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Contents

Federal Register

Vol. 87, No. 29

Friday, February 11, 2022

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 87, No. 29
Friday, February 11, 2022

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 460

[Docket ID FCIC–22–0001]

RIN 0563–AC77

Pandemic Cover Crop Program

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: This rule announces the Pandemic Cover Crop Program (PCCP) to provide support for agricultural producers impacted by the COVID–19 pandemic for the 2022 crop year. USDA is dedicating funding to reach a broader set of producers than in previous COVID–19 assistance programs, with a specific focus on strengthening outreach to underserved producers and communities and small and medium agricultural operations. As a part of that initiative, this rule establishes PCCP for 2022.

DATES: *Effective* April 12, 2022.

FOR FURTHER INFORMATION CONTACT: David Zanoni; telephone: (816) 926–6142; email: *david.zanoni@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Background

The Consolidated Appropriations Act, 2021 (CAA; Pub. L. 116–260) provided funding to prevent, prepare for, and respond to the COVID–19 pandemic by providing support for agricultural producers who were impacted. Secretary Tom Vilsack announced the USDA Pandemic Assistance for Producers initiative on March 24, 2021. USDA is dedicating $6.5 billion in funding to reach a broader set of producers than in previous COVID–19 assistance programs, with a specific focus on strengthening outreach to underserved producers and communities and small and medium agricultural operations. As a part of that initiative, this rule establishes PCCP for 2022.

PCCP

The Federal Crop Insurance Corporation (FCIC) serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIP) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

For the 2021 crop year, FCIC implemented PCCP through a Notice of Funding Availability to help agricultural producers impacted by the effects of the COVID–19 outbreak. The economic challenges due to the pandemic made maintaining cover cropping systems financially challenging for many producers. For the 2021 crop year, PCCP premium support was provided to eligible producers for eligible insured acres on a spring crop insurance policy on which the producer planted a qualifying cover crop during the 2021 crop year.

FCIC amends 7 CFR part 460 to add a new subpart B to establish PCCP regulations for the 2022 crop year. For the 2022 crop year, PCCP premium support will be available to eligible producers for eligible insured acres on a crop insurance policy for a first insured crop on which the producer planted a qualifying cover crop after June 15, 2021, of the 2021 crop year, or during the 2022 crop year. In addition, for the 2022 crop year, additional PCCP premium support will be available to eligible producers for eligible Whole Farm Revenue Protection (WFRP) acres on which the producer planted a qualifying cover crop after June 15, 2021, of the 2021 crop year, or during the 2022 crop year. PCCP premium support will be available for both eligible insured acres and eligible WFRP acres associated with the same planted acreage of qualifying cover crops. Supplemental Coverage Option, Enhanced Coverage Option, Post-Application Coverage Endorsement, and Hurricane Insurance Protection—Wind Index policies or endorsements will not be eligible for PCCP. Stacked Income Protection Plan (STAX) and Margin Protection (MP) policies will only be eligible for PCCP when insured as a standalone policy. STAX and MP endorsements to underlying policies will not be eligible for PCCP.

For the 2022 crop year, in States administering a cover crop program providing premium subsidy under an active Memorandum of Understanding (MOU) with RMA, as authorized by Section 508(c)(8) of the Federal Crop Insurance Act, insured acres qualifying for a State premium subsidy amount are eligible for a matching amount under PCCP, calculated on an FSA Common Land Unit (CLU) basis. The matching amount under PCCP per insured acre will be equal to the State contribution per insured acre on a CLU basis and is in addition to the base amount of PCCP. The matching amount under PCCP per insured acre will be limited by the amount of premium owed by the insured on a CLU basis. If limited, the State contribution amount and matching PCCP amount will be reduced proportionately on a CLU basis.

Some insureds will not owe enough premium to receive the full State premium subsidy support amount. Accordingly, any money contributed by a State that is not paid out via PCCP will be returned to the state within 90 days of the end of PCCP.

Notice and Comment and Effective Date

The Administrative Procedure Act (APA, 5 U.S.C. 553(a)(2)) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to benefits or contracts. This rule governs premium support for eligible producers for eligible insured acres on a crop insurance policy and therefore falls under the benefits or contracts exemption of the APA.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C.

601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the requirement for a proposed rule under 5 U.S.C. 553 or any other law; in addition, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) designated this rule as major under the Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act (CRA, 5 U.S.C. 804(2)). Therefore, the date for making the regulatory changes in this rule effective in the Code of Federal Regulation (CFR) will be delayed for 60 days from the date of publication in the **Federal Register** to allow for Congressional review.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant.

OIRA designated this rule as economically significant under Executive Order 12866 and therefore, OIRA has reviewed this rule. The costs and benefits of this rule are summarized below. The full cost benefit analysis is available on *regulations.gov.*

Cost Benefit Analysis Summary

The 2022 PCCP provides premium support of up to $5 per acre to eligible producers who plant and report to FSA (via the annual FSA–578 reporting) a qualifying cover crop on acreage insured under a Federal crop insurance policy (such as corn or soybeans) after June 15 of the 2021 crop year or during the 2022 crop year. The PCCP amount will not be paid directly to participants but will be accounted for in calculating total producer premium due from producers for the crop (for example, the corn or soybeans). Approximately 12.2 million net acres have received a premium reduction for the crop year 2021 PCCP. Note, however, that eligible acreage has expanded for the 2022 PCCP and in this analysis is projected at 23 million acres. The associated cost is estimated at $116.2 million for the crop year 2022 PCCP.

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and because USDA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b). The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Although OIRA has designated this rule as ''economically significant'' under Executive Order 12866, ''. . . economic or social effects are not intended by themselves to require preparation of an environmental impact statement'' when not interrelated to natural or physical environmental effects (see 40 CFR 1502.16(b)). PCCP was designed to avoid skewing planting decisions. Producers continue to make their planting and production decisions with the market signals in mind, rather than any expectation of what a new USDA program might look like.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, ''Civil Justice Reform.'' This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

USDA has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that required Tribal consultation under Executive Order 13175 at this time. If a Tribe requests consultation, the USDA Risk Management Agency and Federal Crop Insurance Corporation will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications are not expressly mandated by law. Outside of Tribal consultation, the Risk Management Agency and Federal Crop Insurance Corporation is working with Tribes to provide information about PCCP.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local and Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Federal Domestic Assistance Program listed in the Catalog of Federal Domestic Assistance to which this rule applies is No. 10.450—Crop Insurance.

Paperwork Reduction Act

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under

control numbers 0563–0053 and 0563–0084.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 or (844) 433–2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov*.

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List of Subjects in 7 CFR Part 460

Crop insurance, Disaster assistance.

For the reasons discussed above, FCIC amends 7 CFR part 460 as follows:

PART 460—ADDITIONAL DISASTER PAYMENTS

■ 1. Revise the authority citation for part 460 to read as follows:

Authority: 7 U.S.C. 1506(i) and 1506(o); and Division N of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260).

■ 2. Add subpart B, consisting of §§ 460.8 through 460.13, to read as follows:

Subpart B—Pandemic Cover Crop Program

Sec.
460.8 Applicability.
460.9 Definitions.
460.10 Eligibility.
460.11 Calculating PCCP amounts for first insured crops.
460.12 Calculating PCCP amounts for WFRP.
460.13 Accounting for PCCP amounts.

Subpart B—Pandemic Cover Crop Program

§ 460.8 Applicability.

(a) This subpart specifies the terms and conditions of the Pandemic Cover Crop Program (PCCP).

(b) For the 2022 crop year, PCCP premium support is available to eligible producers for eligible insured acres on a crop insurance policy for a first insured crop on which the producer planted a qualifying cover crop after June 15, 2021, of the 2021 crop year, or during the 2022 crop year.

(1) For the 2022 crop year, in states administering a cover crop program providing premium subsidy under an active Memorandum of Understanding (MOU) with RMA, as authorized by section 508(c)(8) of the Federal Crop Insurance Act, insured acres qualifying for a state premium subsidy amount are eligible for a matching amount under PCCP.

(2) For the 2022 crop year, additional PCCP premium support is available to eligible producers for eligible Whole Farm Revenue Protection (WFRP) acres on which the producer planted a qualifying cover crop after June 15, 2021, of the 2021 crop year, or during the 2022 crop year.

§ 460.9 Definitions.

Approved Insurance Provider (AIP) means a legal entity that has entered into a reinsurance agreement with the Federal Crop Insurance Corporation (FCIC) for the applicable reinsurance year and is authorized to sell and service policies or plans of insurance under the Federal Crop Insurance Act.

Crop insurance policy means an insurance policy reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended. It does not include private plans of insurance.

Crop year means the period within which the insured crop is normally grown and is designated by the calendar year in which the insured crop is normally harvested.

Eligible insured acres means insured acres on which the producer planted a qualifying cover crop after June 15, 2021, during the 2021 crop year, or during the 2022 crop year, as reported on the Farm Service Agency's (FSA) common land unit(s) (CLU) to FSA via a completed and signed Form 578—Report of Acreage on or before March 15, 2022, which may be prior to FSA's acreage reporting date, and reported the same CLU(s) on their crop insurance acreage report by the applicable Federal crop insurance acreage reporting date for a 2022 crop year crop insurance policy for a first insured crop.

Eligible WFRP acres means acres on which a person with a 2022 crop year WFRP policy planted a qualifying cover crop after June 15, 2021, during the 2021 crop year, or during the 2022 crop year, as reported on the CLU(s) to FSA via a completed and signed Form 578-Report of Acreage on or before March 15, 2022, which may be prior to FSA's acreage reporting date.

Eligible producer means a producer meeting all of the eligibility requirements for PCCP.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation of USDA that administers the Federal crop insurance program.

First insured crop means, with respect to a single crop year and any specific crop acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Federal Crop Insurance Act.

FSA means the Farm Service Agency, USDA.

FSA Common Land Unit (CLU) means the smallest unit of land that has a permanent, contiguous boundary, common land cover and land management, common owner, and common producer association.

Insured acres means the participant's share of insurable acreage that is insured in accordance with a crop insurance policy purchased from an AIP.

Insured crop means a crop for which the participant has purchased a crop insurance policy from an AIP.

MOU means Memorandum of Understanding.

PCCP means Pandemic Cover Crop Program.

Person means a person as defined in 7 CFR 457.8(1).

Qualifying cover crop means any of the four types of cover crops:

(1) Cereals and other grasses;

(2) Legumes;

(3) Brassicas; and

(4) Other non-legume broadleaves, and mixtures of two or more cover crop species planted at the same time. An

insured crop is not considered a qualifying cover crop.

RMA means the Risk Management Agency, USDA.

USDA means United States Department of Agriculture.

