when initially applying for its labor certification, the employer must provide a copy of the job order to the bargaining representative for its employees in the occupation and area of intended employment, consistent with 20 CFR 655.45(a), or if there is no bargaining representative, post the job order in the places and manner described in 20 CFR 655.45(b).

The requirements to contact former U.S. workers and provide notice to the bargaining representative or post the job order must be conducted in a language understood by the workers, as necessary or reasonable. This requirement would apply, for example, in situations where an employer has one or more employees who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. This requirement would allow those workers to make informed decisions regarding the job opportunity, and is a reasonable interpretation of the recruitment requirements in 20 CFR part 655, subpart A, in light of the need to ensure that the test of the U.S. labor market is as comprehensive as possible. Consistent with existing language requirements in the H–2B program under 20 CFR 655.20(l), DOL intends to broadly interpret the necessary or reasonable qualification, and apply an exemption only in those situations where having the job order translated into a particular language would both place an undue burden on an employer

and not significantly disadvantage the employee.

The employer must hire any qualified U.S. worker who applies or is referred for the job opportunity until either (1) the date on which the last H–2B worker departs for the place of employment, or (2) 30 days after the last date on which the SWA job order is posted, whichever is later. Additionally, consistent with 20 CFR 655.40(a), applicants may be rejected only for lawful job-related reasons. Given that the employer, SWA, and AJC(s) will be actively engaged in conducting recruitment and broader dissemination of the job opportunity during the period of time the job order is active, this requirement provides an adequate period of time for U.S. workers to contact the employer or SWA for referral to the employer and completion of the additional recruitment steps described above. As explained above, the Departments have determined that if employers file a petition 45 or more days after their dates of need, they have not conducted recruitment recently enough for the Departments to reasonably conclude that there are currently an insufficient number of U.S. workers qualified, willing, and available to perform the work absent additional recruitment.

Because of the abbreviated timeline for the additional recruitment required for employers whose initial recruitment has gone stale, the Departments have determined that a longer hiring period is necessary to approximate the hiring period under normal recruitment procedures and ensure that domestic workers have access to these job opportunities, consistent with the Departments' mandate. Additionally, given the relatively brief period during which additional recruitment will occur, additional time may be necessary for U.S. workers to have a meaningful opportunity to learn about the job opportunities and submit applications.

The Departments remind all H–2B employers of the requirement to engage in non-discriminatory hiring practices and that the job opportunity is, and through the recruitment period set forth in this rule must continue to be, open to any qualified U.S. worker regardless of race, color, national origin, age, sex, religion, disability, or citizenship, as specified under 20 CFR 655.20(r). Further, employers that wish to require interviews must conduct those interviews by phone or provide a procedure for the interviews to be conducted in the location where the worker is being recruited so that the worker incurs little or no cost. Employers cannot provide potential H–2B workers with more favorable treatment with respect to the requirement for, and conduct of, interviews. *See* 20 CFR 655.40(d).

Any U.S. worker who applies or is referred for the job opportunity and is not considered by the employer for the job opportunity, experiences difficulty accessing or understanding the materials terms and conditions of the job opportunity, or believes they have been improperly rejected by the employer may file a complaint directly with the SWA serving the area of intended employment. Each SWA maintains a complaint system for public labor exchange services established under 20 CFR part 658, subpart E, and any complaint filed by, or on behalf of, a U.S. worker about a specific H–2B job order will be processed under this existing complaint system. Depending on the circumstances, the SWA may seek informal resolution by working with the complainant and the employer to resolve, for example, miscommunications with the employer to be considered for the job opportunity or other concerns or misunderstandings related to the terms and conditions of the job opportunity. In other circumstances, such as allegations involving discriminatory hiring practices, the SWA may need to formally enter the complaint and refer the matter to an appropriate enforcement agency for prompt action. As mentioned above, DOL's OFLC maintains a comprehensive directory of contact information for each SWA that can be used to obtain more information on how to file a complaint.

Although the hiring period may require some employers to hire U.S. workers after the start of the contract period, this is not unprecedented. For example, in the H–2A program, employers have been required to hire U.S. workers through 50 percent of the contract period since at least 2010,[105] which ''enhance[s] protections for U.S. workers, to the maximum extent possible, while balancing the potential costs to employers,'' and is consistent with the Departments' responsibility to ensure that these job opportunities are available to U.S. workers.[106] The Department acknowledges that hiring workers after the start of the contract period imposes an additional cost on employers, but that cost can be lessened, in part, by the ability to discharge the H–2B worker upon hiring a U.S. worker (note, however, that an employer must pay for any discharged H–2B worker's return transportation, 20 CFR 655.20(j)(1)(ii) and 29 CFR 503.16(j)(1)(ii)). Additionally, this rule permits employers to immediately hire H–2B workers who are already present in the United States without waiting for approval of an H–2B petition, which will reduce the potential for harm to H–2B workers as a result of displacement by U.S. workers. *See* new 8 CFR 214.2(h)(27). Most importantly, a longer hiring period will ensure that available U.S. workers have a viable opportunity to apply for H–2B job opportunities. Accordingly, the Departments have determined that in affording the benefits of this temporary cap increase to businesses that are suffering irreparable harm or will suffer impending irreparable harm, it is necessary to ensure U.S. workers who may be seeking employment as the economy continues to recover in 2022 have sufficient time to apply for these jobs.

As in the temporary rules implementing the supplemental cap increases in prior years, employers must retain documentation demonstrating compliance with the recruitment requirements described above, including placement of a new job order with the SWA, contact with AJCs, contact with former U.S. workers, and compliance with § 655.45(a) or (b). Employers must prepare and retain a recruitment report that describes these efforts and meets the requirements set forth in 20 CFR 655.48, including the requirement to update the recruitment report throughout the recruitment and hiring period set forth in paragraph (a)(5)(v) of new 20 CFR 655.64. Employers must maintain copies of the recruitment report, attestation, and supporting documentation, as described above, for a period of 3 years from the date that the TLC was approved, consistent with the document retention requirements under 20 CFR 655.56. These requirements are similar to those that apply to certain seafood employers that stagger the entry of H–2B workers under 20 CFR 655.15(f).

DOL's WHD has the authority to investigate the employer's attestations, as the attestations are a required part of the H–2B petition process under this rule and the attestations rely on the employer's existing, approved TLC. Where a WHD investigation determines that there has been a willful misrepresentation of a material fact or a substantial failure to meet the required terms and conditions of the attestations, WHD may institute administrative proceedings to impose sanctions and remedies, including (but not limited to) assessment of civil money penalties;

[105] Final Rule, *Temporary Agricultural Employment of H–2A Aliens in the United States,* 75 FR 6884, 6921 (Feb. 12, 2010).

[106] NPRM, *Temporary Agricultural Employment of H–2A Aliens in the United States,* 74 FR 45906, 45917 (Sept. 4, 2009); 75 FR at 6922.

recovery of wages due; make-whole relief for any U.S. worker who has been improperly rejected for employment, laid off, or displaced; make-whole relief for any person who has been discriminated against; and/or debarment for 1 to 5 years. *See* 29 CFR 503.19, 503.20. This regulatory authority is consistent with WHD's existing enforcement authority and is not limited by the expiration date of this rule. Therefore, in accordance with the documentation retention requirements at new 20 CFR 655.69, the petitioner must retain documents and records evidencing compliance with this rule, and must provide the documents and records upon request by DHS or DOL. In addition to the complaint process under 20 CFR part 658, subpart E, which is described above, workers who believe their rights under the H–2B program have been violated may file confidential complaints with WHD by telephone at 1–866–487–9243 or may access the telephone number via TTY by calling 1–877–889–5627 or visit *https://www.dol.gov/agencies/whd* to locate the nearest WHD office for assistance. Note that an employer is prohibited from intimidating, threatening, restraining, coercing, blacklisting, discharging, or in any manner discriminating against an employee who has, among other actions: Filed a complaint related to H–2B rights and protections; consulted with a workers' rights center, community organization, labor union, legal assistance program, or attorney on H–2B rights or protections; or exercised or asserted H–2B rights and protections on behalf of themselves or others. 20 CFR 655.20(n) and 29 CFR 503.16(n).

DHS has the authority to verify any information submitted to establish H–2B eligibility at any time before or after the petition has been adjudicated by USCIS. *See, e.g.,* INA sections 103 and 214 (8 U.S.C. 1103, 1184); *see also* 8 CFR part 103 and section 214.2(h). DHS' verification methods may include, but are not limited to, review of public records and information, contact via written correspondence or telephone, unannounced physical site inspections, and interviews. USCIS will use information obtained through verification to determine H–2B eligibility and assess compliance with the requirements of the H–2B program. Subject to the exceptions described in 8 CFR 103.2(b)(16), USCIS will provide petitioners with an opportunity to address adverse information that may result from a USCIS compliance review, verification, or site visit after a formal decision is made on a petition or after the agency has initiated an adverse action that may result in revocation or termination of an approval.

DOL's OFLC already has the authority under 20 CFR 655.70 to conduct audit examinations on adjudicated *Applications for Temporary Employment Certification,* including all appropriate appendices, and verify any information supporting the employer's attestations. OFLC uses audits of adjudicated *Applications for Temporary Employment Certification,* as authorized by 20 CFR 655.70, to ensure employer compliance with attestations made in its *Application for Temporary Employment Certification* and to ensure the employer has met all statutory and regulatory criteria and satisfied all program requirements. The OFLC CO has sole discretion to choose which *Applications for Temporary Employment Certification* will be audited. *See* 20 CFR 655.70(a). Post-adjudication audits can be used to establish a record of employer compliance or non-compliance with program requirements and the information gathered during the audit assists DOL in determining whether it needs to further investigate or debar an employer or its agent or attorney from future labor certifications.

Under this rule, an employer may submit a petition to USCIS, including a valid TLC and Form ETA–9142B–CAA–5, in which the employer attests to compliance with requirements for access to the supplemental H–2B visas allocated through 8 CFR 214.2(h)(6)(xi), including that its business is suffering irreparable harm or will suffer impending irreparable harm, and that it will conduct additional recruitment, if necessary to refresh the TLC's labor market test. DHS and DOL consider Form ETA–9142B–CAA–5 to be an appendix to the *Application for Temporary Employment Certification* and the attestations contained on the Form ETA–9142B–CAA–5 and documentation supporting the attestations to be evidence that is incorporated into and a part of the approved TLC. Therefore, DOL's audit authority includes the authority to audit the veracity of any attestations made on Form ETA–9142B–CAA–5 and documentation supporting the attestations. However, DOL's audit authority is independently authorized, and is not limited by the expiration date of this rule. In order to make certain that the supplemental visa allocation is not subject to fraud or abuse, DHS will share information regarding Forms ETA–9142B–CAA–5 with DOL, consistent with existing authorities. This information sharing between DHS and DOL, along with relevant information that may be obtained through the separate SWA and WHD complaint systems, are expected to support DOL's identification of TLCs used to access the supplemental visa allocation for closer examination of TLCs through the audit process.

In accordance with the documentation retention requirements in this rule, the petitioner must retain documents and records proving compliance with this rule, and must provide the documents and records upon request by DHS or DOL. Under this rule, DOL will audit a significant number of TLCs used to access the supplemental visa allocation to ensure employer compliance with attestations, including those regarding the irreparable harm standard and additional employer conducted recruitment, required under this rule. In the event of an audit, the OFLC CO will send a letter to the employer and, if appropriate, a copy of the letter to the employer's attorney or agent, listing the documentation the employer must submit and the date by which the documentation must be sent to the CO. During audits under this rule, the CO will request documentation necessary to demonstrate the employer conducted all recruitment steps required under this rule and truthfully attested to the irreparable harm the employer was suffering or would suffer in the near future without the ability to employ all of the H–2B workers requested under the cap increase, including documentation the employer is required to retain under this rule. If necessary to complete the audit, the CO may request supplemental information and/or documentation from the employer during the course of the audit process. 20 CFR 655.70(c).

Failure to comply in the audit process may result in the revocation of the employer's certification or in debarment, under 20 CFR 655.72 and 655.73, respectively, or require the employer to undergo assisted recruitment in future filings of an *Application for Temporary Employment Certification,* under 20 CFR 655.71. Where an audit examination or review of information from DHS or other appropriate agencies determines that there has been fraud or willful misrepresentation of a material fact or a substantial failure to meet the required terms and conditions of the attestations or failure to comply with the audit examination process, OFLC may institute appropriate administrative proceedings to impose sanctions on the employer. Those sanctions may result in revocation of an approved TLC, the requirement that the employer undergo assisted recruitment in future filings of

an *Application for Temporary Employment Certification* for a period of up to 2 years, and/or debarment from the H–2B program and any other foreign labor certification program administered by DOL for 1 to 5 years. *See* 29 CFR 655.71, 655.72, 655.73. Additionally, OFLC has the authority to provide any finding made or documents received during the course of conducting an audit examination to DHS, WHD, IER, or other enforcement agencies. OFLC's existing audit authority is independently authorized, and is not limited by the expiration date of this rule. Therefore, in accordance with the documentation retention requirements at new 20 CFR 655.69, the petitioner must retain documents and records proving compliance with this rule, and must provide the documents and records upon request by DHS or DOL.

Petitioners must also comply with any other applicable laws, such as avoiding unlawful discrimination against U.S. workers based on their citizenship status or national origin. Specifically, the failure to recruit and hire qualified and available U.S. workers on account of such individuals' national origin or citizenship status may violate INA section 274B, 8 U.S.C. 1324b.

IV. Statutory and Regulatory Requirements

A. Administrative Procedure Act

This rule is issued without prior notice and opportunity to comment and with an immediate effective date pursuant to the Administrative Procedure Act (APA). 5 U.S.C. 553(b) and (d).

1. Good Cause To Forgo Notice and Comment Rulemaking

The APA, 5 U.S.C. 553(b)(B), authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Among other things, the good cause exception for forgoing notice and comment rulemaking ''excuses notice and comment in emergency situations, or where delay could result in serious harm.'' *Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004). Although the good-cause exception is ''narrowly construed and only reluctantly countenanced,'' *Tenn. Gas Pipeline Co.* v. *FERC,* 969 F.2d 1141, 1144 (D.C. Cir. 1992), the Departments have appropriately invoked the exception in this case, for the reasons set forth below.

With respect to the supplemental allocations provisions in 8 CFR 214.2 and 20 CFR part 655, subpart A, as explained above, the Departments are acting to give effect to the extension of the supplemental cap authority in section 105 of Div. O of the FY 2021 Omnibus, which was extended by Congress and expires on February 18, 2022 but extends the supplemental cap authority to FY 2022.[107] The Departments are bypassing advance notice and comment because of the exigency created by this short timeframe for action, as well as to urgently address increased labor demand and other conditions stemming from the rapidly unfolding pandemic. In recent months, the ''Great Resignation'' has resulted in an adverse impact on many employers in industries that frequently use the H–2B program,[108] and the emergence of the Omicron variant has uncertain implications for public health [109] as well as on inflation [110] and supply chains.[111] USCIS received more than enough petitions to meet the H–2B visa statutory cap for the first half of FY 2022 on September 30, 2021,[112] which is a month and a half earlier than when the statutory cap for the first half of FY 2020 was reached.[113] USCIS rejected and returned the petitions and associated filing fees to petitioners for all cap-subject petitions received after September 30, 2021. Given high demand by American businesses for H–2B workers, rapidly evolving economic conditions and labor demand, and the very short time remaining to authorize additional visa numbers to help prevent further irreparable harm currently experienced by some U.S. employers or avoid impending economic harm for others,[114] a decision to undertake notice and comment rulemaking would likely delay final action on this matter by weeks or months, and would, therefore, greatly complicate and potentially preclude the Departments from successfully exercising the authority created by section 105, Public Law 117–43, and Public Law 117–70.

The temporary portability and change of employer provisions in 8 CFR 214.2

[107] *See* Public Law 117–70 Further Extending Government Funding Act, Division A ''Further Continuing Appropriations Act, 2022'', section 101 (Dec. 3, 2021) changing the Public Law 117–43 expiration date in section 106(3) from Dec. 3, 2021 to Feb. 18, 2022, and Public Law 117–43 Extending Government Funding and Delivering Emergency Assistance Act, Division A ''Continuing Appropriations Act, 2022'', Section 101 and 106(3) (Oct. 3, 2021) extending DHS funding, including authority under section 105 of title I of Division O of Public Law 116–260 through December 3, 2021.

[108] *See* Megan Leonhardt, *The Great Resignation is hitting these industries hardest,* Fortune, *https://fortune.com/2021/11/16/great-resignation-hitting-these-industries-hardest/* (Nov. 16, 2021) (''The industries hit hardest by quits in September are leisure and hospitality—including those who work in the arts and entertainment, as well as in restaurants and hotels—trade, transportation and utilities, professional services and retail.''). These observations made in the preceding source align with USCIS analysis of labor demand in industry sectors that are most represented in the H–2B program, as discussed in the E.O. 12866 analysis. *See also, e.g.,* Paul Krugman, *Wonking Out: Is the Great Resignation a Great Rethink?,* N.Y. Times, *https://www.nytimes.com/2021/11/05/opinion/great-resignation-quit-job.html* (Nov. 5, 2021) (''. . . there's considerable evidence that 'workers at low-wage jobs [have] historically underestimated how bad their jobs are.' When something—like, say, a deadly pandemic—forces them out of their rut, they realize what they've been putting up with. And because they can learn from the experience of other workers, there may be a 'quits multiplier' in which the decision of some workers to quit ends up inducing other workers to follow suit.'').

[109] *See* Annika Kim Constantino, *Omicron detected in Florida and Texas as it takes root in 25 U.S. states,* CNBC, *https://www.cnbc.com/2021/12/10/omicron-detected-in-florida-texas-and-other-states-as-it-takes-root-across-the-us-.html* (Dec. 10, 2021).

[110] On December 10, 2021, BLS reported that the CPI–U increased 0.8 percent in November on a seasonally adjusted basis after rising 0.9 percent in October. Over the previous 12 months, the all items index increased 6.8 percent before seasonal adjustment. *See* BLS, Economic News Release, Consumer Price Index Summary (Dec. 20, 2021), *https://www.bls.gov/news.release/cpi.nr0.htm.*

[111] *See, e.g.,* Mitchell Hartman, *Omicron's impact on inflation and supply chains is uncertain,* Marketplace, *https://www.marketplace.org/2021/12/01/omicrons-impact-on-inflation-and-supply-chains-is-uncertain/* (Dec. 1, 2021) (''People have trouble getting to work through lockdowns and what have you, and labor gets scarcer — particularly for those jobs where being present at work matters. Supply goes down and has an upward pressure on pricing . . .''); Alyssa Fowers & Rachel Siegel, *Five charts explaining why inflation is at a near 40-year high,* Wash. Post, *https://www.washingtonpost.com/business/2021/10/14/inflation-prices-supply-chain/* (Oct. 14, 2021, last updated Dec. 10, 2021) (''Prices for meat, poultry, fish and eggs have surged in particular above other grocery categories. The White House has pointed to broad consolidation in the meat industry, saying that large companies bear some of the responsibility for pushing prices higher . . . Meat industry groups disagree, arguing that the same supply-side issues rampant in the rest of the economy apply to proteins because it costs more to transport and package materials, while tight labor market has held back meat production.'').

[112] USCIS, USCIS Reaches H–2B Cap for First Half of FY 2022, *https://www.uscis.gov/newsroom/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2022* (Oct. 12, 2021).

[113] November 16, 2020 was the last receipt date for the first half of FY 2020. *See* USCIS, USCIS Reaches H–2B Cap for First Half of FY 2021, *https://www.uscis.gov/news/alerts/uscis-reaches-h-2b-cap-for-first-half-of-fy-2021* (Nov. 18, 2020).

[114] *See* Jason Douglas et al, *Omicron Disrupts Government Plans to Lure Migrant Workers as Labor Shortages Bite,* Wall Street Journal, *https://www.wsj.com/articles/omicron-disrupts-government-plans-to-lure-migrant-workers-as-labor-shortages-bite-11639132203* (Dec. 10, 2021) (''I've lost customers because people don't have the patience to wait—it's horrible, horrible,'' she said. ''The sad part is, if I got my workers, my business would grow exponentially.' . . . Ms. Ogden has tried to find locals to fill the jobs. She even asked her congressman to put a sign in his office. She offered about $18 an hour, plus overtime. No one took a job. Congress raised the cap for H–2B visas this year, up to a total of 66,000 for fiscal 2022, but that still falls far short of demand.'').

and 274a.12 are further supported by conditions created by the COVID–19 pandemic. On January 31, 2020, the Secretary of Health and Human Services declared a public health emergency under section 319 of the Public Health Service Act in response to COVID–19 retroactive to January 27, 2020.[115] This determination that a public health emergency exists due to COVID–19 has subsequently been renewed seven times: On April 21, 2020, on July 23, 2020, on October 2, 2020, January 7, 2021, on April 15, 2021, on July 19, 2021 and most recently on October 15, 2021, effective October 18, 2021.[116] On March 13, 2020, then-President Trump declared a National Emergency concerning the COVID–19 outbreak, retroactive to March 1, 2020, to control the spread of the virus in the United States.[117] In response to the Mexican government's call to increase social distancing in that country, DOS announced the temporary suspension of routine immigrant and nonimmigrant visa services processed at the U.S. Embassy in Mexico City and all U.S. consulates in Mexico beginning on March 18, 2020, and it later expanded the temporary suspension of routine immigrant and nonimmigrant visa services at all U.S. Embassies and Consulates.[118] On July 22, 2020, DOS indicated that embassies and consulates should continue to provide emergency and mission critical visa services to the extent possible and could begin a phased resumption of routine visa services as local conditions and resources allow.[119] On March 26, 2020 DOS designated the H–2 programs as essential to the economy and food security of the United States and a national security priority; DOS indicated that U.S. Embassies and Consulates will continue to process H–2 cases to the extent possible and implemented a change in its procedures, to include interview waivers.[120]

Travel restrictions have also changed over time as the pandemic has continued to evolve. On October 25, 2021, the President issued Proclamation 10294, *Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic,* which, together with other policies, advance the safety and security of the air traveling public and others, while also allowing the domestic and global economy to continue its recovery from the effects of the COVID–19 pandemic. The proclamation bars the entry of noncitizen adult nonimmigrants into the United States via air transportation unless they are fully vaccinated against COVID–19, with certain exceptions.[121] On January 22, 2022, similar requirements entered into force at land ports of entry and ferry terminals.[122]

On November 26, 2021, the President issued another Proclamation suspending the entry into the United States, of immigrants or nonimmigrants, of noncitizens who were physically present within certain Southern African countries during the 14-day period preceding their entry or attempted entry into the United States.[123] On December 28, 2021, the President revoked the November 26 Proclamation.[124] And on December 2, 2021, CDC announced that, beginning December 6, 2021, all air travelers over the age of two, regardless of citizenship or vaccination status, will be to be required to show a negative pre-departure COVID–19 viral test taken the day before they board their flight to the United States, or documentation of recent recovery from COVID–19.[125] Shifting requirements as well as varying availability of vaccines and tests in some H–2B nonimmigrants' home countries could complicate travel.

In addition to travel restrictions and impacts of the pandemic on visa services, as discussed elsewhere in this rule, current efforts to curb the pandemic in the United States and worldwide have been partially successful. With the emergence of COVID–19 variants, including the uncertainty surrounding the most recent variant, Omicron; different rates of vaccination; and other uncertainties associated with the evolving pandemic situation, DHS anticipates that H–2B employers may need additional flexibilities, beyond supplemental visa numbers, to meet all of their labor needs, particularly if some U.S. and H–2B workers become unavailable due to illness or other restrictions related to the spread of COVID–19. Therefore, DHS is acting expeditiously to put in place rules that will facilitate the continued employment of H–2B workers already present in the United States. This action will help employers fill these critically necessary nonagricultural job openings and protect U.S. businesses' economic investments in their operations.

Courts have found ''good cause'' under the APA when an agency is moving expeditiously to avoid significant economic harm to a program, program users, or an industry. Courts have held that an agency may use the good cause exception to address ''a serious threat to the financial stability of [a government] benefit program,'' *Nat'l Fed'n of Fed. Emps.* v. *Devine,* 671 F.2d 607, 611 (D.C. Cir. 1982), or to avoid ''economic harm and disruption'' to a given industry, which would likely result in higher consumer prices, *Am. Fed'n of Gov't Emps.* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981).

Consistent with the above authorities, the Departments are bypassing notice and comment to prevent ''serious economic harm to the H–2B community,'' including U.S. employers, associated U.S. workers, and related professional associations, that could result from ongoing uncertainty over the status of the numerical limitation, in other words, the effective termination of the program through the remainder of FY 2021. *See Bayou Lawn & Landscape Servs.* v. *Johnson,* 173 F. Supp. 3d 1271, 1285 & n.12 (N.D. Fla. 2016). The Departments note that this action is temporary in nature, *see id.,*[126] and

[115] HHS, Determination of Public Health Emergency, 85 FR 7316 (Feb. 7, 2020). *See also, https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx* (Jan. 31, 2020).

[116] See, HHS, Renewal of Determination that a Public Health Emergency Exists, *https://www.phe.gov/emergency/news/healthactions/phe/Pages/COVDI-15Oct21.aspx* (Oct. 15, 2021).

[117] President of the United States, Proclamation 9994 of March 13, 2020, Declaring a National Emergency Concerning the Coronavirus Disease (COVID–19) Outbreak, 85 FR 15337 (Mar. 18, 2020).

[118] DOS, Suspension of Routine Visa Services, *https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html* (last updated July 22, 2020).

[119] *https://travel.state.gov/content/travel/en/News/visas-news/suspension-of-routine-visa-services.html.*

[120] DOS, *Important Announcement on Waivers of the Interview Requirement for Certain Nonimmigrant Visas, https://travel.state.gov/content/travel/en/News/visas-news/important-announcement-on-waivers-of-the-interview-requirement-for-certain-nonimmigrant-visas.html* (last updated Dec. 23, 2021).

[121] *See* 86 FR 59603 (Oct. 28, 2021) (Presidential Proclamation); *see also* 86 FR 61224 (Nov. 5, 2021) (implementing CDC Order).

[122] *See* 87 FR 3425 (Jan. 24, 2022) (restrictions at United States-Mexico border); 87 FR 3429 (Jan. 24, 2022) (restrictions at United States-Canada border).

[123] *See* A Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease 2019 (Nov. 26, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/11/26/a-proclamation-on-suspension-of-entry-as-immigrants-and-nonimmigrants-of-certain-additional-persons-who-pose-a-risk-of-transmitting-coronavirus-disease-2019/.*

[124] *See* A Proclamation on Revoking Proclamation 10315 (Dec. 28, 2021), *https://www.whitehouse.gov/briefing-room/presidential-actions/2021/12/28/a-proclamation-on-revoking-proclamation-10315/.*

[125] *See* CDC, *Requirement for Proof of Negative COVID–19 Test or Documentation of Recovery from COVID–19* (Dec. 2, 2021).

[126] Because the Departments have issued this rule as a temporary final rule, this rule—with the sole exception of the document retention

Continued

includes appropriate conditions to ensure that it affects only those businesses most in need, and also protects H–2B and U.S. workers.

2. Good Cause To Proceed With an Immediate Effective Date

The APA also authorizes agencies to make a rule effective immediately, upon a showing of good cause, instead of imposing a 30-day delay. 5 U.S.C. 553(d)(3). The good cause exception to the 30-day effective date requirement is easier to meet than the good cause exception for foregoing notice and comment rulemaking. *Riverbend Farms, Inc.* v. *Madigan,* 958 F.2d 1479, 1485 (9th Cir. 1992); *Am. Fed'n of Gov't Emps., AFL–CIO* v. *Block,* 655 F.2d 1153, 1156 (D.C. Cir. 1981); *U.S. Steel Corp.* v. *EPA,* 605 F.2d 283, 289–90 (7th Cir. 1979). An agency can show good cause for eliminating the 30-day delayed effective date when it demonstrates urgent conditions the rule seeks to correct or unavoidable time limitations. *U.S. Steel Corp.,* 605 F.2d at 290; *United States* v. *Gavrilovic,* 511 F.2d 1099, 1104 (8th Cir. 1977). For the same reasons set forth above expressing the need for immediate action, we also conclude that the Departments have good cause to dispense with the 30-day effective date requirement.

B. Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary and to the extent permitted by law, to proceed only if the benefits justify the costs and to select the regulatory approach that maximizes net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits; reducing costs; simplifying and harmonizing rules; and promoting flexibility through approaches that preserve freedom of choice (including through ''provision of information in a form that is clear and intelligible''). It also allows consideration of equity, fairness, distributive impacts, and human dignity, even if some or all of these are difficult or impossible to quantify.

The Office of Information and Regulatory Affairs has determined that this rule is a ''significant regulatory action,'' although not an economically significant regulatory action. Accordingly, the Office of Management and Budget has reviewed this regulation.

Summary

With this temporary final rule (TFR), DHS is authorizing the immediate release of an additional 20,000 H–2B visas. By the authority given under Public Law 117–43, and extended by Public Law 117–70, on the same terms as section 105 of the Further Consolidated Appropriations Act, 2021, Public Law 116–260 (FY 2021 Omnibus), DHS is raising the H–2B cap by an additional 20,000 visas during FY 2022 for positions with start dates on or before March 31, 2022 to businesses that: (1) Show that there are an insufficient number of U.S. workers to meet their needs in the first half of FY 2022; (2) attest that their businesses are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on their petition; and (3) petition for returning workers who were issued an H–2B visa or were otherwise granted H–2B status in FY 2019, 2020, or 2021, unless the H–2B worker is a national of one of the Northern Triangle countries or Haiti. Additionally, up to 6,500 of the 20,000 visas may be granted to workers from the Northern Triangle countries and Haiti who are exempt from the returning worker requirement. This TFR aims to prevent irreparable harm to certain U.S. businesses by allowing them to hire additional H–2B workers within FY 2022.