WFRP means Whole Farm Revenue Protection.

§ 460.10 Eligibility.

(a) For the 2022 crop year, to be eligible for premium support under PCCP, the participant must be a person who is eligible to receive Federal benefits and who has purchased a crop insurance policy for a first insured crop from an AIP for insured acres on which the participant planted a qualifying cover crop after June 15, 2021, during the 2021 crop year, or during the 2022 crop year.

(1) Cover crops must be specifically reported to FSA via the Form-578 with the corresponding crop code.

(2) Potential participants that are uncertain of whether their cover crop was reported to the FSA are encouraged to contact their local FSA county office (*http://farmers.gov/service-locator*).

(3) Only acreage reports that are filed or amended prior to March 15 will be considered for PCCP.

(b) Participants who are in violation of Highly Erodible Land or Wetlands Conservation (16 U.S.C. 3811, 3812, and 3821) are not eligible to receive benefits under PCCP.

(c) A person is not eligible to receive benefits under PCCP if at any time that person is determined to be ineligible for crop insurance.

(d) Supplemental Coverage Option, Enhanced Coverage Option, Post-Application Coverage Endorsement, and Hurricane Insurance Protection—Wind Index policies or endorsements are not eligible for PCCP.

(e) Stacked Income Protection Plan (STAX) and Margin Protection (MP) policies are only eligible for PCCP when insured as a standalone policy. STAX and MP endorsements to underlying polices are not eligible for PCCP.

§ 460.11 Calculating PCCP amounts for first insured crops.

(a) For the 2022 crop year, for eligible insured acres covered under a crop insurance policy for a first insured crop, the amount of premium support under PCCP for each insured acre will be $5, calculated on a CLU basis, with a maximum equal to the amount of premium owed by the insured.

(b) For the 2022 crop year, in states administering a cover crop program providing premium subsidy under an active MOU with RMA, as authorized by Section 508(c)(8) of the Federal Crop Insurance Act, insured acres qualifying for a state premium subsidy amount are eligible for a matching amount under PCCP, calculated on a CLU basis, which may be in addition to the amount in paragraph (a) of this section.

(1) The matching amount under PCCP per insured acre will be equal to the state contribution per insured acre on a CLU basis.

(2) The matching amount under PCCP per insured acre will be limited by the amount of premium owed by the insured on a CLU basis. If limited, the state contribution amount and matching PCCP amount will be reduced proportionately on a CLU basis.

(c) Amounts under PCCP are limited to the full amount of premium owed by the insured for the eligible insured acres on a CLU basis. If the full amount under PCCP would result in a negative premium balance for the insured on a CLU basis, PCCP amounts will be limited to the full amount of premium owed on a CLU basis, with the amount calculated in paragraph (b) of this section being applied first and the amount calculated in paragraph (a) of this section being applied second.

(1) In cases where insureds are eligible for both paragraphs (a) and (b) of this section, and premium owed on a CLU basis is less than the amount in paragraph (b) of this section, the state contribution amount and matching PCCP amount in paragraph (b) of this section will be reduced proportionally on a CLU basis, and there will be no PCCP premium support amount applied in paragraph (a) of this section.

(2) In cases where insureds are eligible for both paragraphs (a) and (b) of this section, and premium owed on a CLU basis is greater than the amount in paragraph (b) of this section but less than the sum of the amounts in paragraphs (a) and (b) of this section, there will be no reduction to the state contribution amount and matching PCCP amount in paragraph (b) of this section, and the PCCP premium support amount in paragraph (a) of this section will be reduced.

(d) If the eligible insured acres are adjusted or revised for any reason, such as an overreporting of insured acres, the amount under PCCP will be based on the eligible insured acres after any such amendment.

§ 460.12 Calculating PCCP amounts for WFRP.

(a) For the 2022 crop year, for eligible WFRP acres, the amount of premium support under PCCP for each acre will be $5, with a maximum equal to the amount of WFRP premium owed by the insured.

(b) PCCP amounts for WFRP are limited to the full amount of premium owed by the insured for the WFRP policy. If the full amount under PCCP would result in a negative premium balance for the insured, PCCP amounts will be limited to the full amount of premium owed.

(c) If the eligible WFRP acres are adjusted or revised for any reason, such as an overreporting of planted cover crop acres, the amount under PCCP will be based on the eligible WFRP acres after any such amendment.

§ 460.13 Accounting for PCCP amounts.

(a) The amount under PCCP will not be paid directly to eligible producers. FCIC and AIPs will account for the amount when calculating total producer premium due. AIPs will adjust participant bills accordingly. All bills follow the same terms and conditions specified in the crop insurance policy, regardless of PCCP amounts.

(b) PCCP premium support will be provided via premium billing adjustments by the applicable RMA premium billing date for the insured crop.

(c) PCCP premium support is available both for eligible insured acres and for eligible WFRP acres associated with the same planted acreage of qualifying cover crops.

(d) The payment limitations in 7 CFR 760.1507 are not applicable to PCCP.

(e) RMA will obtain cover crop records from FSA and determine eligibility such that eligible producers do not need to take any additional specific action through their crop insurance agent to enroll in the PCCP.

(1) In the event that any PCCP amount is determined to be incorrect, the amount will be recalculated until the 2022 reinsurance year annual settlement date of October 6, 2023, unless otherwise specified by the RMA Administrator.

(2) After October 6, 2023, the amount will be final except in cases of misrepresentation, fraud, scheme, or device.

Marcia Bunger,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2022–02965 Filed 2–10–22; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0725; Project Identifier MCAI–2020–01402–T; Amendment 39–21882; AD 2021–26–23]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that was published in the **Federal Register**. That AD applies to certain Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. As published, the AD number specified in the regulatory text is incorrect. This document corrects that error and one other minor error. In all other respects, the original document remains the same.

DATES: This correction is effective February 25, 2022. The effective date of AD 2021–26–23 remains February 25, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of February 25, 2022 (87 FR 3184, January 21, 2022).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of November 30, 2017 (82 FR 49498, October 26, 2017).

ADDRESSES: For service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0725.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0725; 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 address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

AD 2021–26–23, Amendment 39–21882 (87 FR 3184, January 21, 2022) (AD 2021–26–23), requires repetitive inspections for fuel leakage at the engine and auxiliary power unit (APU) fuel pumps, related investigative and corrective actions if necessary, an inspection of the APU for damage and deformation, repair if necessary, and modification of the engine electrical fuel pump (EFP) installation. The AD applies to certain Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes.

Need for the Correction

As published, the regulatory text of AD 2021–26–23 included the following errors:

- The AD number was incorrectly identified as ''2021–21–23.'' The correct AD number is 2021–26–23.
- The last sentence of paragraph (g) requires use of certain service information ''as the effective date of this AD.'' The correct compliance time for that requirement is ''as of the effective date of this AD.''

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following service information, which describes procedures for repetitive general visual inspections and rectifications for any fuel leak from the engine and APU EFP electrical wiring conduit outlets. These documents are distinct since they apply to different airplane serial numbers.

- Bombardier Service Bulletin 604–28–022, Revision 3, dated August 31, 2018.
- Bombardier Service Bulletin 605–28–010, Revision 3, dated August 31, 2018.
- Bombardier Service Bulletin 650–28–001, Revision 3, dated January 3, 2019.

Bombardier has also issued the following service information, which describes procedures for a detailed visual inspection of the APU for any damage or deformations (*e.g.,* cut wires and a broken harness assembly of the fuel boost pump connector), modification of the engine EFP installation, and repair if necessary. These documents are distinct since they apply to different airplane serial numbers.

- Bombardier Service Bulletin 604–28–024, Revision 01, dated May 28, 2021.
- Bombardier Service Bulletin 605–28–012, dated June 16, 2020.
- Bombardier Service Bulletin 650–28–002, dated June 16, 2020.

This AD also requires Bombardier Service Bulletin 604–28–022, dated October 19, 2015, and Bombardier Service Bulletin 605–28–010, dated October 19, 2015, which the Director of the Federal Register approved for incorporation by reference as of November 30, 2017 (82 FR 49498, October 26, 2017).

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 the **ADDRESSES** section.

Correction of Publication

This document corrects two errors in the regulatory text and correctly adds the AD as an amendment to 14 CFR 39.13. Although no other part of the preamble or regulatory information has been corrected, the FAA is publishing the entire rule in the **Federal Register**.

The effective date of this AD remains February 25, 2022.

Since this action only corrects the AD number and a minor grammatical error in the regulatory text, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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 [Corrected]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2017–22–06, Amendment 39–19086 (82 FR 49498, October 26, 2017); and

■ b. Adding the following new AD:

2021–26–23 Bombardier, Inc.: Amendment 39–21882; Docket No. FAA–2021–0725; Project Identifier MCAI–2020–01402–T.

(a) Effective Date

This airworthiness directive (AD) is effective February 25, 2022.

(b) Affected ADs

This AD replaces AD 2017–22–06, Amendment 39–19086 (82 FR 49498, October 26, 2017) (AD 2017–22–06).

(c) Applicability

This AD applies to Bombardier, Inc., Model CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes, certificated in any category, serial numbers 5301 through 5665 inclusive, 5701 through 5990 inclusive, and 6050 through 6163 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 28, Fuel.

(e) Reason

This AD was prompted by reports of fuel leaks from the electrical connectors and conduits of the engine and auxiliary power unit (APU) electrical fuel pump (EFP) cartridge/canister, and the development of additional actions to address the root cause of the fuel leaks. The FAA is issuing this AD to address the potential for a fire hazard as a result of fuel leak from the APU EFP electrical conduit in the hot landing light compartment.

(f) Compliance

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

(g) Retained Actions for Certain Airplanes, With Revised Service Information and Method of Compliance Provisions

This paragraph restates the requirements of paragraph (g) of AD 2017–22–06, with revised service information and method of compliance provisions. For Model CL–600–2B16 airplanes having serial numbers 5301 through 5665 inclusive: Within 600 flight hours or 12 months, whichever occurs first after November 30, 2017 (the effective date of AD 2017–22–06), do the inspections specified in paragraphs (g)(1) through (3) of this AD, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 604–28–022, dated October 19, 2015, or Bombardier Service Bulletin 604–28–022, Revision 3, dated August 31, 2018. Do all applicable corrective actions before further flight. Repeat the inspections at intervals not to exceed 600 flight hours or 12 months, whichever occurs first. As of the effective date of this AD, use Bombardier Service Bulletin 604–28–022, Revision 3, dated August 31, 2018, only.

(1) Do a general visual inspection for traces of fuel coming from the right-hand engine boost pump at the location of the belly fairing screw (FS412, BL 0.0).

(2) Do a general visual inspection for traces of fuel coming from the left-hand engine boost pump at the location of the belly fairing screw (FS412, BL 0.0).