The estimated total costs to petitioners range from $4,803,155 to $5,324,039. The estimated total cost to the Federal Government is $467,820. Therefore, DHS estimates that the total cost of this rule ranges from $5,270,975 to $5,791,859. The benefits of this rule are diverse, though some of them are difficult to quantify. They include:

(1) Employers benefit from this rule significantly through increased access to H–2B workers;

(2) Customers and others benefit directly or indirectly from that increased access;

(3) H–2B workers benefit from this rule significantly through obtaining jobs and earning wages, potential ability to port and earn additional wages, and increased information on COVID–19 and vaccination distribution. DHS recognizes that some of the effects of these provisions may occur beyond the borders of the United States; [127]

(4) Some American workers may benefit to the extent that they do not lose jobs through the reduced or closed business activity that might occur if fewer H–2B workers were available;

(5) The existence of a lawful pathway, for the 6,500 visas set aside for new workers from Guatemala, Honduras, El Salvador, and Haiti, is likely to provide multiple benefits in terms of U.S. policy with respect to the Northern Triangle countries and Haiti; and

(6) The Federal Government benefits from increased evidence regarding attestations. Table 1 provides a summary of the provisions in this rule and some of their impacts.

requirements—will be of no effect after September 30, 2022, even if Congress includes an additional or similar authority akin to Public Law 117–43, as extended by Public Law 117–70 on the same terms as section 105, in a subsequent act of Congress.

[127] *See, e.g.,* Arnold Brodbeck et al., Seasonal Migrant Labor in the Forest Industry of the Southeastern United States: The Impact of H–2B Employment on Guatemalan Livelihoods, 31 Society and Natural Resources 1012 (2018).

TABLE 1—SUMMARY OF THE TFR'S PROVISIONS AND ECONOMIC IMPACT

Current provision	Changes resulting from the provisions of the TFR	Expected costs of the provisions of the TFR	Expected benefits of the provisions of the TFR
—The current statutory cap limits H–2B visa allocations to 66,000 workers a year.	—The amended provisions will allow for an additional 20,000 H–2B temporary workers. Up to 6,500 of the 20,000 additional visas will be reserved for workers who are nationals of Guatemala, Honduras, El Salvador, and Haiti and will be exempt from the returning worker requirement.	—The total estimated cost to file Form I–129 by human resource specialists is approximately $558,461. The total estimated cost to file Form I–129 and Form G–28 will range from approximately $624,952 if filed by in-house lawyers to approximately $836,755 if filed by outsourced lawyers. The total estimated cost associated with filing additional petitions ranges from $1,183,413 to $1,395,216 depending on the filer. —The total estimated costs associated with filing Form I–907 if it is filed with Form I–129 is $974,909 if filed by human resource specialists. The total estimated costs associated with filing Form I–907 would range from approximately $795,707 if filed by an in-house lawyer to approximately $817,943 if filed by an outsourced lawyer. The total estimated costs associated with requesting premium processing ranges from approximately $1,770,616 to approximately $1,792,852. —DHS may incur additional adjudication costs as more applicants file Form I–129. However, these additional costs to USCIS are expected to be covered by the fees paid for filing the form, which have been accounted for in costs to petitioners.	—Form I–129 petitioners would be able to hire temporary workers needed to prevent their businesses from suffering irreparable harm. —Businesses that are dependent on the success of other businesses that are dependent on H–2B workers would be protected from the repercussions of local business failures. —Some American workers may benefit to the extent that they do not lose jobs through the reduced or closed business activity that might occur if fewer H–2B workers were available.
	—Petitioners will be required to fill out the newly created Form ETA–9142–B–CAA–5, Attestation for Employers Seeking to Employ H–2B Nonimmigrant Workers Under Section 105 of Div. O of the Consolidated Appropriations Act, 2021.	—The total estimated cost to petitioners to complete and file Form ETA–9142–B–CAA–5 is approximately $472,316.	—Form ETA–9142–B–CAA–5 will serve as initial evidence to DHS that the petitioner meets the irreparable harm standard and returning worker requirements.
	—Petitioners would be required to conduct an additional round of recruitment.	—The total estimated cost to petitioners to conduct an additional round of recruitment is approximately $178,015.	—The additional round of recruitment will ensure that a U.S. worker that is willing and able to fill the position is not replaced by a nonimmigrant worker.
	—Employers of H–2B workers would be required to provide information about equal access to COVID–19 vaccines and vaccination distribution sites.	—The total estimated cost to petitioners to provide COVID–19 vaccines and vaccination distribution site information is approximately $601.	—Workers would be given information about equal access to vaccines and vaccination distribution.
	—An H–2B nonimmigrant who is physically present in the United States may port to another employer.	—The total estimated cost to file Form I–129 by human resource specialists is approximately $63,965. The total estimated cost to file Form I–129 and Form G–28 will range from approximately $72,242 if filed by in-house lawyers to approximately $96,715 if filed by outsourced lawyers. —The total estimated costs associated with filing Form I–907 if it is filed with Form I–129 is $111,549 if filed by human resource specialists. The total estimated costs associated with filing Form I–907 would range from approximately $92,052 if filed by an in-house lawyer to approximately $94,625 if filed by an outsourced lawyer. —The total estimated costs associated with the portability provision ranges from $339,808 to $366,865, depending on the filer. —DHS may incur some additional adjudication costs as more petitioners file Form I–129. However, these additional costs to USCIS are expected to be covered by the fees paid for filing the form, which have been accounted for in costs to petitioners.	—H–2B workers present in the United States will be able to port to another employer and potentially extend their stay and, therefore, earn additional wages. —An H–2B worker with an employer that is not complying with H–2B program requirements would have additional flexibility in porting to another employer's certified position. —This provision would ensure employers will be able to hire the H–2B workers they need.

TABLE 1—SUMMARY OF THE TFR'S PROVISIONS AND ECONOMIC IMPACT—Continued

Current provision	Changes resulting from the provisions of the TFR	Expected costs of the provisions of the TFR	Expected benefits of the provisions of the TFR
	—DHS and DOL intend to conduct a number of audits during the period of temporary need to verify compliance with H–2B program requirements, including the irreparable harm standard as well as other key worker protection provisions implemented through this rule.	—Employers will have to comply with audits for an estimated total opportunity cost of time of $290,400. —It is expected both DHS and DOL will be able to shift resources to be able to conduct these audits without incurring additional costs. However, the Departments will incur opportunity costs of time. The audits are expected to take a total of approximately 6,000 hours and cost approximately $467,820.	—DOL and DHS audits will yield evidence of the efficacy of attestations in enforcing compliance with H–2B supplemental cap requirements. —Conducting a significant number of audits will discourage uncorroborated attestations.
Familiarization Cost	—Petitioners or their representatives with familiarize themselves with the rule.	—Petitioners or their representatives will need to read and understand the rule at an estimated total opportunity costs of time that ranges from $567,986 to $827,774.	—Petitioners will have the necessary information to take advantage of and comply with the provisions of this rule.

Source: USCIS and DOL analysis.

Background and Purpose of the Proposed Rule

The H–2B visa classification program was designed to serve U.S. businesses that are unable to find a sufficient number of U.S. workers to perform nonagricultural work of a temporary or seasonal nature. For a nonimmigrant worker to be admitted into the United States under this visa classification, the hiring employer is required to: (1) Receive a temporary labor certification (TLC) from the Department of Labor (DOL); and (2) file Form I–129 with DHS. The temporary nature of the services or labor described on the approved TLC is subject to DHS review during adjudication of Form I–129.[128] The current INA statute sets the annual number of H–2B visas for workers performing temporary nonagricultural work at 66,000 to be distributed semi-annually beginning in October (33,000) and in April (33,000).[129] Any unused H–2B visas from the first half of the fiscal year will be available for employers seeking to hire H–2B workers during the second half of the fiscal year. However, any unused H–2B visas from one fiscal year do not carry over into the next and will therefore not be made available.[130] Once the statutory H–2B visa cap limit has been reached, petitioners must wait until the next half of the fiscal year, or the beginning of the next fiscal year, for additional visas to become available.

On Dec 27, 2020, the President signed the FY 2021 Omnibus that contains a provision (Sec. 105 of Div. O) permitting the Secretary of Homeland Security, under certain circumstances, to increase the number of H–2B visas available to U.S. employers, notwithstanding the established statutory numerical limitation. On December 3, 2021, Congress extended this authority to eligible employers whose employment needs for FY 2022 cannot be met under the general fiscal year statutory cap.[131] After consulting with the Secretary of Labor, the Secretary of the Homeland Security has determined it is appropriate to exercise his discretion and raise the H–2B cap by up to an additional 20,000 visas for FY 2022 positions with start dates on or before March 31, 2022, for those businesses who would qualify under certain circumstances.

These businesses must attest that they are suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on their petition. The Secretary has determined that up to 13,500 of the 20,000 these supplemental visas will be limited to specified H–2B returning workers for nationals of any country. Specifically, these individuals must be workers who were issued H–2B visas or were otherwise granted H–2B status in fiscal years 2019, 2020, or 2021. The Secretary has also determined that up to 6,500 of the 20,000 additional visas will be reserved for workers who are nationals of Guatemala, Honduras, El Salvador, and Haiti, and that these 6,500 workers will be exempt from the returning worker requirement. Once the 6,500 visa limit has been reached, a petitioner may continue to request H–2B visas for workers who are nationals of Guatemala, Honduras, El Salvador, and Haiti but these workers must be returning workers.

Population

This rule would affect those employers that file Form I–129 on behalf of nonimmigrant workers they seek to hire under the H–2B visa program. More specifically, this rule would affect those employers that can establish that their business is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on their petition and without the exercise of authority that is the subject of this rule. Due to the temporary nature of this rule and the limited time left for employers to begin the H–2B filing process for positions with FY 2022 employment start dates on or before March 31, 2022,[132] DHS believes that it is reasonable to assume that eligible petitioners for these additional 20,000 visas will generally be those employers that have already completed the steps to receive an

[128] Revised effective 1/18/2009; 73 FR 78104; 74 FR 2837.

[129] See 8 U.S.C. 1184(g)(1)(B), INA 214(g)(1)(B) and 8 U.S.C. 1184(g)(4), INA 214(g)(4).

[130] A Temporary Labor Certification (TLC) approved by the Department of Labor must accompany an H–2B petition. The employment start date stated on the petition must match the start date listed on the TLC. *See* 8 CFR 214.2(h)(6)(iv)(A) and (D).

[131] Sections 101 and 106(3) of Division A of Public Law 117–43, Continuing Appropriations Act, 2022, and section 101 of Division A of Public Law 117–70, Further Continuing Appropriations Act, 2022 provide the DHS Secretary with the authority to make available additional H–2B visas for FY 2022 on the same terms as Section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116–260 (FY 2021 Omnibus). This authority expires on February 18, 2022.

[132] This assumption is based on the fact that, under DOL regulations, employers must apply for a TLC 75 to 90 days before the start date of work. 20 CFR 655.15(b).

approved TLC prior to the issuance of this rule.

This rule would also have additional impacts on the population of H–2B employers and workers presently in the United States by permitting some H–2B workers to port to another certified employer. These H–2B workers would continue to earn wages and gaining employers would continue to obtain necessary workers.

Population That Will File a Form I–129, Petition for a Nonimmigrant Worker

According to DOL OFLC's certification data for FY 2021, as of December 1, 2021, about 3,257 TLCs for 86,627 H–2B positions were received with expected work start dates between October 1, 2021 and March 1, 2022. DOL OFLC has approved 2,469 certifications for 65,717 H–2B positions and is still reviewing the remaining 347 TLC requests for 7,301 H–2B positions. DOL OFLC has denied, withdrawn, rejected, or returned 441 certifications for 13,609 H–2B positions.[133] However, many of these certified worker positions have already been filled under the semi-annual cap of 33,000 and, for approximately 16 percent of the worker positions certified and still under review by DOL, employers indicated on the Form ETA–9142B their intention to employ some or all of the H–2B workers under the application who will be exempt from the statutory visa cap.[134] Additionally, based on the average TLC requests received for work start dates between March 2 and 31 during FY 2019–2021, DOL OFLC estimates that it may receive another 65 TLC requests covering approximately 2,100 H–2B worker positions for the remainder of the first half visa allotment period ending March 31, 2022. The total universe of approved, pending, and projected future TLCs, as of December 1, 2021, is 2,881 for 75,118 H–2B worker positions.[135] Assuming 16 percent of the approved, pending, and projected 75,118 H–2B worker petitions will be exempt from the statutory visa cap, we estimate applications requesting approximately 63,099 H–2B beneficiaries.[136]

Of the expected 2,881 certified Applications for Temporary Employment Certification, USCIS data shows that 1,655 H–2B petitions for 40,749 positions with approved certifications were already filed toward the first semi-annual cap of 33,000 visas.[137] Therefore, we estimate that approximately 1,226 Applications for Temporary Employment Certification may be filed towards this FY 2022 supplemental cap.[138] USCIS recognizes that some employers would have to submit two Forms I–129 if they choose to request H–2B workers under both the returning worker and Northern Triangle Countries/Haiti cap. At this time, USCIS cannot predict how many employers will choose to take advantage of this set-aside, and therefore recognize that the number of petitions may be underestimated.

Population That Files Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative

If a lawyer or accredited representative submits Form I–129 on behalf of the petitioner, Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative, must accompany the Form I–129 submission.[139] Using data from FY 2017 to FY 2021, we estimate that approximately 44.43 percent of Form I–129 petitions will be filed by a lawyer or accredited representative (Table 2). Table 2 shows the percentage of Form I–129 H–2B petitions that were accompanied by a Form G–28. Therefore, we estimate that 545 Forms I–129 and Forms G–28 will be filed by in-house or outsourced lawyers, and that 681 Forms I–129 will be filed by human resources (HR) specialists.[140]

TABLE 2—FORM I–129 H–2B PETITION RECEIPTS THAT WERE ACCOMPANIED BY A FORM G–28

[FY 2017–2021]

Fiscal year	Number of Form I–129 H–2B petitions accompanied by a Form G–28	Total number of Form I–129 H–2B petitions received	Percent of Form I–129 H–2B petitions accompanied by a Form G–28
2017	2,615	6,112	42.78
2018	2,626	6,148	42.71
2019	3,335	7,461	44.70
2020	2,434	5,422	44.89
2021	4,229	9,159	46.17
2017–2021 Total	15,239	34,302	44.43

Source: USCIS Claims3 database, queried using the SMART utility by the USCIS Office of Policy and Strategy on April 8, 2021 and December 2, 2021.

[133] As of December 1, 2021, DOL OFLC had denied 235 applications for 6,375 positions and rejected 74 applications for 1,063 positions. Employers had withdrawn 132 applications for 6,171 positions. This totals 441 applications for 13,609 positions either denied, rejected, or withdrawn.

[134] Of the 65,717 certified H–2B worker positions, approximately 14 percent (9,458 certified H–2B worker positions) may be employed by employers under a cap exempt status. Of the 7,301 H–2B workers positions requested for certification and still under DOL review, approximately 26 percent (1,933 pending H–2B worker positions) may be employed by employers under a cap exempt status. This totals 11,391 H–2B workers positions associated with approved and pending TLCs where the H–2B worker may be employed by the employer under a cap exempt status; or 16 percent of all 73,018 positions associated with approved and pending TLCs.

[135] Calculation for petitioners: 2,469 approved TLCs + 347 pending + 65 projected future TLCs = 2,881 approved, pending, and project future TLCs.

Calculation for beneficiaries: 65,717 positions associated with approved TLCs + 7,301 positions associated with pending TLCs+ 2,100 positions associated with projected future TLCs = 75,118 positions associated with approved, pending, and projected future TLCs.

[136] Calculation: 75,118 approved, pending, and projected H–2B worker positions * 84% of requested workers not being exempt from the statutory cap = 63,099 requested H–2B beneficiaries subject to the statutory cap.