(3) Do a general visual inspection for traces of fuel coming from the EFP electrical wiring conduit outlet at the lower body fairing area for engine EFPs and at the right-hand landing light compartment for the APU EFP.

(h) Retained Actions for Certain Other Airplanes, With Revised Service Information and Compliance Method Provisions

This paragraph restates the requirements of paragraph (h) of AD 2017–22–06, with revised service information and compliance method provisions. For Model CL–600–2B16 airplanes having serial numbers 5701 through 5955 inclusive, 5957, 5960 through 5966 inclusive, 5968 through 5971 inclusive, and 5981: Within 600 flight hours or 12 months, whichever occurs first after November 30, 2017 (the effective date of AD 2017–22–06), do the inspections specified in paragraphs (h)(1) through (3) of this AD, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions in Bombardier Service Bulletin 605–28–010, dated October 19, 2015, or Bombardier Service Bulletin 605–28–010, Revision 3, dated August 31, 2018. Do all applicable related investigative and corrective actions before further flight. Repeat the inspections at intervals not to exceed 600 flight hours or 12 months, whichever occurs first. As of the effective date of this AD, use Bombardier Service Bulletin 605–28–010, Revision 3, dated August 31, 2018, only.

(1) Do a general visual inspection for traces of fuel coming from the right-hand engine boost pump at the location of the belly fairing screw (FS412, BL 0.0).

(2) Do a general visual inspection for traces of fuel coming from the left-hand engine boost pump at the location of the belly fairing screw (FS412, BL 0.0).

(3) Do a general visual inspection of the right-hand landing light compartment for traces of fuel coming from the APU EFP.

(i) New Requirements of This AD: Inspections and Rectifications

For the airplanes identified in figure 1 to paragraph (i) of this AD: At the applicable compliance time specified in figure 1 to paragraph (i) of this AD, do a general visual inspection for any fuel leak from the engine and APU EFP electrical wiring conduit outlets, in accordance with the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (i) of this AD. If any fuel leak is found during the general visual inspection, before further flight, correct the fuel leak in accordance with the Accomplishment Instructions of the applicable service information specified in figure 1 to paragraph (i) of this AD. Thereafter, repeat the general visual inspection at intervals not to exceed 600 flight hours or 12 months, whichever occurs first.

Figure 1 to paragraph (i) – *Compliance Times and Service Information*

Serial numbers–	Compliance Time–	Bombardier Service Bulletin–
5956, 5958, 5959, 5967, 5972 through 5980 inclusive, and 5982 through 5990 inclusive	Within 600 flight hours or 12 months, whichever occurs first after the effective date of this AD	Bombardier Service Bulletin 605-28-010, Revision 3, dated August 31, 2018
6050 through 6163 inclusive	Within 600 flight hours or 12 months, whichever occurs first after the effective date of this AD	Bombardier Service Bulletin 650-28-001, Revision 3, dated January 3, 2019

(j) New Requirements of This AD: Inspection and Modification

Within 60 months after the effective date of this AD: Do a detailed visual inspection of the APU for any damage or deformations, and modify the engine EFP installation, in accordance with the Accomplishment Instructions of the applicable service information specified in figure 2 to paragraph (j) of this AD. If any damage or deformations are found during the detailed visual inspection, before further flight, do the repair in accordance with the Accomplishment Instructions of the applicable service information specified in figure 2 to paragraph (j) of this AD.

Figure 2 to paragraph (j) – *Service Information*

Serial numbers–	Bombardier Service Bulletin–
5301 through 5665 inclusive	Bombardier Service Bulletin 604-28-024, Revision 01, dated May 28, 2021
5701 through 5990 inclusive	Bombardier Service Bulletin 605-28-012, dated June 16, 2020
6050 through 6163 inclusive	Bombardier Service Bulletin 650-28-002, dated June 16, 2020

(k) No Reporting Requirement

Where service information identified in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(l) Terminating Actions

Accomplishing the actions required by paragraph (j) of this AD terminates all requirements of this AD.

(m) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 604–28–022, dated October 19, 2015, provided that within 4 months or 150 flight hours from the effective date of this AD or within 1 year from the last inspection, whichever occurs first, the actions specified in paragraph (g) are done using Bombardier Service Bulletin 604–28–022, Revision 3, dated August 31, 2018. Bombardier Service Bulletin 604–28–022, dated October 19, 2015, was incorporated by reference in AD 2017–22–06.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 605–28–010, dated October 19, 2015, provided that within 4 months or 150 flight hours from the effective date of this AD or within 1 year from the last inspection, whichever occurs first, the actions specified in paragraph (h) of this AD are done using Bombardier Service Bulletin 605–28–010, Revision 3, dated August 31, 2018. Bombardier Service Bulletin 605–28–010, dated October 19, 2015, was incorporated by reference in AD 2017–22–06.

(3) This paragraph provides credit for actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using the service information in paragraphs (m)(3)(i) through (iii) of this AD, provided that within 1 year from the last inspection, the actions accomplished in paragraph (i) of this AD are done using Bombardier Service Bulletin 650–28–001, Revision 3, dated January 3, 2019. This service information is not incorporated by reference in this AD.

(i) Bombardier Service Bulletin 650–28–001, dated November 3, 2017.

(ii) Bombardier Service Bulletin 650–28–001, Revision 1, dated May 14, 2018.

(iii) Bombardier Service Bulletin 650–28–001, Revision 2, dated August 31, 2018.

(4) This paragraph provides credit for actions required by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 604–28–024, dated June 16, 2020. This service information is not incorporated by reference in this AD.

(n) Other FAA AD Provisions

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your

request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2016–32R4, dated October 13, 2020; and TCCA AD CF–2020–38, dated October 13, 2020; for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0725.

(2) For more information about this AD, contact Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (p)(5) and (6) of this AD.

(p) 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 this AD specifies otherwise.

(3) The following service information was approved for IBR on February 25, 2022 (87 FR 3184, January 21, 2022).

(i) Bombardier Service Bulletin 604–28–022, Revision 3, dated August 31, 2018.

(ii) Bombardier Service Bulletin 604–28–024, Revision 01, dated May 28, 2021.

(iii) Bombardier Service Bulletin 605–28–010, Revision 3, dated August 31, 2018.

(iv) Bombardier Service Bulletin 605–28–012, dated June 16, 2020.

(v) Bombardier Service Bulletin 650–28–001, Revision 3, dated January 3, 2019.

(vi) Bombardier Service Bulletin 650–28–002, dated June 16, 2020.

(4) The following service information was approved for IBR on November 30, 2017 (82 FR 49498, October 26, 2017).

(i) Bombardier Service Bulletin 604–28–022, dated October 19, 2015.

(ii) Bombardier Service Bulletin 605–28–010, dated October 19, 2015.

(5) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.*

(6) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

(7) 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 February 7, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–02881 Filed 2–10–22; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 249

[Release No. 34–87005D; File No. S7–05–14]

RIN 3235–AL45

Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Correcting amendment.

SUMMARY: On September 19, 2019, the Securities and Exchange Commission (the ''Commission'') adopted recordkeeping, reporting, and notification requirements applicable to security-based swap dealers and major security-based swap participants, securities count requirements applicable to certain security-based swap dealers, and additional recordkeeping requirements applicable to broker-dealers to account for their security-based swap and swap activities. Release 34–87005 (Sept. 19, 2019) was published in the **Federal Register** on Dec. 16, 2019. This document corrects technical inaccuracies in that release.

DATES: Effective February 11, 2022.

FOR FURTHER INFORMATION CONTACT: Valentina Minak Deng, Special Counsel, at (202) 551–5778; Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: We are making technical corrections to Part II and Part IIC of Form X–17A–5 (referenced in 17 CFR 249.617). The release resulting in the technical inaccuracies was published in the **Federal Register** on December 16, 2019 at 84 FR 68550, and adopted by the Commission in Exchange Act Release No. 87005 on September 19, 2019.

List of Subjects in 17 CFR Part 249

Brokers, Recordkeeping and reporting requirements, Securities.

Accordingly, 17 CFR part 249 is corrected by making the following amendments:

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), and Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted.

* * * * *

Section 249.617 is also issued under Pub. L. 111–203, 939, 939A, 124. Stat. 1376 (2010) (15 U.S.C. 78c, 15 U.S.C. 78*o*–7 note).

* * * * *

■ 2. Amend Part II of Form X–17A–5 (referenced in § 249.617 of this chapter) by:

BILLING CODE 8011–01–P

■ a. Removing "D. Minimum CFTC net capital requirement; Enter the greatest of Lines A.v, B, or C…….$_____ 7490" and adding in its place "D. Minimum CFTC net capital requirement; Enter the greatest of Lines A.vii, B, or C…….$_____ 7490"; and

■ b. Removing "CFTC early warning level – enter the greatest of 110% of Line A.v. or 150% of Line B or 150% of Line C or $375,000…….$_____ 7495" and adding in its place "CFTC early warning level – enter the greatest of 110% of Line A.vii. or 150% of Line B or 150% of Line C…….$_____ 7495".

Note: The text of Part II of Form X–17A–5 does not and this amendment will not appear in the Code of Federal Regulations.

■ 3. Amend Part IIC of Form X–17A–5 (referenced in § 249.617 of this chapter) by:

■ a. Removing "12758" and adding in its place "12820";

■ b. Removing "12759" and adding in its place "12821";

■ c. Removing "12760" and adding in its place "12007";

■ d. Removing "12761" and adding in its place "12008";

■ e. Removing "12762" and adding in its place "12999";

■ f. Removing "12763" and adding in its place "12009";

■ g. Removing "12764" and adding in its place "12010";

■ h. Removing "12765" and adding in its place "12011";

■ i. Removing "12766" and adding in its place "12012";

■ j. Removing "12767" and adding in its place "12013";

■ k. Removing "12768" and adding in its place "12822";

■ l. Removing "12769" and adding in its place "12823";

■ m. Removing "12770" and adding in its place "12824";

■ n. Removing "12771" and adding in its place "12825";

■ o. Removing "12772" and adding in its place "12826";

■ p. Removing "12773" and adding in its place "12827";

■ q. Removing "12774" and adding in its place "12828";

■ r. Removing "12775" and adding in its place "12829";

■ s. Removing "12776" and adding in its place "12830";

■ t. Removing "12777" and adding in its place "12831";

■ u. Removing "12778" and adding in its place "12832";

■ v. Removing "12779" and adding in its place "12833";

■ w. Removing "12780" and adding in its place "12834";

■ x. Removing "12781" and adding in its place "12835";

■ y. Removing "12782" and adding in its place "12836";

■ z. Removing "12783" and adding in its place "12837";

■ aa. Removing "12784" and adding in its place "12838";

■ bb. Removing "12785" and adding in its place "12839";

■ cc. Removing "12786" and adding in its place "12840";

■ dd. Removing "12801" and adding in its place "12106";

■ ee. Removing "12802" and adding in its place "12107";

■ ff. Removing "12803" and adding in its place "12108";

■ gg. Removing "12804" and adding in its place "12109";

■ hh. Removing "12805" and adding in its place "12110";

■ ii. Removing "12806" and adding in its place "12111";

■ jj. Removing "12807" and adding in its place "8295";

■ kk. Removing "12809" and adding in its place "12114";

■ ll. Removing "12810" and adding in its place "12115";

■ mm. Removing "12811" and adding in its place "12116";

■ nn. Removing "12812" and adding in its place "12117";

■ oo. Removing "12813" and adding in its place "12118";

■ pp. Removing "12814" and adding in its place "12119"; and

■ qq. Removing "12815" and adding in its place "8296".

Note: The text of Part IIC of Form X–17A–5 does not and this amendment will not appear in the Code of Federal Regulations.

Dated: February 2, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02552 Filed 2–10–22; 8:45 am]

BILLING CODE 8011–01–C

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 523

[BOP–1032–F]

RIN 1120–AA62

Good Conduct Time Credit Under the First Step Act

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Prisons (Bureau or BOP) modifies regulations on Good Conduct Time (GCT) credit to conform with legislative changes under the First Step Act (FSA). The changes made by the FSA to the process for awarding GCT credit have resulted in recalculation of the release date of most inmates. This final rule adopts the same calculation method set forth in the proposed rule published on this subject, and finalizes that proposed rule with the following minor change(s) described below.

DATES: This rule is effective March 14, 2022.

FOR FURTHER INFORMATION CONTACT: Sarah N. Qureshi, Rules Administrator, Office of General Counsel, Bureau of Prisons, phone (202) 353–8248.

SUPPLEMENTARY INFORMATION:

I. Overview

In this document, the Bureau modifies regulations on GCT credit to conform with changes made in the First Step Act of 2018 (FSA), Public Law 115–391, December 21, 2018, 132 Stat 5194. The Bureau published a proposed rule on this subject on December 31, 2019 (84 FR 72274) with a comment deadline of March 2, 2020. Seventy-four comments were received during the comment period. Six of those 74 comments supported the proposed rule without qualification. The remaining 68 comments raised some common issues, which we address below.

II. Background.

Section 102(b) of the FSA amended 18 U.S.C. 3624(b) to provide that inmates may receive up to 54 days of GCT credit for each year of the sentence imposed by the court, instead of for each year of actual time served. *See* 18 U.S.C. 3624(b)(1) (''[A] prisoner who is serving a term of imprisonment of more than 1 year other than a term of imprisonment for the duration of the prisoner's life, may receive credit toward the service of the prisoner's sentence of up to 54 days for each year of the prisoner's sentence imposed by the court . . . .''). As a practical matter, prior to this change, awarding GCT credit for each year of actual time served had routinely resulted in a de facto cap of roughly 47 days per year of GCT credit. *See Barber* v. *Thomas,* 560 U.S. 474, 479 (2010). This final rule supports the FSA's modification of the GCT credit determination, which will result in recalculation of the release date of most current inmates (with the exception of those serving sentences for offenses committed before November 1, 1987, sentences of one year or less, and sentences of life imprisonment).

Under section 102(b)(2) of the FSA, this change to the manner in which GCT credit is applied could not be made effective until the Attorney General completed and released a recidivism risk and needs assessment system, which was done on July 19, 2019. A total of 3,163 inmates were released from Bureau custody on July 19, 2019, after the Bureau recalculated release dates under the amended GCT credit scheme in the FSA.

The Bureau has completed the process of recalculations for the remainder of the inmate population, prioritizing recalculations by proximity of projected release dates, and releasing inmates as appropriate. This rule focuses primarily on the proper calculation of GCT credit for the last chronological year of an inmate's term of imprisonment, implementing the statutory instruction that ''credit for the last year of a term of imprisonment shall be credited on the first day of the last year of the term of imprisonment.'' 18 U.S.C. 3624(b)(1). The Bureau has applied this calculation method since July 19, 2019, and the calculation method is the same one set forth in the Bureau's proposed rule.

III. Discussion of Comments and BOP's Responses

Comment: The Bureau should choose the second alternative described in the proposed rule instead of the third alternative proposed by the Bureau. Sixty-four commenters urged the Bureau to adopt ''Alternative 2,'' the alternative interpretation of the FSA described in the proposed rule that would offer ''the most Good Conduct Time credit possible.'' To explain Alternative 2, we first provide some brief background.

Previously, 18 U.S.C. 3624(b)(1) provided that inmates ''may receive credit toward the service of the prisoner's sentence beyond the time served, of up to 54 days at the end of each year of the prisoner's term of imprisonment, beginning at the end of the first year of the term.'' The statute then specified that ''credit for the last year or portion of a year of the term of imprisonment shall be prorated and credited within the last six weeks of the sentence.''

Section 102(b)(1) of the FSA, however, amended 18 U.S.C. 3624(b)(1) to require that inmates serving a sentence (other than a life sentence) of more than a year receive GCT credit of ''up to 54 days for each year of the prisoner's sentence imposed by the court''—as opposed to for ''time served''—and that GCT ''credit for the last year of a term of imprisonment . . . be credited on the first day of the last year of the term of imprisonment.''

In the proposed rule, the Bureau discussed three possible interpretations of the FSA's changes to 18 U.S.C. 3624(b)(1):

Alternative 1: The Bureau should award no GCT credit for any portion of a sentence imposed that is less than 12 months (*i.e.,* the Bureau should award no credit for any partial-year portion of the sentence imposed).

Alternative 2: The Bureau should award a full 54 days of GCT credit for *any partial* final year of the sentence imposed.

Alternative 3: The Bureau should award prorated credit for any partial final year of the sentence imposed.

As stated above, sixty-four commenters urged the Bureau to adopt Alternative 2, because the commenters felt it would offer ''the most Good Conduct Time credit possible.'' [1]

The Bureau offers the following explanations of the alternative interpretations of the changes made to the GCT credit statute by the FSA, in order to clarify the issues raised and explain why Alternative 3 remains the most logical and equitable option.

Alternative 1

The revised section 3624(b)(1) directs the Bureau to award GCT credit for ''the last year of the term of imprisonment.'' 18 U.S.C. 3624(b)(1). The FSA removed language from the statute which had instructed the Bureau to prorate GCT credit ''for the last year or portion of a year,'' it could be argued that this deletion means that if an inmate has any part of his her or sentence that is less than 12 months, he or she earns *no* GCT credit for that portion of the sentence.

This interpretation, however, would ignore Congress's apparent intent to award credit for the full ''sentence imposed.'' *See id.* Congress amended section 3624(b)(1) following the Supreme Court's decision in *Barber* v. *Thomas,* which interpreted the provision to allow GCT credit based on the time actually served, rather than the sentence imposed. 560 U.S. at 483. The practical effect of that decision, as noted above, was to place a cap of roughly 47 days per year of GCT credit. *Id.* at 479. The FSA abrogated that holding, amending section 3624(b)(1) to expressly tie GCT credit to the ''sentence imposed,'' 18 U.S.C. 3624(b)(1), thereby ''allowing prisoners to earn 54 days of credit per year, rather than 47 days.'' 164 Cong. Rec. S7774 (daily ed. Dec. 18, 2018).

Under Alternative 1, any inmate whose sentence imposed was not a whole number of years would earn GCT credit at a rate of less than 54 days per year. An inmate sentenced to 2.9 years, for instance, would receive 108 days of credit (54 days for each of the first 2 years), or an average of roughly 37 days of GCT per year. That is the kind of result Congress sought to avoid by amending section 3624(b)(1), and for that reason, the Bureau stated in the proposed rule that this interpretation is erroneous, unfair, and contradictory to Congressional intent. No commenters questioned the Bureau's rejection of this interpretation.

Alternative 2 vs. Alternative 3

Under both Alternative 2 and Alternative 3, inmates earn 54 days of GCT for each full year of the sentence imposed. For sentences that include a partial year, Alternative 2 would require the Bureau not to prorate GCT credit for the final partial year of the imposed sentence, but rather to award a full 54 days of GCT credit for that final partial year. The Bureau does not believe that this interpretation of the statute—under which 54 days of credit would be awarded to an inmate regardless of the length of the sentence imposed—would be fair or appropriate or reflects accurately the statutory text regarding calculation of GCT credit.

Instead, the Bureau adopts the Alternative 3 interpretation described in the proposed rule, under which it awards prorated credit for any partial year in an imposed sentence.

The Bureau's interpretation follows from the text of the statute, which directs that BOP award up to 54 days for ''each *year*'' of the sentence imposed, rather than for each *year or partial year* of an inmate's sentence. 18 U.S.C. 3624(b)(1) (emphasis added). The best way to effectuate that statutory command is to prorate, ensuring that an inmate receives ''up to 54 days''—but no more—''for each year'' imposed by the court and partial credit for partial years at the end of the sentence imposed by the court. *See id.* This has the effect of maintaining the maximum rate at which inmates can earn GCT credit at 54 days per year, as directed by the statute. Alternative 2, in contrast, would permit inmates to exceed this statutory rate. An inmate serving a sentence of 9 years and a day, for example, would receive 540 days of GCT credit—an average of nearly 60 days of GCT credit ''for each year of the prisoner's sentence imposed by the court.'' *Id.* The alternative would thus contravene the statutory command of awarding ''*up to* 54 days for each year of the prisoner's sentence imposed by the court'' by regularly awarding credit at a rate of *more* than 54 days per year. *Id.* (emphasis added).

To be sure, when Congress enacted the FSA to require calculating GCT credit by reference to the ''sentence imposed by the court,'' it eliminated the express direction that the Bureau should ''prorate[ ]'' credit for the final ''portion of a year of the term of imprisonment,'' *i.e.,* the final portion of the term served. The statute is now silent as to how the Bureau should calculate credit if the sentence imposed includes a final ''portion of a year.'' The Bureau carefully considered that statutory history, but it ultimately concluded that any negative inference from Congress's deletion of the prior reference to prorating is insufficient to overcome the conflict with the current statute's text, which limits credit to ''up to'' 54 days of credit for the last year.[2]

That is especially so because Alternative 2 would lead to arbitrary, illogical, and unwarranted disparities among inmates. Under Alternative 2, inmates sentenced to more time would *systematically* secure an earlier release date than certain others sentenced to less time. Table 1 below illustrates the difference, and resulting inequities, in release dates under Alternative 2 and under Alternative 3, for a hypothetical inmate whose imprisonment term began on January 1, 2020.