[137] USCIS, Office of Performance and Quality, Data pulled on December 2, 2021.

[138] Calculation: 2,881 approved, pending, and projected TLCs − 1,665 petitions for H–2B workers = 1,226 expected additional petitions for H–2B workers.

[139] USCIS, *Filing Your Form G–28, https://www.uscis.gov/forms/filing-your-form-g-28.*

[140] Calculation: 1,226 estimated additional petitions * 44.43 percent of petitions filed by a lawyer = 545 petitions (rounded) filed by a lawyer.

Calculation: 1,226 estimated additional petitions − 545 petitions filed by a lawyer = 681 petitions filed by an HR specialist.

Population That Files Form I–907, Request for Premium Processing Service

Employers may use Form I–907, Request for Premium Processing Service, to request faster processing of their Form I–129 petitions for H–2B visas. Table 3 shows the percentage of Form I–129 H–2B petitions that were filed with a Form I–907. Using data from FY 2017 to FY 2021, USCIS estimates that approximately 93.67 percent of Form I–129 H–2B petitioners will file a Form I–907 requesting premium processing, though this could be higher because of the timing of this rule. Based on this historical data, USCIS estimates that 1,148 Forms I–907 will be filed with the Forms I–129 as a result of this rule.[141] Of these 1,148 premium processing requests, we estimate that 510 Forms I–907 will be filed by in-house or outsourced lawyers and 638 will be filed by HR specialists.[142]

TABLE 3—FORM I–129 H–2B PETITION RECEIPTS THAT WERE ACCOMPANIED BY A FORM I–907

[FY 2017–2021]

Fiscal year	Number of Form I–129 H–2B petitions accompanied by Form I–907	Total number of Form I–129 H–2B petitions received	Percent of Form I–129 H–2B petitions accompanied by Form I–907
2017	5,932	6,112	97.05
2018	5,986	6,148	97.36
2019	7,227	7,461	96.86
2020	4,341	5,422	80.06
2021	8,646	9,159	94.40
2017–2021 Total	32,132	34,302	93.67

Source: USCIS Claims3 database, queried using the SMART utility by the USCIS Office of Policy and Strategy on April 8, 2021 and December 2, 2021.

Population That Files Form ETA–9142–B–CAA–5, Attestation for Employers Seeking To Employ H–2B Nonimmigrant Workers Under Section 105 of Division O of the Consolidated Appropriations Act, 2021 Public Law 116–260 and Public Laws 117–43 and 117–70

Petitioners seeking to take advantage of the FY 2022 H–2B supplemental visa cap will need to file a Form ETA–9142–B–CAA–5 attesting that their business is suffering irreparable harm or will suffer impending irreparable harm without the ability to employ all of the H–2B workers requested on the petition, comply with third party notification, and maintain required records, among other requirements. DOL estimates that each of the 1,226 petitioners will need to file a Form ETA–9142–B–CAA–5 and comply with its provisions.

Population Affected by the Portability Provision

The population affected by this provision are nonimmigrants in H–2B status who are present in the United States and the employers with valid TLCs seeking to hire H–2B workers. We use the population of 66,000 H–2B workers authorized by statute and 20,000 additional H–2B workers authorized by this supplemental cap regulation as a proxy for the H–2B population that could be currently present in the United States.[143] We use the number of approved, pending, and projected TLCs (2,881) to estimate the potential number of Form I–129 H–2B petitions that incur impacts associated with this porting provision. USCIS uses the number of Forms I–129 filed for extension of stay due to change of employer relative to the Forms I–129 filed for new employment from FY 2011 to FY 2020, the ten years prior to the implementation of first portability provision in a H–2B supplemental cap TFR, to estimate the baseline rate. We compare the average rate from FY 2011–FY 2020 to the rate from FY 2021. Table 4 presents the number of Form I–129 filed extensions of stay due to change of employer and Form I–129 filed for new employment for Fiscal year 2011 through 2020. The average rate of extension of stay due to change of employer compared to new employment is approximately 10.5 percent.

[141] Calculation: 1,226 estimated additional petitions * 93.67 percent premium processing filing rate = 1,148 (rounded) additional Form I–907.

[142] Calculation: 1,148 additional Form I–907 * 44.43 percent of petitioners represented by a lawyer = 510 (rounded) additional Form I–907 filed by a lawyer.

Calculation: 1,148 additional Form I–907 − 510 additional Form I–907 filed by a lawyer = 638 additional Form I–907 filed by an HR specialist.

[143] H–2B workers may have varying lengths in time approved on their H–2B visas. This number may overestimate H–2B workers who have already completed employment and departed and may underestimate H–2B workers not reflected in the current cap and long-term H–2B workers. In FY 2020, 346 requests for change of status to H–2B were approved by USCIS and 3,505 crossings of visa-exempt H–2B workers were processed by Customs and Border Protection (CBP). *See Characteristics of H–2B Nonagricultural Temporary Workers FY2020 Report to Congress at https://www.uscis.gov/sites/default/files/document/reports/H-2B-FY20-Characteristics-Report.pdf.* USCIS assumes some of these workers, along with current workers with a valid H–2B visa under the cap, could be eligible to port under this new provision. USCIS does not know the exact number of H–2B workers who would be eligible to port at this time but uses the cap and supplemental cap allocations as a possible proxy for this population.

TABLE 4—NUMBERS OF FORM I–129 H–2B PETITIONS FILED FOR EXTENSION OF STAY DUE TO CHANGE OF EMPLOYER AND FORM I–129 H–2B PETITIONS FILED FOR NEW EMPLOYMENT

[FY 2011–FY 2020]

Fiscal year	Form I–129 H–2B petitions filed for extension of stay due to change of employer	Form I–129 H–2B petitions filed for new employment	Rate of extension to stay due to change of employer filings relative to new employment filings
2011	360	3,887	0.093
2012	293	3,688	0.079
2013	264	4,120	0.064
2014	314	4,666	0.067
2015	415	4,596	0.090
2016	427	5,750	0.074
2017	556	5,298	0.105
2018	744	5,136	0.145
2019	812	6,251	0.130
2020	804	3,997	0.201
Ten-Year Average	.....	.....	0.105

Source: USCIS, Office of Performance and Quality, Data pulled on December 6, 2021.

In FY 2021, the first year a H–2B supplemental cap included a portability provision, there were 1,113 Forms I–129 filed for extension of stay due to change of employer compared to 7,208 Forms I–129 filed for new employment.[144] This is a rate of 15.4 percent, which is above our earlier 10.5 percent rate, and is our estimate of the rate expected in future years with a portability provision in the supplemental visa allocation.[145] Using the 2,881 as our estimate for the number of Forms I–129 filed for H–2B new employment in the first half of FY 2022, we estimate that 303 Forms I–129 for extension of stay due to change of employer would be filed in absence of this provision.[146] With this portability provision, we estimate that 444 Forms I–129 for extension of stay due to change of employer would be filed.[147] This difference results in 141 additional Forms I–129 as a result of this provision.[148]

Population Affected by the Audits

DHS and DOL each intend to conduct 250 audits of employers hiring H–2B workers under this time-limited FY 2022 H–2B supplemental cap rule. The determination of which employers are audited will be done at the discretion of the Departments, though the agencies will coordinate so that no employer is audited by both DOL and DHS. Therefore, a total of 500 audits on employers that petition for H–2B workers under this TFR will be conducted by the Federal Government.

Population Expected To Familiarize Themselves With This Rule

DHS expects the population that employers with approved, pending, or projected Applications for Temporary Employment Certification will need to familiarize themselves with this rule; an estimated 2,881 employers. We expect familiarization with the rule will be performed by a HR specialist, in-house lawyer, or outsourced lawyer, and this will be done at the same rate as petitioners who file a Form G–28; an estimated 44.43 percent performed by lawyers. Therefore we estimate that 1,280 lawyers will incur familiarization costs and 1,601 HR specialists will incur familiarization costs.[149]

Cost-Benefit Analysis

The provisions of this rule require the submission of a Form I–129 H–2B petition. The costs for this form include filing costs and the opportunity cost of time to complete and submit the form. The current filing fee for Form I–129 is $460 and employers filing H–2B petitions must submit an additional fee of $150.[150] The total estimated cost from filing fees for H–2B petitions using Form I–129 is $610.[151] The estimated time to complete and file Form I–129 for H–2B classification is 4.34 hours.[152] The petition must be filed by a U.S. employer, a U.S. agent, or a foreign employer filing through the U.S. agent. DHS estimates that 44.43 percent of Form I–129 H–2B petitions will be filed by an in-house or outsourced lawyer, and the remainder (55.57 percent) will be filed by an HR specialist or equivalent occupation. DHS presents estimated costs for HR specialists filing Form I–129 petitions and an estimated range of costs for in-house lawyers or outsourced lawyers filing Form I–129 petitions.

To estimate the total opportunity cost of time to HR specialists who complete and file Form I–129, DHS uses the mean hourly wage rate of HR specialists of

[144] USCIS, Office of Performance and Quality, Data pulled on December 6, 2021.

[145] Calculation: 1,113 Form I–129 filed for extension of stay due to change of employer/7,208 Form I–129 filed for new employment = 15.4 percent.

[146] Calculation: 2,881 Form I–129 H–2B petitions filed for new employment * 10.5 percent = 303 estimated number of Form I–129 H–2B petitions filed for extension of stay due to change of employer, no portability provision.

[147] Calculation: 2,881 Form I–129 H–2B petitions filed for new employment * 15.4 percent = 444 estimated number of Form I–129 H–2B petitions filed for extension of stay due to change of employer, with a portability provision.

[148] Calculation: 444 estimated number of Form I–129 H–2B petitions filed for extension of stay due to change of employer, with a portability provision − 303 estimated number of Form I–129 H–2B petitions filed for extension of stay due to change of employer, no portability provision = 141 Form I–129 H–2B petition increase as a result of portability provision.

[149] Calculation for lawyers: 2,881 approved, pending, and projected applicants * 44.43 percent represents by a lawyer = 1,280 (rounded) represented by a lawyer.

Calculation for HR specialists: 2,881 approved, pending, and projected applicants—1,280 represented by a lawyer = 1,601 represented by a HR specialist

[150] *See* Form I–129 instructions at *https://www.uscis.gov/i-129* (accessed December 1, 2021). *See also* 8 U.S.C. 1184(c)(13).

[151] Calculation: $460 current filing fee for Form I–129 + $150 additional filing fee for employers filing H–2B petitions = $610 total estimated filing fees for H–2B petitions using Form I–129.

[152] The public reporting burden for this form is 2.34 hours for Form I–129 and an additional 2.00 hours for H Classification Supplement, totaling 4.34 hours. *See* Form I–129 instructions at *https://www.uscis.gov/i-129* (accessed December 1, 2021).

$33.38 as the base wage rate.[153] If petitioners hire an in-house or outsourced lawyer to file Form I–129 on their behalf, DHS uses the mean hourly wage rate of $71.59 as the base wage rate.[154] Using the most recent Bureau of Labor Statistics (BLS) data, DHS calculated a benefits-to-wage multiplier of 1.45 to estimate the full wages to include benefits such as paid leave, insurance, and retirement.[155] DHS multiplied the average hourly U.S. wage rate for HR specialists and for in-house lawyers by the benefits-to-wage multiplier of 1.45 to estimate the full cost of employee wages. The total compensation for an HR specialist is $48.40 per hour, and the total compensation for an in-house lawyer is $103.81 per hour.[156] In addition, DHS recognizes that an entity may not have in-house lawyers and seek outside counsel to complete and file Form I–129 on behalf of the petitioner. Therefore, DHS presents a second wage rate for lawyers labeled as outsourced lawyers. DHS recognizes that the wages for outsourced lawyers may be much higher than in-house lawyers and therefore uses a higher compensation-to-wage multiplier of 2.5 for outsourced lawyers.[157] DHS estimates the total compensation for an outsourced lawyer is $178.98 per hour.[158] If a lawyer submits Form I–129 on behalf of the petitioner, Form G–28 must accompany the Form I–129 petition.[159] DHS estimates the time burden to complete and submit Form G–28 for a lawyer is 50 minutes (0.83 hour, rounded).[160] For this analysis, DHS adds the time to complete Form G–28 to the opportunity cost of time to lawyers for filing Form I–129 on behalf of a petitioner. This results in a time burden of 5.17 hours for in-house lawyers and outsourced lawyers to complete Form G–28 and Form I–129.[161] Therefore, the total opportunity cost of time per petition for an HR specialist to complete and file Form I–129 is approximately $210.06, for an in-house lawyer to complete and file Forms I–129 and G–28 is about $536.70, and for an outsourced lawyer to complete and file is approximately $925.33.[162] The total cost, including filing fees and opportunity costs of time, per petitioner to file Form I–129 is approximately $820.06 if HR specialists file, $1,146.70 if an in-house lawyer files, and $1,535.33 if an outsourced lawyer files the form.[163]

Cost to Petitioners

As mentioned in *Section 3,* the estimated population impacted by this rule is 1,226 eligible petitioners who are projected to apply for the additional 20,000 H–2B visas for the first half of FY 2022, with 6,500 of the additional visas reserved for employers that will petition for workers who are nationals of the Northern Triangle countries and Haiti, who are exempt from the returning worker requirement.

Costs to Petitioners To File Form I–129 and Form G–28

As discussed above, DHS estimates that an additional 681 petitions will be filed by HR specialists using Form I–129 and an additional 545 petitions will be filed by lawyers using Form I–129 and Form G–28. DHS estimates the total cost to file Form I–129 petitions if filed by HR specialists is $448,461 (rounded).[164] DHS estimates total cost to file Form I–129 petitions and Form G–28 if filed by lawyers will range from $624,952 (rounded) if only in-house lawyers file these forms to $836,755 (rounded) if only outsourced lawyers file them.[165] Therefore, the estimated total cost to file Form I–129 and Form G–28 range from $1,183,413 and $1,395,216.[166]

Costs To File Form I–907

Employers may use Form I–907 to request premium processing of Form I–129 petitions for H–2B visas. The filing fee for Form I–907 for H–2B petitions is $1,500 and the time burden for completing the form is 35 minutes (0.58 hour).[167] Using the wage rates established previously, the opportunity cost of time to file Form I–907 is approximately $28.07 for an HR specialist, $60.21 for an in-house lawyer, and $103.81 for an outsourced lawyer.[168] Therefore, the total filing cost to complete and submit Form I–907 per petitioner is approximately $1,528.07

[153] U.S. Department of Labor, Bureau of Labor Statistics, ''May 2020 National Occupational Employment and Wage Statistics'' Human Resources Specialist (13–1071), Mean Hourly Wage, available at *https://www.bls.gov/oes/2020/may/oes_nat.htm#13-0000* (accessed December 1, 2021).

[154] U.S. Department of Labor, Bureau of Labor Statistics. ''May 2020 National Occupational Employment and Wage Estimates'' Lawyers (23–1011), Mean Hourly Wage, available at *https://www.bls.gov/oes/2020/may/oes_nat.htm#23-0000* (accessed December 1, 2021).