[1] Fifty-four of the comments were two-word to two-sentence online responses, simply indicating support for Alternative 2.

[2] Indeed, Congress appears to have deleted the reference to ''prorated'' credit in the last sentence of section 3624(b)(1) not in an attempt to implicitly forbid prorating, but because that sentence no longer sets forth a special rule of calculation for the ''last year of a term of imprisonment.'' Before the FSA, Congress directed the Bureau to calculate credit by reference to the ''term of imprisonment''—a phrase that the Supreme Court held referred to time served, rather than the sentence imposed. *See Barber* v. *Thomas,* 560 U.S. 474, 483 (2010). The FSA abrogated that holding, amending the first sentence of section 3624(b)(1) to require the Bureau to calculate credit based on the ''*sentence imposed by the court*'' and to award up to 54 days for each year (including the last year) of a sentence imposed. The last sentence now addresses only when ''credit for the last year of *a term of imprisonment*'' should be awarded, not how credit for that last year should be calculated. 18 U.S.C. 3624(b)(1) (emphases added). Because Congress no longer intended for the Bureau to calculate GCT based on the ''term of imprisonment,'' Congress had no reason to retain the reference to prorating credit for the ''last year of a term of imprisonment'' in this sentence.

TABLE 1—APPLICATION OF GCT CREDIT UNDER ALTERNATIVES 2 AND 3

	Sentence imposed (prison term starting Jan. 1, 2020)	GCT credit for all full chronological years (54 days per year)	GCT credit for portion of last chronological year	Total GCT credit	Release date
ALT. 2:	24 months	108	0	108	Sept. 14, 2021.
ALT. 3:					
ALT. 2:	24 months + 1 day	108	54	162	July 23, 2021.
ALT. 3:			0	108	Sept. 15, 2021.
ALT. 2:	25 months	108	54	162	Aug. 22, 2021.
ALT. 3:			4	112	Oct. 11, 2021.
ALT. 2:	26 months	108	54	162	Sept. 19, 2021.
ALT. 3:			8	116	Nov. 4, 2021.
ALT. 2:	32 months	108	54	162	Mar. 22, 2022.
ALT. 3:			35	143	Apr. 10, 2022.
ALT. 2:	36 months	162	0	162	July 22, 2022.
ALT. 3:.					
ALT. 2:	37 months	162	54	216	Jun. 29, 2022.
ALT. 3:			4	166	Aug. 18, 2022.

As shown in the chart, under either alternative, an inmate sentenced to 24 months would receive a maximum of 108 days of GCT credit (54 days for each year) with a release date of September 14, 2021. Under Alternative 2, an inmate with a sentence of 24 months and one day would have an *earlier* release date of July 23, 2021. The Bureau would award 54 days of GCT credit for each of the two full years imposed, *as well as 54 days of credit for the additional single day,* resulting in a total of 162 days subtracted from his sentence to calculate his release date. Alternative 3 avoids this unwarranted disparity and inequity: The Bureau would prorate credit for the final date of the inmate's sentence, leading to a maximum of 108 days of GCT credit.[3] That inmate would have a release date of September 15, 2021.

While courts might accept that inequitable result if Congress had expressly required it, an agency should generally seek to avoid introducing such anomalies in its interpretation of statutory text. *Cf. Validus Reinsurance, Ltd.* v. *United States,* 786 F.3d 1039, 1045–46 (D.C. Cir. 2015) (courts ''must [ ] avoid statutory interpretations that bring about an anomalous result when other interpretations [are] available'') (internal quotation marks omitted); *Sturgeon* v. *Frost,* 139 S. Ct. 1066, 1080 n.3 & 1084 (2019) (declining to defer to an agency's interpretation that, though ''grammatically possible,'' was inconsistent with statute's context).[4] In this case, it seems unlikely that Congress would have intended inmates sentenced to longer terms—often pursuant to Congress's statutory sentencing schemes—to, in fact, serve shorter sentences.

Alternative 3 is also most consistent with the premise behind GCT credit: Awarding sentencing credit for good conduct. In *Barber* v. *Thomas,* the Supreme Court interpreted the pre-FSA text of section 3624(b)(1) and explained that the ''basic purpose'' of the statute was to tie the award of GCT credits directly to good behavior during the preceding year of imprisonment. 560 U.S. at 482. Alternative 3 maintains that relationship, while Alternative 2 would award inmates the same amount of GCT credit despite being sentenced to (and serving) different amounts of time. For example, under Alternative 2, an inmate sentenced to 2 years and one day would receive the same GCT credit as an inmate sentenced to 3 years: A total of 162 days of GCT credit. Therefore, Alternative 2 benefits an inmate with one day left to serve in the final year and another inmate with 365 days left to serve in the identical way, resulting in an unfair administration of the GCT benefit. Likewise, under Alternative 2, an inmate sentenced to 2 years and 1 day could misbehave for several days but still end up with more GCT credit than inmate who behaved perfectly but was sentenced to 2 years.

Some commenters believe that the Bureau incorrectly relied upon *Barber* in the proposed rule, noting that ''several courts have found the FSA amendments to have 'effectively abrogate[d] *Barber* v. *Thomas.*'''[5] The Bureau agrees that the FSA abrogated *Barber's* holding that GCT credit should be based on time served rather than the sentence imposed. In doing so, Congress corrected a statutory ambiguity that resulted in inmates receiving a maximum of 47 days for each year imposed, and the Bureau's final rule reflects that change. At the same time, Congress retained the instruction that GCT credit only be awarded ''subject to determination by the Bureau of Prisons that, during that year, the prisoner has displayed exemplary compliance'' with all relevant rules and laws governing inmate conduct. 18 U.S.C. 3624(b)(1). Congress thus retained the same underlying principle that GCT should

[3] Technically, the inmate would receive 108.188 days of GCT, but it is the Bureau's convention to round down any partial day of GCT to the nearest whole number. The Bureau does this because sentences are imposed in days, rather than hours, so the Bureau cannot award an inmate a partial day (*i.e.,* a few hours) of GCT. Nor can the Bureau round up to the nearest whole number, as that would result in an inmate being released before he has earned the requisite GCT credit.

[4] The statute does expressly create one such anomaly: The statute on its face applies only to inmates ''serving a term of imprisonment of more than 1 year,'' 18 U.S.C. 3624(b)(1), which means that inmates sentenced to one year or less are not eligible for GCT credit. Accordingly, an inmate sentenced to one year and a day may well be released earlier than an inmate sentenced to a year. Alternative 2, however, would make that disparity even more pronounced, as it would allow an inmate sentenced to one year and a day to receive 108 days of GCT credit (rather than the 54 days received under the prorated option). It would also extend the disparity for sentences of all lengths.

[5] These commenters specifically cited *Hoenig* v. *United States,* 2019 WL 2006695 (N.D. Tex. May 7, 2019). Notably, however, the *Hoenig* court did not find that the Bureau's interpretation of the FSA was incorrect, but instead found that because the relevant statutory provisions had not yet taken effect, ''the question of whether the BOP has erred in the calculation of Hoenig's sentence is premature and not yet ripe.'' *See id.* at *2.

have some relation to ''exemplary compliance'' with BOP rules. A natural reading of FSA-amended section 3624(b)(1) and adherence to the basic purpose of the statute support prorated credit for the last year of each inmate's imprisonment term.

Separately, some commenters assumed that section 3624(b)(1)'s ''first day of the last year of the term of imprisonment'' refers to the first day of the final calendar year of each inmate's imprisonment term. However, section 3624(b)(1) makes clear that credit for ''*each* year'' must be calculated using the length of sentence actually imposed by the court. 18 U.S.C. 3624(b)(1) (emphasis added). The Bureau thus calculates the maximum amount of GCT credit available, and the effective term to serve, based on the sentence imposed, and uses that number to calculate the number of full years (''anniversary periods'') that an inmate will serve if he receives maximum GCT credit. Therefore, the ''first day of the last year of the term of imprisonment'' is the final anniversary date.

Since the publication of the proposed rule, courts have upheld the Bureau's general interpretation of how to calculate GCT credit under the FSA, though none have addressed the specific question at issue here. In *Chambers* v. *Ebbert,* for example, the court approved the Bureau's calculation of GCT credit after an inmate challenged the Bureau's assertion that less was earned due to the inmate's unsatisfactory progress towards earning a GED. The court stated that the inmate is ''eligible, but not automatically entitled, to receive up to 54 days of good conduct time for each of his 15 years of imprisonment,'' and that the Bureau had engaged in a careful review of the ''anniversary date for year-end sentence calculations.'' *Chambers* v. *Ebbert,* 2020 WL 1183321 (M.D. Penn. Mar. 12, 2020). *See also Lewis* v. *Rios,* 2020 WL 555373 (D. Minn. Jan. 13, 2020); *United States* v. *Bowie,* 2019 WL 6464790 (D. Minn. Dec. 12, 2019); *United States* v. *Rivera,* 2019 WL 6464786 (D. Minn. Dec. 12, 2019); *Frazer* v. *Petrucci,* 2019 WL 5887302 (S.D.N.Y. Nov. 8, 2019).

For the above reasons, the Bureau adopts the interpretation of the FSA and the method of calculation of GCT credit described in Alternative 3 of the proposed rule.

Comment: The rule is inequitable if an inmate receives a low-level sanction and GCT credit is withheld or denied. One commenter was concerned that under the new regulation, GCT credit might be withheld if an inmate violates a ''low-level'' or low-severity prohibited act code under the current inmate disciplinary regulations at 28 CFR part 541. That is not the Bureau's intention, and such a policy was not reflected in the proposed rule.

The proposed rule indicated that a sanction of forfeiture, disallowance, or withholding of GCT credit may only be imposed after the due process requirements described in 28 CFR part 541 as part of the inmate disciplinary process have been followed, and only if such a sanction is found to be appropriate for the severity level category of the prohibited act committed by the inmate.

The list of prohibited acts and corresponding available sanctions can be found in current regulations at 28 CFR 541.3 (Table 1—Prohibited Acts and Available Sanctions). Prohibited acts are divided into four categories based on severity: Greatest, High, Moderate, and Low. Each category is accompanied by a list of sanctions which may be imposed by the Bureau after an inmate is found to have committed a prohibited act in that category, following the appropriate due process procedures in 28 CFR part 541.

The proposed rule did not alter current procedures for the sanction of forfeiture, disallowance, or withholding of GCT credit for commission of prohibited acts, and the final rule likewise does not change the current system.