[155] Calculation: $38.91 mean Total Employee Compensation per hour for civilian workers/$26.85 mean Wages and Salaries per hour for civilian workers = 1.45 benefits-to-wage multiplier. *See* Economic News Release, Bureau of Labor Statistics, U.S. Department of Labor, Employer Costs for Employee Compensation—June 2021 Table 1. Employer Costs for Employee Compensation by ownership, Civilian workers, available at *https://www.bls.gov/news.release/archives/ecec_09162021.pdf* (accessed December 1, 2021).

[156] Calculation for the total wage of an HR specialist: $33.38 × 1.45 = $48.40 (rounded).

Calculation for the total wage of an in-house lawyer: $71.59 × 1.45 = $103.81 (rounded).

[157] The DHS ICE ''Safe-Harbor Procedures for Employers Who Receive a No-Match Letter'' used a multiplier of 2.5 to convert in-house lawyer wages to the cost of outsourced lawyer based on information received in public comment to that rule. We believe the explanation and methodology used in the Final Small Entity Impact Analysis remains sound for using 2.5 as a multiplier for outsourced labor wages in this rule, see page G–4 [September 1, 2015] [*https://www.regulations.gov/document/ICEB-2006-0004-0921*]. Also see ''Exercise of Time-Limited Authority To Increase the Fiscal Year 2021 Numerical Limitation for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers.'' May 25, 2021, 86 FR 28198. Available at *https://www.regulations.gov/document/USCIS-2021-0007-0001.*

[158] *Calculation:* Average hourly wage rate of lawyers × benefits-to-wage multiplier for outsourced lawyer = $71.59 × 2.5 = $178.98 (rounded).

[159] USCIS, *Filing Your Form G–28, https://www.uscis.gov/forms/filing-your-form-g-28* (accessed December 1, 2021).

[160] USCIS, G–28, Notice of Entry of Appearance as Attorney or Accredited Representative Instructions. See *https://www.uscis.gov/g-28.*

[161] Calculation: 0.83 hours to file Form G–28 + 4.34 hours to file Form I–129 = 5.17 hours to file both forms.

[162] Calculation if an HR specialist files Form I–129: $48.40 × 4.34 hours = $210.06 (rounded).

Calculation if an in-house lawyer files Forms I–129 and G–28: $103.81 × 5.17 hours = $536.70 (rounded).

Calculation if an outsourced lawyer files Forms I–129 and G–28: $178.98 × 5.17 hours = $925.33 (rounded).

[163] Calculation if an HR specialist files Form I–129 and filing fee: $210.06 opportunity cost of time + $610 in filing fees = $820.06.

Calculation if an in-house lawyer files Forms I–129, G–28, and filing fee: $536.70 opportunity cost of time + $610 in filing fees = $1,146.70.

Calculation if outsourced lawyer files Forms I–129, G–28 and filing fee: $925.33 opportunity cost of time + $610 in filing fees = $1,535.33.

[164] Calculation: $820.06 opportunity costs for HR specialist plus filing fees * 681 Form I–129 filed by HR specialists = $558,461 (rounded) total cost of Form I–129 filed by HR specialists.

[165] Calculation: $1,146.70 opportunity costs for in-house lawyers plus filing fees * 545 Form I–129 and Form G–28 filed by in-house lawyers = $624,952 (rounded) total cost of Form I–129 and Form G–28 filed by in-house lawyers.

Calculation: $1,535.33 opportunity costs for outsourced lawyers plus filing fees * 545 Form I–129 and Form G–28 filed by outsourced lawyers = $836,755 (rounded) total cost of Form I–129 and Form G–28 filed by outsourced lawyers.

[166] Calculation: $558,461 total cost of Form I–129 filed by HR specialists + $624,952 total cost of Form I–129 and Form G–28 filed by in-house lawyers = $1,183,413 estimated total costs to file Form I–129 and G–28.

Calculation: $558,461 total cost of Form I–129 filed by HR specialists + $836,755 total cost of Form I–129 and G–28 filed by outsourced lawyers = $1,395,216 estimated total costs to file Form I–129 and G–28.

[167] *See* Form I–907 instructions at *https://www.uscis.gov/i-907* (accessed December 1, 2021).

[168] Calculation for opportunity cost of time if an HR specialist files Form I–907: $48.40 × 0.58 hours = $28.07(rounded).

Calculation for opportunity cost of time if an in-house lawyer files Form I–907: $103.81 × 0.58 hours= $60.21(rounded).

Calculation for opportunity cost of time if an outsourced lawyer files Form I–907: $178.98 × 0.58 hours = $103.81(rounded).

for HR specialists, $1,560.21 for in-house lawyers, and $1,603.81 for outsourced lawyers.[169]

As discussed above, DHS estimates that an additional 638 Form I–907 will be filed by HR specialists and an additional 510 Form I–907 will be filed by lawyers. DHS estimates the total cost of Form I–907 filed by HR specialists is about $974,909 (rounded).[170] DHS estimates total cost to file Form I–907 filed by lawyers range from about $795,707 (rounded) for only in-house lawyers to $817,943 (rounded) for only outsourced lawyers.[171] The estimated total cost to file Form I–907 range from $1,770,616 and $1,792,852.[172]

Cost To File Form ETA–9142–B–CAA–5

Form ETA–9142–B–CAA–5 is an attestation form that includes recruiting requirements, the irreparable harm standard, and document retention obligations. DOL estimates the time burden for completing and signing the form is 0.25 hour, 0.25 hours for retaining records, and 0.5 hours to comply with the returning workers' attestation, for a total time burden of 1 hour. Using the total compensation per hour for an HR specialist ($48.40), the opportunity cost of time for an HR specialist to complete the attestation form, notify third parties, and retain records relating to the returning worker requirements is approximately $48.40.[173]

Additionally, the form requires that petitioners assess and document supporting evidence for meeting the irreparable harm standard, and retain those documents and records, which we assume will require the resources of a financial analyst (or another equivalent occupation). Using the same methodology previously described for wages, the total compensation per hour for a financial analyst is $67.37.[174] DOL estimates the time burden for these tasks is at least 4 hours, and 1 hour for gathering and retaining documents and records. Therefore, the total opportunity cost of time for a financial analyst to assess, document, and retain supporting evidence is approximately $336.85.[175]

As discussed previously, DHS believes that the estimated 1,226 remaining certifications for the first half of FY 2022 would include potential employers that might request to employ H–2B workers under this rule. This number of certifications is a reasonable proxy for the number of employers that may need to review and sign the attestation. Using this estimate for the total number of certifications, we estimate the opportunity cost of time for completing the attestation for HR specialists is approximately $59,338 (rounded) and for financial analysts is about $412,978 (rounded).[176] The total cost is estimated to be approximately $472,316.[177]

Cost To Conduct Recruitment

An employer that files Form ETA–9142B–CAA–5 and the I–129 petition 45 or more days after the certified start date of work must conduct additional recruitment of U.S. workers. This consists of placing a new job order with the State Workforce Agency, contacting the American Job Center, and contacting laid-off workers. Employers must place a new job order for the job opportunity with the State Workforce Agency (SWA).

Employers are required to make reasonable efforts to contact, by mail or other effective means, their former U.S. workers, including those workers who were furloughed and laid off, beginning January 1, 2020. Employers must also disclose the terms of the job order to these workers as required by the rule.

During the period of time the SWA is actively circulating the job order, employers must contact, by email or other available electronic means, the nearest local American Job Center (AJC) in order to request staff assistance advertising and recruiting qualified U.S. workers for the job opportunity, and to provide to the AJC the unique identification number associated with the job order placed with the SWA.

Finally, the employer is required to provide a copy of the job order to the bargaining representative for its employees in the occupation and area of intended employment, consistent with 20 CFR 655.45(a), or if there is no bargaining representative, post the job order in the places and manner described in 20 CFR 655.45(b).

DOL estimates the total time burden for activities related to conducting recruitment is 3 hours. Assuming this work will be done by an HR specialist or an equivalent occupation, the estimated cost to each petitioner is approximately $145.20.[178] Using the 1,226 as the estimated number of petitioners, the estimated total cost of this provision is approximately $178,015 (rounded).[179] It is possible that if U.S. employees apply for these positions, H–2B employers may incur some costs associated with reviewing applications, interviewing, vetting, and hiring applicants who are referred to H–2B employers by the recruiting activities required by this rule. However, DOL is unable to quantify the impact.

Cost of the COVID Protection Provision

Employers must notify employees, in a language understood by the worker as necessary or reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID–19 vaccines and vaccine distribution sites. We assume that

[169] Calculation if an HR specialist files: $28.07 + $1,500 = $1,528.07.

Calculation if an in-house lawyer files: $60.21 + $1,500 = $1,560.21.

Calculation if outsourced lawyer files: $103.81 + $1,500 = $1,603.81.

[170] Calculation: $1,528.07 opportunity costs for HR specialist plus filing fees * 638 Form I–907 filed by HR specialists = $974,909 (rounded) total cost of Form I–907 filed by HR specialists.

[171] Calculation: $1,560.21 opportunity costs for in-house lawyers plus filing fees * 510 Form I–907 filed by in-house lawyers = $795,707 (rounded) total cost of Form I–907 filed by in-house lawyers.

Calculation: $1,603.81 opportunity costs for outsourced lawyers plus filing fees * 510 Form I–907 filed by outsourced lawyers = $817,943 (rounded) total cost of Form I–907 filed by outsourced lawyers.

[172] Calculation: $974,909 total cost of Form I–907 filed by HR specialists + $795,707 total cost of Form I–907 filed by in-house lawyers = $1,770,616 estimated total costs to file Form I–907.

Calculation: $974,909 total cost of Form I–129 filed by HR specialists + $817,943 total cost of Form I–907 filed by outsourced lawyers = $1,792,852 estimated total costs to file Form I–907.

[173] Calculation: $48.40 opportunity cost of time for HR specialist × 1-hour time burden for the new attestation form and notifying third parties and retaining records related to the returning worker requirements = $48.40.

[174] Calculation: $46.46 (average per hour wage for a financial analyst, based on BLS wages) × 1.45 (benefits-to-wage multiplier) = $67.37. U.S. Department of Labor, Bureau of Labor Statistics, ''May 2020 National Occupational Employment and Wage Statistics'' Financial and Investment Analysts, Financial Risk Specialists, and Financial Specialists, All Other (13–2098): *https://www.bls.gov/oes/2020/may/oes_nat.htm#13-0000* (accessed April 9, 2021).

[175] Calculation: $67.37 (fully loaded hourly wage for a financial analyst) x 5 hours (time burden for assessing, documenting and retention of supporting evidence demonstrating the employer is suffering irreparable harm or will suffer impending irreparable harm) = $336.85.

[176] Calculations: Cost for HR Specialists: $48.40 opportunity cost of time for an HR specialist to comply with attestation requirements * 1,226 estimated additional petitions = $59,338 (rounded) total cost for HR specialists to comply with attestation requirements.

Calculation: $336.85 opportunity cost of time for a financial analyst to comply with attestation requirements * 1,226 estimated additional petitions = $412,978 (rounded) for financial analysts to comply with attestation requirements.

[177] Calculation: $59,338 total cost for HR specialist to comply with attestation requirement + $412,978 total cost for financial analysts to comply with attestation requirements = $472,316 total cost to comply with attestation requirements.

[178] Calculation: $48.40 hourly opportunity cost of time for an HR specialist * 3-hour time burden = $145.20 per petitioner cost to conduct additional recruitment.

[179] Calculation: 1,226 estimated number of petitioners * $145.20 per petitioner cost to conduct additional recruitment = $178,015 (rounded) total cost to conduct additional recruitment.

employers will provide a printed notification to inform their employees and that printing and posting the notification can be done during the normal course of business. Given that the regulatory text associated with this provision is less than 150 words, we expect that an employer would only need to post a one-page notification. The printing cost associated with posting the notification (assuming that the notification is written) is $0.49 per posting.[180] The estimated total cost to petitioners to print copies is approximately $601 (rounded).[181] Print costs may be higher if employers have to print posters in multiple languages.

Cost of the Portability Provision

Petitioners seeking to hire H–2B nonimmigrants who are currently present in the United States with a valid H–2B visa would need to file a Form I–129 which includes paying the associated fee as discussed above. Also previously discussed, we assume that all employers with an approved TLC (2,881) would be able to file a petition under this provision, and estimate that approximately 141 additional Form I–129 H–2B petitions will be filed as a result of this provision.

As discussed previously, if a petitioner is represented by a lawyer, the lawyer must file Form G–28; if premium processing is desired, a petitioner must file Form I–907 and pay the associated fee. We expect these actions to be performed by an HR specialist, in-house lawyer, or an outsourced lawyer. Moreover, as previously estimated, we expect that about 44.43 percent of these Form I–129 petitions will be filed by an in-house or outsourced lawyer. Therefore, we expect that 63 of these petitions will be filed by a lawyer and the remaining 78 will be filed by a HR specialist. As previously discussed, the estimated cost to file a Form I–129 H–2B petition is $820.06 for an HR specialist; and the estimated cost to file a Form I–129 H–2B petition with accompanying Form G–28 is approximately $1,146.70 for an in-house lawyer and $1,535.33 for an outsourced lawyer. Therefore, we estimate the cost of the additional Forms I–129 from the portability provision for HR specialists is $63,965.[182] The estimated cost of the additional Forms I–129 accompanied by Forms G–28 from the portability provision for lawyers is $72,242 if filed by in-house lawyers and $96,726 if filed by outsourced lawyers.[183]

Previously in this analysis, we estimated that about 93.67 percent of Form I–129 H–2B petitions are filed with Form I–907 for premium processing. As a result of this provision, we expect that an additional 132 Forms I–907 will be filed.[184] We expect 59 of those Forms I–907 will be filed by a lawyer and the remaining 73 will be filed by an HR specialist.[185] As previously discussed, the estimated cost to file a Form I–907 is $1,528.07 for an HR specialist; and the estimated cost to file a Form I–907 is approximately $1,560.21 for an in-house lawyer and $1,603.81 for an outsourced lawyer. The estimated total cost of the additional Forms I–907 if HR specialists file is $111,549.[186] The estimated total cost of the additional Forms I–907 is $92,052 if filed by in-house lawyers and $94,625 if filed by outsourced lawyers.[187]

The estimated total cost of this provision ranges from $339,808 to $366,865 depending on what share of the forms are filed by in-house or outsourced lawyers.[188]

Cost of Audits to Petitioners

DHS and DOL will each conduct audits on 250 separate employers of H–2B workers hired under this supplemental cap, for a total of 500 employers. Employers will need to provide requested information to comply with the audit. The expected time burden to comply with audits is estimated to be 12 hours.[189] We expect that providing these documents will be accomplished by an HR specialist or equivalent occupation. Given an hourly opportunity cost of time of $48.40, the estimated cost of complying with audits is $580.80 per audited employer.[190] Therefore, the total estimated cost to employers to comply with audits is $290,400.[191]

Familiarization Costs

We expect that petitioners or their representatives would need to read and understand this rule if they seek to take advantage of the supplemental cap. As a result we expect this rule would impose one-time familiarization costs associated with reading and understanding this rule. As shown previously, we estimate that approximately 2,881 petitioners may take advantage of the provisions of this rule, and that 1,280 of these petitioners are expected to be represented by a lawyer and 1,601 are expected to be represented by a HR representative.