That said, the Bureau is committed to ensuring that the forfeiture, disallowance, or withholding of GCT credit for commission of prohibited acts—and the restoration of that GCT credit—is administered equitably across all individuals in all facilities. To that end, the Department of Justice will conduct and publish a demographic analysis over the past three years of (1) all prohibited acts that have led to the forfeiture, disallowance, or withholding of GCT credit; and (2) instances in which GCT credit was restored to determine whether any practices are leading to a disparate impact. This information will be part of the Bureau's evaluation whether a notice of proposed rulemaking regarding the classification of prohibited acts and their available penalties under the current inmate discipline program, codified at 28 CFR part 541, is warranted.

Comment: Does the Bureau require a risk and needs assessment and a release plan as conditions for earning GCT credit? Several commenters submitted comments regarding the Bureau's use of ''risk assessments'' under the FSA as a condition of earning GCT credit. One commenter asked whether inmates are required to undergo a ''needs assessment'' or have a ''solid release plan'' as ''conditions of obtaining'' GCT credit, opining that if these requirements were imposed, recidivism rates would decrease tremendously. The commenter indicated that ''the rule does mention that attending literacy classes or classes to obtain a GED would be one of the ways to earn credit[, as would] participating in any Bureau-authorized program. I am assuming the needs assessment falls under the Bureau-authorized program.''

The commenter also noted that the FSA requires the Bureau to conduct inmate risk assessments, which the commenter suggested should help the Bureau to set programming goals for inmates, asking: ''could participation [in] these assessment[s] be a mandated requirement to receiv[e] GCT credit[?] It sounds like it[']s up to the Bureau['s] discretion.''

The commenter correctly interprets the FSA, but misunderstands the purpose of this rule, which is to explain how GCT credit will be calculated under the FSA. The changes to the method for calculating GCT credit are required by section 102(b) of the FSA, which amends 18 U.S.C. 3624(b) to indicate that inmates may receive up to 54 days of GCT credit for each year of the sentence imposed by the court, instead of for each year of actual time served.

The commenter is confusing the changes to GCT credit calculations mandated by section 102(b) of the FSA with FSA ''Time Credits,'' which are authorized under section 101 of the FSA, and for which the Bureau will be publishing a separate rule. Broadly speaking, section 101 of the FSA provides that an eligible inmate in Bureau custody who successfully completes Evidence-Based Recidivism Reduction programs or Productive Activities may earn FSA Time Credits to be applied towards prerelease custody (*i.e.,* transfer to a Residential Reentry Center (RRC) or home confinement for service of a portion of the inmate's sentence) or early transfer to supervised release (*i.e.,* early satisfaction of the inmate's sentence) under 18 U.S.C. 3624(g). FSA Time Credits are not the same as GCT credits and will not be earned or applied in the same manner.

The commenter's confusion is understandable. Section 102(b)(2) of the FSA indicated that all the amendments made by section 102 (pertaining to GCT credits) could only take effect *after* the Attorney General completed and released the risk and needs assessment system described in section 101(a) (largely pertaining to FSA Time

Credits).[6] The Department of Justice publicly released this risk and needs assessment system on July 19, 2019. Therefore, in the proposed rule, we explained that the Bureau had already begun recalculating release dates due to the changes made by section 102(b) to the Bureau's GCT credit calculation method in anticipation of the July 19, 2019 release of the risk and needs assessment system.

Because explaining this point required a discussion of the release of the risk and needs assessment, the proposed rule may have given the impression that the risk and needs assessment was somehow connected to the process of calculating GCT credit, which is incorrect. The only connection between the risk and needs assessment and GCT credit is that the FSA conditioned the Bureau's implementation of the modified method of GCT credit calculation on the timing of the public release of the risk and needs assessment tool. Otherwise, as a practical matter, earning GCT credit is not predicated or conditioned upon any requirement that inmates have a plan for release or go through a risk assessment.

Comment: The proposed rule would prevent elderly offenders eligible for home confinement from earning GCT. One comment was comprised entirely of what appeared to be a reprint of an article or editorial entitled ''Durbin, Lee Introduce Bill To Allow Nonviolent Elderly Prisoners Eligible For Release To Home Confinement To Benefit From Good Time Credit.'' The article had an explanatory subtitle: ''The First Step Act Reauthorized And Expanded A Pilot Program To Place Elderly And Terminally Ill Inmates In Home Confinement, But BOP's Misinterpretation Of This Provision Will Result In Elderly Offenders Unnecessarily Spending A Longer Time Behind Bars Before Becoming Eligible For Release To Home Confinement.''

This comment (including the article it reproduces) appears to refer to a bill passed in the House of Representatives on December 3, 2019 as H.R. 4018 and introduced in the Senate on December 12, 2019 as S.3035, the Elderly Home Detention Pilot Program Technical Corrections Act of 2019. The House Judiciary Committee Report accompanying this bill explains that H.R. 4018, a bill '' '[t]o provide that the amount of time that an elderly offender must serve before being eligible for placement in home detention is to be reduced by the amount of good time credits earned by the prisoner, and for other purposes,' would ensure that participants in the Second Chance Act elderly prisoner pilot program receive credit for good conduct time.'' H. Rept. 116–311, at 2 (2019).

The Bureau's current practice permits inmates who participate in the elderly prisoner pilot program to earn GCT credit, calculated with respect to their projected release date. The projected release date includes release from time in home detention or community confinement. S.3035 would not affect the Bureau's process for calculating GCT credit, but rather the determination of eligibility for elderly offender home confinement. The bill would provide that elderly offenders would become eligible for home confinement under the elderly offender pilot program if they had served two-thirds of their sentence as calculated based on their *projected release date* (which might be reduced by GCT credit), instead of their *full term of sentence* as imposed by the court. This new method of calculating eligibility for elderly offender home confinement would not impact an inmate's actual accrual or application of GCT credit in any way.

Comment: The proposed rule will NOT make inmates eligible for the maximum of 12 months prerelease Residential Reentry Center (RRC) placement, contrary to the Second Chance Act's amendments to 18 U.S.C. 3624(c)(6)(C). Section 3624(c)(6)(C) of title 18 requires the Bureau to ensure that community confinement placement is ''of sufficient duration to provide the greatest likelihood of successful reintegration into the community.'' One commenter felt that the statute's requirement of ''sufficient duration'' should be interpreted to require the Bureau to afford qualifying inmates the maximum of 12 months of prerelease RRC placement.

As an initial matter, this comment does not address the proposed rule or the revised method of computing GCT credits under the FSA, and thus is not relevant to the final rule the Bureau issues today. Nonetheless, the Bureau notes that the commenter may have inadvertently overlooked the provisions directly before subparagraph (C). In subparagraph (A), the statute also requires the Bureau to ensure that community confinement is consistent with 18 U.S.C. 3621(b), which mandates that the Bureau designate each inmate to a place of imprisonment subject to a list of specific factors. The Bureau is specifically instructed by this statute to consider, for each designation determination, bed availability, the specific inmate's security designation, programming needs, mental and medical needs, faith-based needs, sentencing court recommendations, security concerns, and proximity to the inmate's primary residence.

Additionally, the Bureau must also consider the resources of the facility, the circumstances of the inmate's offense, the inmate's history and characteristics, court statements regarding the purposes of the sentence imposed, and recommendations or relevant policies of the Sentencing Commission. Consideration of all these very specific factors necessarily requires a case-by-case determination, as required by the remainder of 18 U.S.C. 3624(c)(6)(B), which, after referring to the exhaustive list of required designation considerations in section 3621(b), further reinforces that the Bureau must make the determination of community confinement placement ''on an individual basis.'' 18 U.S.C. 3624(c)(6)(B).

In the context of the full text of the statute, therefore, the commenter's assertion that 18 U.S.C. 3624(c)(6)(C) requires the Bureau to allow 12 months of community confinement in all cases, for all inmates, seems to be incorrect. This reading of the statute directly conflicts with the statute's mandate that the Bureau make this determination after a careful and thorough consideration of many factors on an individualized basis.

Comment: With regard to literacy requirements, there should be several changes to the Bureau's education programs. One commenter recommended specific ratios of GED, alternative literacy, and vocational training ''tutors'' per number of inmates, suggested that the Bureau provide payment and bonuses to inmates who tutor other inmates, and encouraged inmate placement in United States Department of Labor apprenticeship programs for teacher's aides. These recommendations will be taken under consideration by the Bureau and in consultation with Departments of Labor and Education, as appropriate, as it continues to develop inmate educational and vocational training opportunities.

Change in terminology regarding immigrants in federal custody. We make one minor change to conform with Executive Order 14012, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,* issued on Feburary 2, 2021, and Executive Order 14010, *Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage*

[6] Section 101(a) amends 18 U.S.C. 3632(a) to require the Attorney General to consult with an Independent Review Committee, also authorized by the FSA, to develop a risk and needs assessment system.

Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border, issued on February 5, 2021. Those Executive orders use the term ''noncitizen'' in place of the terms ''alien'' or ''illegal alien.'' Consistent with this representative change in terminology, and to promote accuracy, we likewise change the term ''alien'' in 28 CFR 523.20(d)(3) to ''noncitizen'' wherever it appears.

Regulatory Analyses

Executive Orders 12866 and 13563. Because this rule may raise novel legal or policy issues arising out of implementation of the First Step Act, the Office of Management and Budget (OMB) has determined that it constitutes a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and has reviewed it.

Executive Order 13132. This regulation will not have substantial direct effect on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act. The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This regulation pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995. This regulation will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act. This regulation is not a major rule as defined by the Congressional Review Act, 5 U.S.C. 804.

List of Subjects in 28 CFR Part 523

Prisoners.

Michael D. Carvajal,

Director, Federal Bureau of Prisons.

Under rulemaking authority vested in the Attorney General in 5 U.S.C. 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96, we amend 28 CFR part 523 as follows:

PART 523—COMPUTATION OF SENTENCE

■ 1. The authority citation for 28 CFR part 523 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3568 (repealed November 1, 1987, as to offenses committed on or after that date), 3621, 3622, 3624, 3632, 3635, 4001, 4042, 4081, 4082 (repealed in part as to conduct occurring on or after November 1, 1987), 4161–4166 (repealed October 12, 1984, as to offenses committed on or after November 1, 1987), 5006–5024 (repealed October 12, 1984, as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Revise § 523.20 to read as follows:

§ 523.20 Good conduct time.

(a) The Bureau of Prisons (Bureau or BOP) awards good conduct time (GCT) credit to inmates under conditions described in this section. GCT credit may be reduced if an inmate:

(1) Commits prohibited acts which result in certain disciplinary sanctions (see part 541 of this chapter); or

(2) Fails to comply with literacy requirements in this section and part 544 of this chapter.