To estimate the cost of rule familiarization, we estimate the time it will take to read and understand the rule by assuming a reading speed of 238 words per minute.[192] This rule has approximately 38,000 words. Using a reading speed of 238 words per minute, DHS estimates it will take approximately 2.7 hours to read and become familiar with this rule.[193]

The estimated hourly total compensation for a HR specialist, in-house lawyer, and outsourced lawyer are $48.40, $103.81, and $178.98 respectively. The estimated opportunity cost of time for each of these filers to familiarize themselves with the rule are $130.68, $280.29, and $483.25 respectively.[194] The estimated total

[180] Cost to make copies $0.49. *See https://www.fedex.com/en-us/office/copy-and-print-services.html* (accessed December 6, 2021).

[181] Calculation: $0.49 per posting * 1,226 petitioners = $601 (rounded) cost of notifications copies.

[182] Calculation: $820.06 estimated cost for an HR specialist to file a Form I–129 H–2B petition * 78 petitions = $63,965.

[183] Calculation for an in-house lawyer: $1,146.70 estimated cost for an in-house lawyer to file a Form I–129 H–2B petition and accompanying Form G–28 * 63 petitions = $72,242 (rounded).

Calculation for an outsourced lawyer: $1,535.33 estimated cost for an outsourced lawyer to file a Form I–129 H–2B petition and accompanying Form G–28 * 63 petitions = $96,726 (rounded).

[184] Calculation: 144 estimated additional Form I–129 H–2B petitions * 93.67 percent accompanied by Form I–907 = 132 (rounded) additional Form I–907.

[185] Calculation: 132 additional Form I–907 * 44.43 percent filed by a lawyer = 59 (rounded) Form I–907 filed by a lawyer. 132 Form I–907—59 Form I–907 filed by a lawyer = 73 Form I–907 filed by a HR specialist.

[186] Calculation: $1,528.07 for a HR specialist to file a Form I–907 * 73 forms = $111,549 (rounded).

[187] Calculation for an in-house lawyer: $1,560.21 for an in-house lawyer to file a Form I–907 * 59 forms = $92,052 (rounded).

Calculation for an outsourced lawyer: $1,603.81 for an outsourced lawyer to file a Form I–907 * 59 forms = $94,625 (rounded).

[188] Calculation for HR specialists and in-house lawyers: $63,965 for HR specialists to file Form I–129 H–2B petitions + $72,242 for in-house lawyers to file Form I–129 and the accompanying Form G–28 + $111,549 for HR specialists to file Form I–907 + $92,052 for in-house lawyers to file Form I–907 = $339,808.

Calculation for HR specialists and outsourced lawyers: $63,965 for HR specialists to file Form I–129 H–2B petitions + $96,726 for outsourced lawyers to file Form I–129 and the accompanying Form G–28 + $111,549 for HR specialists to file Form I–907 + $94,625 for outsourced lawyers to file Form I–907 = $366,865.

[189] The number in hours for audits was provided by the USCIS, Service Center Operations.

[190] Calculation: $48.40 hourly opportunity cost of time for an HR specialist * 12 hours to comply with an audit = $580.80 per audited employer.

[191] Calculation: 500 audited employers * $580.80 opportunity cost of time to comply with an audit = $290,400.

[192] Brysbaert, Marc (2019, April 12). How many words do we read per minute? A review and meta-analysis of reading rate. *https://doi.org/10.31234/osf.io/xynwg* (accessed July 30, 2021). We use the average speed for silent reading of English nonfiction by adults.

[193] Calculation: 32,000 words/238 words per minute = 134 (rounded) minutes. 134 minutes/60 minutes per hour = 2.2 (rounded) hours.

[194] Calculation: Total respective hourly compensation (HR $48.40, In-house Lawyer $103.81, or Outsourced Lawyer $178.98)*2.2 hours.

opportunity cost of time for 1,601 HR specialists to familiarize themselves with this rule is approximately $209,219. The estimated total opportunity cost of time for 1,280 lawyers to familiarize themselves with this rule is approximately $358,767 if they are all in-house lawyers and $618,555 if they are all outsourced lawyers. The estimated total opportunity costs of time for petitioners or their representatives to familiarize themselves with this rule ranges from $567,986 to $827,774.

Estimated Total Costs to Petitioners

The monetized costs of this rule come from filing and complying with Form I–129, Form G–28, Form I–907, and Form ETA–9142–B–CAA–5, as well as contacting and refreshing recruitment efforts, posting notifications, filings to obtain a porting worker, and complying with audits. The estimated total cost to file Form I–129 and an accompanying Form G–28 ranges from $1,183,413 to $1,395,216, depending on the filer. The estimated total cost of filing Form I–907 ranges from $1,770,616 to $1,792,852, depending on the filer. The estimated total cost of filing and complying with Form ETA–9142–B–CAA–5 is about $472,316. The estimated total cost of conducting additional recruitment is about $178,015. The estimated total cost of the COVID–19 protection provision is approximately $601. The estimated cost of the portability provision ranges from $339,808 to $366,865, depending on the filer. The estimated total cost for employers to comply with audits is $290,400. The estimated total costs for petitioners or their representatives to familiarize themselves with this rule ranges from $567,986 to $827,774, depending on the filer. The total estimated cost to petitioners ranges from $4,803,155 to $5,324,039, depending on the filer.[195]

Cost to the Federal Government

The INA provides USCIS with the authority for the collection of fees at a level that will ensure recovery of the full costs of providing adjudication and naturalization services, including administrative costs, and services provided without charge to certain applicants and petitioners.[196] DHS notes USCIS establishes its fees by assigning costs to an adjudication based on its relative adjudication burden and use of USCIS resources. Fees are established at an amount that is necessary to recover these assigned costs such as clerical, officers, and managerial salaries and benefits, plus an amount to recover unassigned overhead (for example, facility rent, IT equipment and systems among other expenses) and immigration benefits provided without a fee charge. Consequently, since USCIS immigration fees are based on resource expenditures related to the benefit in question, USCIS uses the fee associated with an information collection as a reasonable measure of the collection's costs to USCIS. DHS anticipates some additional costs in adjudicating the additional petitions submitted because of the increase in cap limitation for H–2B visas. However, DHS expects these costs to be recovered by the fees associated with the forms, which have been accounted for under costs to petitioners and serve as proxy of the costs to the agency to adjudicate these forms.

Both DOL and DHS intend to conduct a significant number of audits during the period of temporary need to verify compliance with H–2B program requirements, including the irreparable harm standard as well as other key worker protection provisions implemented through this rule. While most USCIS activities are funded through fees and DOL is funded through appropriations, it is expected that both agencies will be able to shift resources to be able to conduct these audits without incurring additional costs. As previously mentioned, the agencies will conduct a total of 500 audits and each audit is expected to take 12 hours. This results in a total time burden of 6,000 hours.[197] USCIS anticipates that a Federal employee at a GS–13 Step 5 salary will typically conduct these audits for each agency. The base pay for a GS–13 Step 5 in the Washington, DC locality area is $117,516.[198] The hourly wage for this salary is approximately $56.50.[199] To estimate the total hourly compensation for these positions, we multiply the hourly wage ($56.50) by the Federal benefits to wage multiplier of 1.38.[200] This results in an hourly opportunity cost of time of $77.97 for GS 13–5 Federal employees in the Washington, DC locality pay area.[201] The total opportunity costs of time for Federal workers to conduct audits is estimated to be $467,820.[202]

Benefits to Petitioners

The Departments assume that employers will incur the costs of this rule and other costs associated with hiring H–2B workers if the expected benefits of those workers exceed the expected costs. We assume that employers expect some level of net benefit from being able to hire additional H–2B workers. However, the Departments do not collect or require data from H–2B employers on the profits from hiring these additional workers to estimate this increase in net benefits.

The inability to access H–2B workers for some entities is currently causing irreparable harm or will cause their businesses to suffer irreparable harm in the near future. Temporarily increasing the number of available H–2B visas for this fiscal year may result in a cost savings, because it will allow some businesses to hire the additional labor resources necessary to avoid such harm. Preventing such harm may ultimately preserve the jobs of other employees (including U.S. workers) at that establishment. Additionally, returning workers are likely to be very familiar with the H–2B process and requirements, and may be positioned to begin work more expeditiously with these employers. Moreover, employers may already be familiar with returning workers as they have trained, vetted, and worked with some of these returning workers in past years. As such, limiting the supplemental visas to returning workers would assist employers that are suffering irreparable harm or will suffer impending irreparable harm.

Benefits to Workers

The Departments assume that workers will only incur the costs of this rule and other costs associated with obtaining a

[195] Calculation of lower range: $1,183,413 + $1,770,616 + $472,316 + $178,015 + $339,808 + $601 + $290,400 + $567,986= $4,803,155.

Calculation of upper range: $1,395,216 + $1,792,852 + $472,316 + $178,015 + $366,865 + $601 + $290,400 + $827,774 = $5,324,039.

[196] *See* INA section 286(m), 8 U.S.C. 1356(m).

[197] Calculation: 12 hours to conduct an audit * 500 audits = 6,000 total hours to conduct audits.

[198] U.S. Office of Personnel Management, Pay and Leave, Salaries and Wages, For the Locality Pay area of Washington-Baltimore-Arlington, DC–MD–VA–WV–PA, 2021, *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/21Tables/html/DCB.aspx* (last accessed December 6, 2021).

[199] Calculation: $117,516 GS 13–5 Washington, DC locality annual salary/2080 annual hours = $56.50 (rounded).

[200] Calculation: $1,717,321 Full-time Permanent Salaries + $656,748 Civilian Personnel Benefits = $2,374,069 Compensation.

$2,374,069 Compensation/$1,717,321 Full-time Permanent Salaries = 1.38 (rounded) Federal employee benefits to wage ratio.

https://www.uscis.gov/sites/default/files/document/reports/USCIS_FY_2021_Budget_Overview.pdf (last accessed December 6, 2021).

[201] Calculation: $56.50 hourly wage for a GS 13–5 in the Washington, DC locality area * 1.38 Federal employee benefits to wage ratio = $77.97 hourly opportunity cost of time for a GS 13–5 federal employee in the Washington, DC locality area.

[202] Calculation: 6,000 hours to conduct audits * $77.97 hourly opportunity cost of time = $467,820 total opportunity costs of time for Federal employees to conduct audits.

H–2B position if the expected benefits of that position exceed the expected costs. We assume that H–2B workers expect some level of net benefit from being able to work for H–2B employers. However, the Departments do not have sufficient data to estimate this increase in net benefits and lack the necessary resources to investigate this in a timely manner. This rule is not expected to impact wages because DOL prevailing wage regulations apply to all H–2B workers covered by this rule. Additionally, the RIA shows that employers incur costs in conducting additional recruitment of U.S. workers and attesting to irreparable harm from current labor shortfall. These costs suggest employers are not taking advantage of a large supply of foreign labor at the expense of domestic workers.

The existence of this rule will benefit the workers who receive H–2B visas. *See* Arnold Brodbeck et al., Seasonal Migrant Labor in the Forest Industry of the United States: The Impact of H–2B Employment on Guatemalan Livelihoods, 31 Society & Natural Resources 1012 (2018), and in particular this finding: ''Participation in the H–2B guest worker program has become a vital part of the livelihood strategies of rural Guatemalan families and has had a positive impact on the quality of life in the communities where they live. Migrant workers who were landless, lived in isolated rural areas, had few economic opportunities, and who had limited access to education or adequate health care, now are investing in small trucks, building roads, schools, and homes, and providing employment for others in their home communities. . . . The impact has been transformative and positive.''

Some provisions of this rule will benefit such workers in particular ways. The portability provision of this rule will allow nonimmigrants with valid H–2B visas who are present in the United States to transfer to a new employer more quickly and potentially extend their stay in the United States and, therefore, earn additional wages. Importantly, the rule will also increase information employees have about equal access to COVID–19 vaccinations and vaccine distribution sites. DHS recognizes that some of the effects of these provisions may occur beyond the borders of the United States. The current analysis does not seek to quantify or monetize costs or benefits that occur outside of the United States.

Note as well that U.S. workers will benefit in multiple ways. For example, the additional round of recruitment and U.S. worker referrals required by the provisions of this rule will ensure that a U.S. worker who is willing and able to fill the position is not displaced by a nonimmigrant worker. As noted, the avoidance of current or impending irreparable harm made possible through the granting of supplemental visas in this rule could ensure that U.S. workers—who otherwise may be vulnerable if H–2B workers were not given visas—do not lose their jobs.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), imposes certain requirements on Federal agency rules that are subject to the notice and comment requirements of the APA. See 5 U.S.C. 603(a), 604(a). This temporary final rule is exempt from notice and comment requirements for the reasons stated above. Therefore, the requirements of the RFA applicable to final rules, 5 U.S.C. 604, do not apply to this temporary final rule. Accordingly, the Departments are not required to either certify that the temporary final rule would not have a significant economic impact on a substantial number of small entities nor conduct a regulatory flexibility analysis.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule that includes any Federal mandate that may result in $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. This rule is exempt from the written statement requirement because DHS did not publish a notice of proposed rulemaking for this rule.

In addition, this rule does not exceed the $100 million expenditure in any 1 year when adjusted for inflation ($169.8 million in 2020 dollars),[203] and this rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply, and the Departments have not prepared a statement under the Act.

E. Executive Order 13132 (Federalism)

This rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, 64 FR 43255 (Aug. 4, 1999), this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, 61 FR 4729 (Feb. 5, 1996).

G. National Environmental Policy Act

DHS and its components analyze proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive (Dir) 023–01 Rev. 01 and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow Federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(1)(iii), 1508.4. The Instruction Manual, Appendix A, Table 1 lists Categorical Exclusions that DHS has found to have no such effect. Under DHS NEPA implementing procedures, for an action to be categorically excluded, it must satisfy each of the

[203] *See* U.S. Bureau of Labor Statistics, *Historical Consumer Price Index for All Urban Consumers (CPI–U): U.S. City Average, All Items, available at https://www.bls.gov/cpi/tables/supplemental-files/historical-cpi-u-202103.pdf (last visited December 8, 2021).*

Calculation of inflation: (1) Calculate the average monthly CPI–U for the reference year (1995) and the most recent current year available (2020); (2) Subtract reference year CPI–U from current year CPI–U; (3) Divide the difference of the reference year CPI–U and current year CPI–U by the reference year CPI–U; (4) Multiply by 100 = [(Average monthly CPI–U for 2020 − Average monthly CPI–U for 1995)/(Average monthly CPI–U for 1995)] * 100 = [(258.811 − 152.383)/152.383] * 100 = (106.428/152.383) * 100 = 0.6984 * 100 = 69.84 percent = 69.8 percent (rounded).

Calculation of inflation-adjusted value: $100 million in 1995 dollars * 1.698 = $169.8 million in 2020 dollars.

following three conditions: (1) The entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual, section V.B.2(a–c).

This rule temporarily amends the regulations implementing the H–2B nonimmigrant visa program to increase the numerical limitation on H–2B nonimmigrant visas for FY 2022 for positions with start dates on or before March 31, 2022 based on the Secretary of Homeland Security's determination, in consultation with the Secretary of Labor, consistent with the FY 2021 Omnibus and Public Laws 117–43 and 117–70. It also allows H–2B beneficiaries who are in the United States to change employers upon the filing of a new H–2B petition and begin to work for the new employer for a period generally not to exceed 60 days before the H–2B petition is approved by USCIS.

DHS has determined that this rule clearly fits within categorical exclusion A3(d) because it interprets or amends a regulation without changing its environmental effect. The amendments to 8 CFR part 214 would authorize up to an additional 20,000 visas for noncitizens who may receive H–2B nonimmigrant visas, of which 13,500 are for returning workers (persons issued H–2B visas or were otherwise granted H–2B status in Fiscal Years 2019, 2020, or 2021). The proposed amendments would also facilitate H–2B nonimmigrants to move to new employment faster than they could if they had to wait for a petition to be approved. The amendment's operative provisions approving H–2B petitions under the supplemental allocation would effectively terminate after September 30, 2022 for the cap increase, and 180 days from the rule's effective date for the portability provision. DHS believes amending applicable regulations to authorize up to an additional 20,000 H–2B nonimmigrant visas will not result in any meaningful, calculable change in environmental effect with respect to the current H–2B limit or in the context of a current U.S. population exceeding 332,000,000 (maximum temporary increase of 0.0066%).

The amendment to applicable regulations is a stand-alone temporary authorization and not a part of any larger action, and presents no extraordinary circumstances creating the potential for significant environmental effects. Therefore, this action is categorically excluded and no further NEPA analysis is required.

H. Congressional Review Act

The Office of Information and Regulatory Affairs has determined that this temporary final rule is not a ''major rule'' as defined by the Congressional Review Act, 5 U.S.C. 804(2), and thus is not subject to a 60-day delay in the rule becoming effective. DHS will send this temporary final rule to Congress and to the Comptroller General under the Congressional Review Act, 5 U.S.C. 801 *et seq.*

I. Paperwork Reduction Act

Attestation for Employers Seeking To Employ H–2B Nonimmigrants Workers Under Section 105 of Division O of the Consolidated Appropriations Act, 2021 Public Law 116–260, and Public Laws 117–43 and 117–70 Form ETA–9142–B–CAA–5.

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. DOL has submitted the Information Collection Request (ICR) contained in this rule to OMB and obtained approval of a new form, Form ETA–9142B–CAA–5, using emergency clearance procedures outlined at 5 CFR 1320.13. The Departments note that while DOL submitted the ICR, both DHS and DOL will use the information.

Petitioners will use the new Form ETA–9142B–CAA–5 to make attestations regarding, for example, irreparable harm and the returning worker requirement (unless exempt because the H–2B worker is a national of one of the Northern Triangle countries who is counted against the 6,500 returning worker exemption cap) described above. Petitioners will need to file the attestation with DHS until it announces that the supplemental H–2B cap has been reached. In addition, the petitioner will need to retain all documentation demonstrating compliance with this implementing rule, and must provide it to DHS or DOL in the event of an audit or investigation.

In addition to obtaining immediate emergency approval, DOL is seeking comments on this information collection pursuant to 5 CFR 1320.13. Comments on the information collection must be received by March 29, 2022. This process of engaging the public and other Federal agencies helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The PRA provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. *See* 44 U.S.C. 3501 *et seq.* In addition, notwithstanding any other provisions of law, no person must generally be subject to a 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.

In accordance with the PRA, DOL is affording the public with notice and an opportunity to comment on the new information collection, which is necessary to implement the requirements of this rule. The information collection activities covered under a newly granted OMB Control Number 1205–NEW are required under Public Laws 117–43 and 117–70, on the same terms as Section 105 of Division O of the FY 2021 Omnibus, which provided that ''the Secretary of Homeland Security, after consultation with the Secretary of Labor, and upon the determination that the needs of American businesses cannot be satisfied in [FY] 2021 with U.S. workers who are willing, qualified, and able to perform temporary nonagricultural labor,'' may increase the total number of noncitizens who may receive an H–2B visa in FY 2021 by not more than the highest number of H–2B nonimmigrants who participated in the H–2B returning worker program in any fiscal year in which returning workers were exempt from the H–2B numerical limitation. As previously discussed in the preamble of this rule, the Secretary of Homeland Security, in consultation with the Secretary of Labor, has decided to increase the numerical limitation on H–2B nonimmigrant visas to authorize the issuance of up to, but not more than, an additional 20,000 visas for FY 2022 for certain H–2B workers with start dates on or before March 31, 2022, for U.S.

businesses who attest that they are suffering irreparable harm or will suffer impending irreparable harm. As with the previous supplemental rules, the Secretary has determined that the additional visas will only be available for returning workers, that is workers who were issued H–2B visas or otherwise granted H–2B status in FY 2019, 2020, or 2021, unless the worker is one of the 6,500 nationals of one of the Northern Triangle countries and Haiti who are exempt from the returning worker requirement.

Commenters are encouraged to discuss the following:

- 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;
- the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- the quality, utility, and clarity of the information to be collected; and
- 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, for example, permitting electronic submission of responses.

The aforementioned information collection requirements are summarized as follows:

Agency: DOL–ETA.

Type of Information Collection: Extension of an existing information collection.

Title of the Collection: Attestation for Employers Seeking to Employ H–2B Nonimmigrants Workers Under Section 105 of Division O of the Consolidated Appropriations Act, 2021 Public Law 116–260, and Public Laws 117–43 and 117–70.

Agency Form Number: Form ETA–9142–B–CAA–5.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 1,226.

Average Responses per Year per Respondent: 1.

Total Estimated Number of Responses: 1,226.

Average Time per Response: 9 hours per application.

Total Estimated Annual Time Burden: 11,034 hours.

Total Estimated Other Costs Burden: $0.

Application for Premium Processing Service, Form I–907

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* provides that a Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. Form I–907, Application for Premium Processing Service, has been approved by OMB and assigned OMB control number 1615–0048. DHS is making no changes to the Form I–907 in connection with this temporary rule implementing the time-limited authority pursuant to Public Laws 117–43 and 117–70, on the same terms as section 105 of Division O, FY 2021 Omnibus, (which expires on September 30, 2022). However, USCIS estimates that this temporary rule may result in approximately 1,280 additional filings of Form I–907 in fiscal year 2022. The current OMB-approved estimate of the number of annual respondents filing a Form I–907 is 319,301. USCIS has determined that the OMB-approved estimate is sufficient to fully encompass the additional respondents who will be filing Form I–907 in connection with this temporary rule, which represents a small fraction of the overall Form I–907 population. Therefore, DHS is not changing the collection instrument or increasing its burden estimates in connection with this temporary rule and is not publishing a notice under the PRA or making revisions to the currently approved burden for OMB control number 1615–0048.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Cultural exchange program, Employment, Penalties, Reporting and recordkeeping requirements, Students.

20 CFR Part 655

Administrative practice and procedure, Employment, Employment and training, Enforcement, Foreign workers, Forest and forest products, Fraud, Health professions, Immigration, Labor, Longshore and harbor work, Migrant workers, Nonimmigrant workers, Passports and visas, Penalties, Reporting and recordkeeping requirements, Unemployment, Wages, Working conditions.

Department of Homeland Security

8 CFR Chapter I

For the reasons discussed in the joint preamble, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 214—NONIMMIGRANT CLASSES

■ 1. Effective January 28, 2022 through January 28, 2025, the authority citation for part 214 continues to read as follows:

Authority: 6 U.S.C. 202, 236; 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282, 1301–1305, 1357, and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; Pub. L. 106–386, 114 Stat. 1477–1480; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note and 1931 note, respectively; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

■ 2. Effective January 28, 2022 through January 28, 2025, amend § 214.2 by:
■ a. Adding paragraph (h)(6)(xi); and
■ b. Adding paragraph (h)(27).

The additions read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(6) * * *

(xi) *Special requirements for additional cap allocations under Public Laws 116–260, 117–43 and 117–70*—(A) *Public Law 116–260, and sections 101 and 106(3) of Division A of Public Law 117–43, Continuing Appropriations Act, 2022, and section 101 of Division A of Public Law 117–70, Further Continuing Appropriations Act, 2022 through February 18, 2022*—

(*1*) *Supplemental allocation for returning workers.* Notwithstanding the numerical limitations set forth in paragraph (h)(8)(i)(C) of this section, for fiscal year 2022 only, the Secretary has authorized up to an additional 13,500 visas for aliens who may receive H–2B nonimmigrant visas pursuant to section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116–260, sections 101 and 106(3) of Division A of Public Law 117–43,

Continuing Appropriations Act, 2022, and section 101 of Division A of Public Law 117–70, Further Continuing Appropriations Act, 2022 through February 18, 2022 based on petitions requesting FY 2022 employment start dates on or before March 31, 2022. An alien may be eligible to receive an H–2B nonimmigrant visa under this paragraph (h)(6)(xi)(A)(*1*) if she or he is a returning worker. The term ''returning worker'' under this paragraph (h)(6)(xi)(A)(*1*) means a person who was issued an H–2B visa or was otherwise granted H–2B status in fiscal year 2019, 2020, or 2021. Notwithstanding § 248.2 of this chapter, an alien may not change status to H–2B nonimmigrant under this paragraph (h)(6)(xi)(A)(*1*).

(*2*) *Supplemental allocation for nationals of Guatemala, El Salvador, Honduras (Northern Triangle countries), or Haiti.* Notwithstanding the numerical limitations set forth in paragraph (h)(8)(i)(C) of this section, for fiscal year 2022 only, and in addition to the allocation described in paragraph (h)(6)(xi)(A)(*1*) of this section, the Secretary has authorized up to an additional 6,500 aliens who are nationals of Guatemala, El Salvador, Honduras (Northern Triangle countries), or of Haiti who may receive H–2B nonimmigrant visas pursuant to section 105 of Division O of the Consolidated Appropriations Act, 2021, Public Law 116–260, and Public Laws 117–43 and 117–70, based on petitions with FY 2022 employment start dates on or before March 31, 2022. Such workers are not subject to the returning worker requirement in paragraph (h)(6)(xi)(A)(*1*). Petitioners must request such workers in an H–2B petition that is separate from H–2B petitions that request returning workers under paragraph (h)(6)(xi)(A)(*1*) and must declare that they are requesting these workers in the attestation required under 20 CFR 655.69(a)(1). A petition requesting returning workers under paragraph (h)(6)(xi)(A)(*1*), which is accompanied by an attestation indicating that the petitioner is requesting nationals of Northern Triangle countries or Haiti, will be rejected, denied or, in the case of a non-frivolous petition, will be approved solely for the number of beneficiaries that are from the Northern Triangle or Haiti. Notwithstanding § 248.2 of this chapter, an alien may not change status to H–2B nonimmigrant under this paragraph (h)(6)(xi)(A)(*2*).

(B) *Eligibility.* In order to file a petition with USCIS under this paragraph (h)(6)(xi), the petitioner must:

(*1*) Comply with all other statutory and regulatory requirements for H–2B classification, including, but not limited to, requirements in this section, under part 103 of this chapter, and under 20 CFR part 655 and 29 CFR part 503; and

(*2*) Submit to USCIS, at the time the employer files its petition, a U.S. Department of Labor attestation, in compliance with this section and 20 CFR 655.64, evidencing that:

(*i*) Its business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H–2B workers requested on the petition filed pursuant to this paragraph (h)(6)(xi);

(*ii*) All workers requested and/or instructed to apply for a visa have been issued an H–2B visa or otherwise granted H–2B status in fiscal year 2019, 2020, or 2021, unless the H–2B worker is a national of Guatemala, El Salvador, Honduras, or Haiti who is counted towards the 6,500 cap described in paragraph (h)(6)(xi)(A)(*2*) of this section;

(*iii*) The employer will comply with all Federal, State, and local employment-related laws and regulations, including, where applicable, health and safety laws and laws related to COVID–19 worker protections; any right to time off or paid time off for COVID–19 vaccination, or to reimbursement for travel to and from the nearest available vaccination site; and that the employer will notify any H–2B workers approved under the supplemental cap in paragraph (h)(6)(xi)(A)(*2*) of this section, in a language understood by the worker as necessary or reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID–19 vaccines and vaccine distribution sites;

(*iv*) The employer will comply with obligations and additional recruitment requirements outlined in 20 CFR 655.64(a)(3) through (5);

(*v*) The employer will provide documentary evidence of the facts in paragraphs (h)(6)(xi)(B)(*2*)(*i*) through (*iv*) of this section to DHS or DOL upon request; and

(*vi*) The employer will agree to fully cooperate with any compliance review, evaluation, verification, or inspection conducted by DHS, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with immigration laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2022 supplemental allocations outlined in paragraph (h)(6)(xi)(B) of this section, as a condition for the approval of the petition.

(*vii*) The employer must attest on Form ETA–9142–B–CAA–5 that it will fully cooperate with any audit, investigation, compliance review, evaluation, verification or inspection conducted by DOL, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with applicable laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2022 supplemental allocations outlined in 20 CFR 655.64(a) and 655.69(a), as a condition for the approval of the H–2B petition. The employer must further attest on Form ETA–9142–B–CAA–5 that it will not impede, interfere, or refuse to cooperate with an employee of the Secretary of the U.S. Department of Labor who is exercising or attempting to exercise DOL's audit or investigative authority pursuant to 20 CFR part 655, subpart A, and 29 CFR 503.25.

(C) *Processing.* USCIS will reject petitions filed pursuant to paragraph (h)(6)(xi)(A)(*1*) or (*2*) of this section that are received after the applicable numerical limitation has been reached or after March 31, 2022, whichever is sooner. USCIS will not approve a petition filed pursuant to this paragraph (h)(6)(xi) on or after October 1, 2022.

(D) *Numerical limitations under paragraphs (h)(6)(xi)(A)(1) and (2) of this section.* When calculating the numerical limitations under paragraphs (h)(6)(xi)(A)(*1*) and (*2*) of this section as authorized under Public Law 116–260, as extended by Public Law 117–43, and Public Law 117–70, USCIS will make numbers for each allocation available to petitions in the order in which the petitions subject to the respective limitation are received. USCIS will make projections of the number of petitions necessary to achieve the numerical limit of approvals, taking into account historical data related to approvals, denials, revocations, and other relevant factors. USCIS will monitor the number of petitions received (including the number of workers requested when necessary) and will notify the public of the dates that USCIS has received the necessary number of petitions (the ''final receipt dates'') under paragraph (h)(6)(xi)(A)(*1*) or (*2*). The day the public is notified will not control the final receipt dates. When necessary to ensure the fair and orderly allocation of numbers subject to the numerical limitations in paragraphs (h)(6)(xi)(A)(*1*) and (*2*), USCIS may

randomly select from among the petitions received on the final receipt dates the remaining number of petitions deemed necessary to generate the numerical limit of approvals. This random selection will be made via computer-generated selection. Petitions subject to a numerical limitation not randomly selected or that were received after the final receipt dates that may be applicable under paragraph (h)(6)(xi)(A)(*1*) or (*2*) will be rejected. If the final receipt date is any of the first 5 business days on which petitions subject to the applicable numerical limits described in paragraph (h)(6)(xi)(A)(*1*) or (*2*) may be received (in other words, if either of the numerical limits described in paragraph (h)(6)(xi)(A)(*1*) or (*2*) is reached on any one of the first 5 business days that filings can be made), USCIS will randomly apply all of the numbers among the petitions received on any of those 5 business days.

(E) *Sunset.* This paragraph (h)(6)(xi) expires on October 1, 2022.