(b) For inmates serving a sentence for offenses committed on or after November 1, 1987:

(1) The Bureau will award inmates up to 54 days of GCT credit for each year of the sentence imposed by the court. Consistent with this methodology, the Bureau will initially determine a projected release date by calculating the maximum GCT credit possible based on the length of an inmate's imposed sentence. The projected release date is subject to change during the inmate's incarceration.

(2) The Bureau will award prorated credit for any partial final year of the sentence imposed, subject to the requirements in this section. Accordingly, BOP calculates the projected GCT credit to be awarded for any portion of a sentence that is less than a full year at a prorated amount.

(3) An inmate may receive up to 54 days of GCT credit on each anniversary date of his or her imposed sentence, subject to the requirements in this section. Credit for the last year of a term of imprisonment is awarded the day after the end of the final ''anniversary period,'' unless the final year is a complete year, in which case credit for the last year is awarded on the first day of the final anniversary period

(4) When the inmate reaches the Bureau-projected release date, the sentence will be satisfied and the inmate will be eligible for release.

(c) For inmates serving a sentence for offenses committed on or after November 1, 1987, but before September 13, 1994, GCT credit is vested once received and cannot be withdrawn.

(d)(1) For inmates serving a sentence for offenses committed on or after September 13, 1994, but before April 26, 1996, all GCT credit will vest annually only for inmates who have earned, or are making satisfactory progress toward earning, a high school diploma, equivalent degree, or Bureau-authorized alternative program credit (see part 544 of this chapter).

(2) For inmates serving a sentence for an offense committed on or after April 26, 1996, the Bureau will award:

(i) Up to 54 days of GCT credit for each year of the sentence imposed, applied on the anniversary date of his or her imposed sentence, if the inmate has earned or is making satisfactory progress toward earning a high school diploma, equivalent degree, or Bureau-authorized alternative program credit; or

(ii) Up to 42 days of GCT credit for each year of the sentence imposed, applied on the anniversary date of his/her imposed sentence, if the inmate does not meet conditions described in paragraph (d)(2)(i) of this section.

(3) Notwithstanding the requirements of paragraphs (d)(1) and (2) of this section, a noncitizen (inmate who is not a citizen of the United States) who is subject to a final order of removal, deportation, or exclusion, is not required to participate in a literacy program to earn yearly awards of GCT credit. However, such inmates remain eligible to participate in literacy programs under part 544 of this chapter.

[FR Doc. 2022–02876 Filed 2–10–22; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 554

Burundi Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is removing from the Code of Federal Regulations the Burundi Sanctions Regulations as a result of the termination of the national emergency on which the regulations were based.

DATES: This rule is effective February 11, 2022.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treasury.gov/ofac.*

Background

On November 22, 2015, the President, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (IEEPA), issued Executive Order (E.O.) 13712, ''Blocking Property of Certain Persons Contributing to the Situation in Burundi'' (80 FR 73633, November 25, 2015). In E.O. 13712, the President found that the situation in Burundi, which had been marked by the killing of and violence against civilians, unrest, incitement of imminent violence, and significant political repression, and which threatened the peace, security, and stability of Burundi, constituted an unusual and extraordinary threat to the national security and foreign policy of the United States, and declared a national emergency to deal with that threat.

On April 6, 2016, OFAC issued the Burundi Sanctions Regulations, 31 CFR part 554 (81 FR 19878, April 6, 2016) (the ''Regulations''), as a final rule to implement E.O. 13712. The Regulations were issued in abbreviated form for the purpose of providing immediate guidance to the public.

On November 18, 2021, the President issued E.O. 14054, ''Termination of Emergency With Respect to the Situation in Burundi'' (86 FR 66149, November 19, 2021). In E.O. 14054, the President found that the situation that gave rise to the declaration of a national emergency in E.O. 13712 with respect to the situation in Burundi had been significantly altered by events of the past year, including the transfer of power following elections in 2020, significantly decreased violence, and President Ndayishimiye's pursuit of reforms across multiple sectors. Accordingly, the President terminated the national emergency declared in E.O. 13712 and revoked that order.

As a result, OFAC is removing the Regulations from the Code of Federal Regulations. Pursuant to section 202(a) of the National Emergencies Act (50 U.S.C. 1622(a)) and section 2 of E.O. 14054, termination of the national emergency declared in E.O. 13712 shall not affect any action taken or proceeding pending not finally concluded or determined as of November 18, 2021 (the date of E.O. 14054), any action or proceeding based on any act committed prior to the date of E.O. 14054, or any rights or duties that matured or penalties that were incurred prior to the date of E.O. 14054.

Public Participation

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

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose information collection requirements that would require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 31 CFR Part 554

Administrative practice and procedure, Banks, banking, Blocking of assets, Brokers, Burundi, Credit, Foreign trade, Investments, Loans, Sanctions, Securities, Services.

PART 554—[REMOVED]

■ For the reasons set forth in the preamble, and pursuant to 50 U.S.C. 1601–1651 and E.O. 14054 (86 FR 66149, November 19, 2021), OFAC amends 31 CFR chapter V by removing part 554.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–02949 Filed 2–10–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 313

[Docket ID: DOD–2019–OS–0109]

RIN 0790–AK59

The Chairman of the Joint Chiefs of Staff and the Joint Staff Privacy Program

AGENCY: The Chairman of the Joint Chiefs of Staff and the Joint Staff, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the Chairman of the Joint Chiefs of Staff and the Joint Staff Privacy Program. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy Program rule, which contains the necessary information for an agency-wide privacy program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the CFR.

DATES: This rule is effective on February 11, 2022.

FOR FURTHER INFORMATION CONTACT: Kyle Roseman, 703–695–7071.

SUPPLEMENTARY INFORMATION: DoD now has a single DoD-level Privacy Program rule at 32 CFR part 310 (84 FR 14728) that contains all the codified information required for the Department. The Chairman of the Joint Chiefs of Staff and the Joint Staff Program regulation at 32 CFR part 313, last updated on November 14, 1991 (56 FR 57802), is no longer required and can be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on the removal of policies and procedures that are either now reflected in another CFR part, 32 CFR part 310, or are publicly available on the Department's website. The Office of the Joint Chiefs of Staff is governed by the Privacy Act implementation policies of the Office of the Secretary of Defense.

This rule is one of 20 separate component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department eliminated the need for this component Privacy rule, thereby reducing costs to the public as explained in the preamble

of the DoD-level Privacy rule published on April 11, 2019 at 84 FR 14728–14811.

This rule is not significant under Executive Order 12866, ''Regulatory Planning and Review.''

List of Subjects in 32 CFR Part 313

Privacy.

PART 313—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 313 is removed.

Dated: February 8, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–02940 Filed 2–10–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2022–0035]

RIN 1625–AA09

Drawbridge Operation Regulation; Chicago River, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the Dearborn Street Bridge, mile 1.13, over the Main Branch of the Chicago River at Chicago, Illinois. During this maintenance period, the bridge need only operate one leaf while the other leaf remains secured to masted navigation. Vessels able to pass under the bridge without an opening may do so at any time.

DATES: This temporary final rule is effective from 11:59 p.m. on February 13, 2022 through 12 p.m. on November 1, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type USCG–2022–0035 in the ''SEARCH'' box and click ''SEARCH.'' In the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or email: Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email *Lee.D.Soule@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
IGLD 85 International Great Lakes Datum of 1985 LWD Low Water Datum based on IGLD 85
Pub. L. Public Law
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable, as the Coast Guard did not receive details for the maintenance event until January 20, 2022. There was insufficient time to undergo a full rulemaking process, including providing a reasonable comment period and considering those comments because the bridge is scheduled to start repairs on February 13, 2022. Delaying repairs would negatively impact public safety.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, as the public interest in initiating repairs to the bridge on time outweighs the potential burden the closure will place on waterway users. Most vessels that require an opening only need one leaf of the bridge to open to safely pass. Further, as necessary, vessels can detour through the Calumet River and arrive at the same destination.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Dearborn Street Bridge, mile 1.13, spans the Main Branch of the Chicago River at Chicago, Illinois. The Dearborn Street Bridge, mile 1.13, over the Main Branch of the Chicago River provides a horizontal clearance of 200 feet and a vertical clearance of 22 feet above LWD. The bridges of Chicago are historic and all of them are over 100 years old and require frequent maintenance and repairs that occur with little warning. Typically, these repairs must be attended to immediately to protect the health and welfare of pedestrians crossing the bridges each day. The current bridge regulations for the Chicago River are contained in 33 CFR 117.391 and allows the bridges to open on signal if a 12-hour advance notice is provided by commercial vessels and a 20-hour advance notice by recreational vessel during posted times. The Chicago River bridges operate infrequently as almost all vessels can pass through the bridges without an opening. The exceptions are recreational sailing vessels that pass the bridge in City of Chicago sponsored flotillas twice a year that can pass safely with one leaf open. Commercial vessels transits that require both bridge leafs to open are rare, occurring less than once a month on average. All vessels have the opportunity to detour through the Calumet River.

IV. Discussion of the Rule

This rule establishes a temporary change to the operation of the Dearborn Street Bridge, mile 1.13, over the Main Branch of the Chicago River at Chicago, Illinois. During the period from February 13, 2022 through November 1, 2022, the Dearborn Street Bridge, mile 1.13, need only operate one leaf for the passage of vessels, while the other leaf is secured to masted navigation for maintenance. The effect of not performing the maintenance would be to deny the bridge to an estimated 10,000 persons commuting to work daily if repairs and required maintenance are not started in a timely manner.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can

still transit the bridge through one leaf and that most vessels can pass under the bridge without an opening.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Government

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

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

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.391, effective from 11:59 p.m. on February 13, 2022 through 12 p.m. on November 1, 2022, temporarily add paragraph (f) to read as follows:

* * * * *

(f) The Dearborn Street Bridge, mile 1.13, need only operate one leaf for the passage of vessels, while the other leaf is secured to masted navigation for maintenance.

* * * * *

M.J. Johnston,

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

[FR Doc. 2022–02910 Filed 2–10–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2022–00596]

Safety Zone; Recurring Events in Captain of the Port Duluth Zone—Pointe to La Pointe Swim

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone for the Pointe to La Pointe Swim event in Bayfield, WI. This action is necessary to protect participants and spectators during the event. During the enforcement period, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or a designated on-scene representative.