(F) *Non-severability.* The requirement to file an attestation under paragraph (h)(6)(xi)(B)(*2*) of this section is intended to be non-severable from the remainder of this paragraph (h)(6)(xi), including, but not limited to, the numerical allocation provisions at paragraphs (h)(6)(xi)(A)(*1*) and (*2*) of this section in their entirety. In the event that any part of this paragraph (h)(6)(xi) is enjoined or held to be invalid by any court of competent jurisdiction, the remainder of this paragraph (h)(6)(xi) is also intended to be enjoined or held to be invalid in such jurisdiction, without prejudice to workers already present in the United States under this paragraph (h)(6)(xi), as consistent with law.

* * * * *

(27) *Change of employers and portability for H–2B workers.* (i) This paragraph (h)(27) relates to H–2B workers seeking to change employers during the time period specified in paragraph (h)(27)(iv) of this section. Notwithstanding paragraph (h)(2)(i)(D) of this section:

(A) An alien in valid H–2B nonimmigrant status whose new petitioner files a non-frivolous H–2B petition requesting an extension of the alien's stay on or after January 28, 2022, is authorized to begin employment with the new petitioner after the petition described in this paragraph (h)(27) is received by USCIS and before the new H–2B petition is approved, but no earlier than the start date indicated in the new H–2B petition; or

(B) An alien whose new petitioner filed a non-frivolous H–2B petition requesting an extension of the alien's stay before January 28, 2022 that remains pending on January 28, 2022, is authorized to begin employment with the new petitioner before the new H–2B petition is approved, but no earlier than the start date of employment indicated on the new H–2B petition.

(ii)(A) With respect to a new petition described in paragraph (h)(27)(i)(A) of this section, and subject to the requirements of 8 CFR 274a.12(b)(30), the new period of employment described in paragraph (h)(27)(i) of this section may last for up to 60 days beginning on the Received Date on Form I–797 (Notice of Action) or, if the start date of employment occurs after the I–797 Received Date, for a period of up to 60 days beginning on the start date of employment indicated in the H–2B petition.

(B) With respect to a new petition described in paragraph (h)(27)(i)(B) of this section, the new period of employment described in paragraph (h)(27)(i) of this section may last for up to 60 days beginning on the later of either January 28, 2022 or the start date of employment indicated in the H–2B petition.

(C) With respect to either type of new petition, if USCIS adjudicates the new petition before the expiration of this 60-day period and denies the petition, or if the new petition is withdrawn by the petitioner before the expiration of the 60-day period, the employment authorization associated with the filing of that petition under 8 CFR 274a.12(b)(30) will automatically terminate 15 days after the date of the denial decision or 15 days after the date on which the new petition is withdrawn. Nothing in this paragraph (h)(27) is intended to alter the availability of employment authorization related to professional H–2B athletes who are traded between organizations pursuant to paragraph (h)(6)(vii) of this section and 8 CFR 274a.12(b)(9).

(iii) In addition to meeting all other requirements in paragraph (h)(6) of this section for the H–2B classification, to commence employment and be approved under this paragraph (h)(27), the alien must either:

(A) Have been in valid H–2B nonimmigrant status on or after January 28, 2022 and be the beneficiary of a non-frivolous H–2B petition requesting an extension of the alien's stay that is received on or after January 28, 2022, but no later than July 27, 2022; or

(B) Be the beneficiary of a non-frivolous H–2B petition requesting an extension of the alien's stay that is pending as of January 28, 2022.

(C) The petitioner must comply with all Federal, State, and local employment-related laws and regulations, including, where applicable, health and safety laws, laws related to COVID–19 worker protections, any right to time off or paid time off for COVID–19 vaccination, or to reimbursement for travel to and from the nearest available vaccination site; and

(D) The petitioner may not impede, interfere, or refuse to cooperate with an employee of the Secretary of the U.S. Department of Labor who is exercising or attempting to exercise DOL's audit or investigative authority under 20 CFR part 655, subpart A, and 29 CFR 503.25.

(iv) Authorization to initiate employment changes pursuant to this paragraph (h)(27) begins at 12 a.m. on January 28, 2022, and ends at the end of July 27, 2022.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

■ 3. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1105a, 1324a; 48 U.S.C. 1806; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 114–74, 129 Stat. 599.

■ 4. Effective January 28, 2022 through January 28, 2025, amend § 274a.12 by adding paragraph (b)(31) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(31)(i) Pursuant to 8 CFR 214.2(h)(27) and notwithstanding 8 CFR 214.2(h)(2)(i)(D), an alien is authorized to be employed no earlier than the start date of employment indicated in the H–2B petition and no earlier than January 28, 2022, by a new employer that has filed an H–2B petition naming the alien as a beneficiary and requesting an extension of stay for the alien, for a period not to exceed 60 days beginning on:

(A) The later of the ''Received Date'' on Form I–797 (Notice of Action) acknowledging receipt of the petition, or the start date of employment indicated on the new H–2B petition, for petitions filed on or after January 28, 2022; or

(B) The later of January 28, 2022 or the start date of employment indicated on the new H–2B petition, for petitions that are pending as of January 28, 2022

(ii) If USCIS adjudicates the new petition prior to the expiration of the 60-day period in paragraph (b)(31)(i) of this section and denies the new petition for

extension of stay, or if the petitioner withdraws the new petition before the expiration of the 60-day period, the employment authorization under this paragraph (b)(31) will automatically terminate upon 15 days after the date of the denial decision or the date on which the new petition is withdrawn. Nothing in this section is intended to alter the availability of employment authorization related to professional H–2B athletes who are traded between organizations pursuant to paragraph (b)(9) of this section and 8 CFR 214.2(h)(6)(vii).

(iii) Authorization to initiate employment changes pursuant to 8 CFR 214.2(h)(27) and paragraph (b)(31)(i) of this section begins at 12 a.m. on January 28, 2022, and ends at the end of July 27, 2022.

* * * * *

Department of Labor

Employment and Training Administration

20 CFR Chapter V

Accordingly, for the reasons stated in the joint preamble, 20 CFR part 655 is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF FOREIGN WORKERS IN THE UNITED STATES

■ 5. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(E)(iii), 1101(a)(15)(H)(i) and (ii), 8 U.S.C. 1103(a)(6), 1182(m), (n), and (t), 1184(c), (g), and (j), 1188, and 1288(c) and (d); sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; sec. 412(e), Pub. L. 105–277, 112 Stat. 2681 (8 U.S.C. 1182 note); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); 29 U.S.C. 49k; Pub. L. 107–296, 116 Stat. 2135, as amended; Pub. L. 109–423, 120 Stat. 2900; 8 CFR 214.2(h)(4)(i); 8 CFR 214.2(h)(6)(iii); and sec. 6, Pub. L. 115–218, 132 Stat. 1547 (48 U.S.C. 1806).

Subpart A issued under 8 CFR 214.2(h).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; and 8 CFR 214.2(h).

Subpart E issued under 48 U.S.C. 1806.

Subparts F and G issued under 8 U.S.C. 1288(c) and (d); sec. 323(c), Pub. L. 103–206, 107 Stat. 2428; and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b) and (b)(1), 1182(n), and (t), and 1184(g) and (j); sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1101 note); sec. 412(e), Pub. L. 105–277, 112 Stat. 2681; 8 CFR 214.2(h); and 28 U.S.C. 2461 note, Pub. L. 114–74 at section 701.

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c) and 1182(m); sec. 2(d), Pub. L. 106–95, 113 Stat. 1312, 1316 (8 U.S.C. 1182 note); Pub. L. 109–423, 120 Stat. 2900; and 8 CFR 214.2(h).

■ 6. Effective January 27, 2022 through September 30, 2022, add § 655.64 to read as follows:

§ 655.64 Special application filing and eligibility provisions for Fiscal Year 2022 under the January 28, 2022 supplemental cap increase.

(a) An employer filing a petition with USCIS under 8 CFR 214.2(h)(6)(xi) to request H–2B workers with FY 2022 employment start dates on or before March 31, 2022, must meet the following requirements:

(1) The employer must attest on the Form ETA–9142–B–CAA–5 that its business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H–2B workers requested on the petition filed pursuant to 8 CFR 214.2(h)(6)(xi). Additionally, the employer must attest that it will provide documentary evidence of the applicable irreparable harm to DHS or DOL upon request.

(2) The employer must attest on Form ETA–9142–B–CAA–5 that each of the workers requested and/or instructed to apply for a visa, whether named or unnamed, on a petition filed pursuant to 8 CFR 214.2(h)(6)(xi), have been issued an H–2B visa or otherwise granted H–2B status during one of the last three (3) fiscal years (fiscal year 2019, 2020, or 2021), unless the H–2B worker is a national of Guatemala, El Salvador, Honduras, or Haiti and is counted towards the 6,500 cap described in 8 CFR 214.2(h)(6)(xi)(A)(*2*).

(3) The employer must attest on Form ETA–9142–B–CAA–5 that the employer will comply with all the assurances, obligations, and conditions of employment set forth on its approved *Application for Temporary Employment Certification.*

(4) The employer must attest on Form ETA–9142–B–CAA–5 that it will comply with all Federal, State, and local employment-related laws and regulations, including, where applicable, health and safety laws and laws related to COVID–19 worker protections; any right to time off or paid time off for COVID–19 vaccination, or to reimbursement for travel to and from the nearest available vaccination site; and that the employer will notify any H–2B workers approved under the supplemental cap in 8 CFR 214.2(h)(6)(xi)(A)(*1*) and (*2*), in a language understood by the worker as necessary or reasonable, that all persons in the United States, including nonimmigrants, have equal access to COVID–19 vaccines and vaccine distribution sites.

(5) An employer that submits Form ETA–9142B–CAA–5 and the I–129 petition 45 or more days after the certified start date of work, as shown on its approved *Application for Temporary Employment,* must conduct additional recruitment of U.S. workers as follows:

(i) Not later than the next business day after submitting the I–129 petition for H–2B worker(s), the employer must place a new job order for the job opportunity with the State Workforce Agency (SWA), serving the area of intended employment. The employer must follow all applicable SWA instructions for posting job orders, inform the SWA that the job order is being placed in connection with a previously certified *Application for Temporary Employment Certification* for H–2B workers by providing the unique temporary labor certification (TLC) identification number, and receive applications in all forms allowed by the SWA, including online applications (sometimes known as ''self-referrals''). The job order must contain the job assurances and contents set forth in § 655.18 for recruitment of U.S. workers at the place of employment, and remain posted for at least 15 calendar days;

(ii) During the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) of this section for intrastate clearance, the employer must contact, by email or other available electronic means, the nearest comprehensive American Job Center (AJC) serving the area of intended employment where work will commence, request staff assistance advertising and recruiting qualified U.S. workers for the job opportunity, and provide the unique identification number associated with the job order placed with the SWA or, if unavailable, a copy of the job order. If a comprehensive AJC is not available, the employer must contact the nearest affiliate AJC serving the area of intended employment where work will commence to satisfy the requirements of this paragraph (a)(5)(ii);

(iii) During the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) of this section for intrastate clearance, the employer must contact (by mail or other effective means) its former U.S. workers, including those who have been furloughed or laid off, during the period beginning January 1, 2020, until the date the I–129 petition required under 8 CFR

214.2(h)(6)(xi) is submitted, who were employed by the employer in the occupation at the place of employment (except those who were dismissed for cause or who abandoned the worksite), disclose the terms of the job order, and solicit their return to the job. The contact and disclosures required by this paragraph (a)(5)(iii) must be provided in a language understood by the worker, as necessary or reasonable;

(iv) During the period of time the SWA is actively circulating the job order described in paragraph (a)(5)(i) of this section for intrastate clearance, the employer must engage in the recruitment of U.S. workers as provided in § 655.45(a) and (b). The contact and disclosures required by this paragraph (a)(5)(iv) must be provided in a language understood by the worker, as necessary or reasonable; and

(v) The employer must hire any qualified U.S. worker who applies or is referred for the job opportunity until the date on which the last H–2B worker departs for the place of employment, or 30 days after the last date on which the SWA job order is posted, whichever is later. Consistent with § 655.40(a), applicants can be rejected only for lawful job-related reasons.

(6) The employer must attest on Form ETA–9142–B–CAA–5 that it will fully cooperate with any audit, investigation, compliance review, evaluation, verification, or inspection conducted by DOL, including an on-site inspection of the employer's facilities, interview of the employer's employees and any other individuals possessing pertinent information, and review of the employer's records related to the compliance with applicable laws and regulations, including but not limited to evidence pertaining to or supporting the eligibility criteria for the FY 2022 supplemental allocations outlined in this paragraph (a) and § 655.69(a), as a condition for the approval of the H–2B petition. Pursuant to this subpart and 29 CFR 503.25, the employer will not impede, interfere, or refuse to cooperate with an employee of the Secretary who is exercising or attempting to exercise DOL's audit or investigative authority.

(b) This section expires on October 1, 2022.

(c) The requirements under paragraph (a) of this section are intended to be non-severable from the remainder of this section; in the event that paragraph (a)(1), (2), (3), (4), or (5) of this section is enjoined or held to be invalid by any court of competent jurisdiction, the remainder of this section is also intended to be enjoined or held to be invalid in such jurisdiction, without prejudice to workers already present in the United States under this part, as consistent with law.

■ 7. Effective January 28, 2022 through September 30, 2025, add § 655.69 to read as follows:

§ 655.69 Special document retention provisions for Fiscal Years 2022 through 2026 under Public Laws 116–260, 117–43, and 117–70.

(a) An employer that files a petition with USCIS to employ H–2B workers in fiscal year 2022 under authority for the temporary increase in the numerical limitation provided by Public Law 117–43 and Public Law 117–70 on the same terms as section 105 of Division O, of Public Law 116–260, must maintain for a period of three (3) years from the date of certification, consistent with 20 CFR 655.56 and 29 CFR 503.17, the following:

(1) A copy of the attestation filed pursuant to the regulations in 8 CFR 214.2 governing that temporary increase;

(2) Evidence establishing, at the time of filing the I–129 petition, that the employer's business is suffering irreparable harm or will suffer impending irreparable harm (that is, permanent and severe financial loss) without the ability to employ all of the H–2B workers requested on the petition filed pursuant to 8 CFR 214.2(h)(6)(xi);

(3) Documentary evidence establishing that each of the workers the employer requested and/or instructed to apply for a visa, whether named or unnamed on a petition filed pursuant to 8 CFR 214.2(h)(6)(xi), have been issued an H–2B visa or otherwise granted H–2B status during one of the last three (3) fiscal years (fiscal year 2019, 2020, or 2021), unless the H–2B worker(s) is a national of El Salvador, Guatemala, Honduras, or Haiti and is counted towards the 6,500 cap described in 8 CFR 214.2(h)(6)(xi)(A)(*2*). Alternatively, if applicable, employers must maintain documentary evidence that the workers the employer requested and/or instructed to apply for visas are eligible nationals of El Salvador, Guatemala, Honduras, or Haiti as defined in 8 CFR 214.2(h)(6)(xi)(A)(*2*); and

(4) If applicable, proof of recruitment efforts set forth in § 655.64(a)(5)(i) through (iv) and a recruitment report that meets the requirements set forth in § 655.48(a)(1) through (4) and (7), and maintained throughout the recruitment period set forth in § 655.64(a)(5)(v).

(b) DOL or DHS may inspect the documents in paragraphs (a)(1) through (4) of this section upon request.

(c) This section expires on October 1, 2025.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Martin J. Walsh,

Secretary, U.S. Department of Labor.

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