DATES: The regulation listed in 33 CFR 165.943(a)(9) will be enforced as listed in Table 1 to 33 CFR 165.943 from 7 a.m. through 11 a.m. on August 6, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email LTJG Joseph McGinnis,

telephone (218)725–3818, email *DuluthWWM@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation for the annual Pointe to La Pointe Swim event in 33 CFR 165.943(a)(9) from 7 a.m. through 11 a.m. on August 06, 2022 on all waters between Bayfield, WI and Madeline Island, WI within an imaginary line created by the following coordinates: 46°48′27.55″ N, 090°48′56.86″ W, moving southeast to 46°48′21.2″ N, 090°48′59.9″ W, moving south to 46°47′19.91″ N, 090°49′46.18″ W, moving east 46°47′21.18″ N, 090°49′02.39″ W, then moving north to 46°48′21.20″ N, 090°48′56.86″ W and finally running back to the starting point.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Duluth or a designated on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.943 and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement of this safety zone via Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Duluth may be contacted via Channel 16, VFH–FM or at (218) 428–9357.

Dated: February 1, 2022.

F.M. Smith,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 2022–02942 Filed 2–10–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AD36

Land Uses; Special Uses; Procedures for Operating Plans and Agreements for Powerline Facility Maintenance and Vegetation Management Within and Abutting the Linear Right-of-Way for a Powerline Facility

AGENCY: Forest Service, (Agriculture) USDA.

ACTION: Final rule; technical amendment.

SUMMARY: The Forest Service, U.S. Department of Agriculture, is making purely technical, clarifying revisions to its existing regulations governing procedures for operating plans and agreements for powerline facility inspection, operation and maintenance, and vegetation management. The revisions are necessary to conform definitions and text in the regulations to revisions made to the proposed implementing directive in response to public comment. These purely technical, clarifying revisions do not formulate standards, criteria, or guidelines applicable to Forest Service programs and therefore do not require public notice and comment under section 14(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974.

DATES: Effective February 9, 2022.

FOR FURTHER INFORMATION CONTACT: Reggie Woodruff, Energy Program Manager, Lands and Realty Management, 202–205–1196 or *reginal.woodruff@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule makes purely technical, clarifying revisions to the Department's existing regulations at 36 CFR 251.51 and 251.56(h) governing procedures for operating plans and agreements for powerline facility inspection, operation and maintenance, and vegetation management. The revisions conform definitions in § 251.51 and text in § 251.56(h) to revisions made to the proposed implementing directive in response to public comment.

Specifically, the Department is adding the term ''qualified vegetation management specialist'' to the definition of ''hazard tree'' to be more inclusive of personnel titles used by owners and operators and is removing the reference to the Forest Service in connection with who may identify hazard trees because the owner or operator, not the Forest Service, is responsible for inspecting, identifying, and felling hazard trees.

In the definition of ''minimum vegetation clearance distance,'' the Department is adding the phrase ''that is used to prevent flashover between conductors and vegetation for various altitudes and operating voltages'' and removing the phrase ''within or abutting the linear boundary of a special use authorization for a powerline facility'' to better align the definition of minimum vegetation clearance distance with the industry definition.

In the definition for ''operating plan or agreement for a powerline facility,'' the Department is adding a reference to construction, reconstruction, and maintenance of access roads and trails, which are covered by an operating plan or agreement.

The Department is revising the definition for ''powerline facility'' to clarify that it includes communications equipment that is owned by the owner or operator; that solely supports operation and maintenance of the electric distribution or transmission lines; and that is not leased to other parties for communications uses that serve other purposes. Communications equipment that does not meet these criteria must be authorized under a separate special use authorization.

The Department is removing the terms ''removal'' and ''remove'' as they relate to hazard trees and vegetation in the definitions and text and replacing them with the terms ''felling'' and ''fell'' to accurately describe accepted treatment of hazard trees and vegetation.

Consistent with the defined term ''linear right-of-way,'' the Department is replacing the phrase ''linear boundary of a special use authorization for a powerline facility'' with the phrase ''linear right-of-way for a powerline facility'' in the definitions for ''minimum vegetation clearance distance,'' ''emergency vegetation management,'' ''operating plan or agreement for a powerline facility (operating plan or agreement),'' and ''non-emergency (routine) vegetation management.''

An owner or operator that meets either of the two criteria for an operating agreement specified in the governing statute, section 512 of the Federal Land Policy and Management Act (43 U.S.C. 1772), is eligible for an operating agreement. An owner or operator that meets both criteria is also eligible. To clarify that point, the Department is revising § 251.56(h)(2) to provide that an owner or operator that meets the first and/or the second criterion is eligible for an operating agreement.

Consistent with the final implementing directive, for powerline facilities without an operating plan, the Department is revising § 251.56(h)(3) to extend the deadline for submitting a proposed operating plan or agreement from August 31, 2023, to 18 months from the date the authorized officer notifies the owner or operator that a proposed operating plan or agreement must be submitted, which must occur no later than September 30, 2026. Revised § 251.56(h)(3) gives the authorized officer the discretion to determine the sequence of notification of the requirement to submit a proposed modified operating plan or proposed operating plan or agreement, based on factors enumerated in the final implementing directive.

The final implementing directive provides for the requisite environmental

analysis and consultation for routine vegetation management to be completed before a proposed operating plan or agreement is approved, or case-by-case after a proposed operating plan or agreement is approved, but before routine vegetation management is conducted. Accordingly, the Department is revising the second criterion in § 251.56(h)(5)(viii)(A) that must be met to conduct routine vegetation management without authorized officer approval to state that the proposed routine vegetation management must be covered by approval of a proposed operating plan or agreement or by subsequent case-by-case environmental analysis and consultation.

Also for consistency with the final implementing directive, the Department is revising § 251.56(h)(5)(viii)(B) to provide that the owner or operator must notify the authorized officer by email of the location and type of emergency vegetation management as soon as practicable, but no later than 24 hours after completion, and that within 30 days of completion must submit to the authorized officer a written report detailing at a minimum the location, type, and scope of emergency vegetation management conducted, the reason it was conducted, the methods used to conduct it, and the resulting benefit.

For consistency with the final implementing directive, the Department is revising § 251.56(h)(7) to require that at least every 10 years, rather than every 5 years, from the approval date of an operating plan or agreement, the owner or operator must review and, as appropriate not just as necessary, propose updates to the operating plan or agreement to ensure consistency with changed conditions. In addition, consistent with the final implementing directive, revised paragraph (h)(7) provides that proposed updates to an approved operating plan or agreement that are deemed significant by the authorized officer will be treated as proposed modifications and must be submitted by the owner or operator for review and approval by the authorized officer in accordance with the procedures described in paragraph (h)(6). Revised paragraph (h)(7) further provides that proposed updates that are deemed non-significant by the authorized officer may be made by written agreement of the owner or operator and the authorized officer.

Regulatory Certifications

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Consistent with Executive Order (E.O.) 12866, the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will determine whether proposed, interim, and final rules that impose, eliminate, or modify requirements on non-Forest Service parties are significant and will review any proposed, interim, or final rules that OIRA has designated as significant. This final rule does not impose, eliminate, or modify requirements on non-Forest Service parties and therefore does not require a significance determination by OIRA. E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Forest Service has developed this final rule consistent with E.O. 13563.

Congressional Review Act

Since this final rule does not impose, eliminate, or modify requirements on non-Forest Service parties, it is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996 (known as the Congressional Review Act), 5 U.S.C. 804(2).

National Environmental Policy Act

This final rule will make purely technical, clarifying revisions to existing Forest Service regulations at 36 CFR 251.51 and 251.56(h) to conform to revisions made to the proposed implementing directive in response to public comment. Agency regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment (EA) or environmental impact statement (EIS) ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Forest Service has concluded that this final rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an EA or EIS.

Regulatory Flexibility Act Analysis

The Forest Service has considered this final rule under the requirements of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). This final rule will not have any direct effect on small entities as defined by the Regulatory Flexibility Act. The final rule will not impose recordkeeping requirements on small entities; will not affect their competitive position in relation to large entities; and will not affect their cash flow, liquidity, or ability to remain in the market. Therefore, the Forest Service has determined that this final rule will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act.

Federalism

The Forest Service has considered this final rule under the requirements of E.O. 13132, *Federalism.* The Forest Service has determined that the final rule conforms with the federalism principles set out in this E.O.; will not impose any compliance costs on the states; and will not have substantial direct effects on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the Forest Service has concluded that the final rule does not have Federalism implications.

Consultation With Tribal Governments

The Forest Service has reviewed this final rule in accordance with the requirements of E.O. 13175, *Consultation and Coordination with Indian Tribal Governments.* The Forest Service has determined that national tribal consultation is not necessary for the final rule. The final rule, which will make purely technical, clarifying revisions to existing Forest Service regulations at 36 CFR 251.51 and 251.56(h) to conform to revisions made to the proposed implementing directive in response to public comment, does not impose, eliminate, or modify requirements on non-Forest Service parties and therefore does not have any direct effects on tribes.

Environmental Justice

The Forest Service has considered the final rule under the requirements of E.O. 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.* The Forest Service has determined that the final rule is consistent with E.O. 12898.

No Takings Implications

The Forest Service has analyzed the final rule in accordance with the principles and criteria in E.O. 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights.* The Forest Service has determined that the final rule will not

pose the risk of a taking of private property.

Energy Effects

The Forest Service has reviewed the final rule under E.O. 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.* The Forest Service has determined that the final rule will not constitute a significant energy action as defined in E.O. 13211, and OIRA has not otherwise designated the final rule as a significant energy action.

Civil Justice Reform

The Forest Service has analyzed the final rule in accordance with the principles and criteria in E.O. 12988, *Civil Justice Reform.* Upon issuance of the final rule, (1) all state and local laws and regulations that conflict with the final rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this final rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), signed into law on March 22, 1995, the Forest Service has assessed the effects of the final rule on state, local, and tribal governments and the private sector. The final rule will not compel the expenditure of $100 million or more by any state, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Controlling Paperwork Burdens on the Public

The final rule does not contain information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, and Water resources.

Therefore, for the reasons set forth in the preamble, the Department is amending part 251, subpart B, of title 36 of the Code of Federal Regulations as follows:

PART 251—LAND USES

Subpart B—Special Uses

■ 1. The authority citation for part 251 continues to read as follows:

Authority: 16 U.S.C. 472, 479b, 551, 1134, 3210, 6201–13; 30 U.S.C. 1740, 1761–1771.

■ 2. The authority citation for subpart B continues to read as follows:

Authority: 16 U.S.C. 460*l*–6a, 460*l*–6d, 472, 497b, 497c, 551, 580d, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1772.

■ 3. Amend § 251.51 by revising the definitions of ''Hazard tree'', ''Minimum vegetation clearance distance'', ''Operating plan or agreement for a powerline facility (hereinafter ''operating plan or agreement'')'', ''Powerline facility'', and ''Vegetation management'' to read as follows:

§ 251.51 Definitions.

* * * * *

Hazard tree—for purposes of vegetation management for a powerline facility, any tree, brush, shrub, other plant, or part thereof, hereinafter ''vegetation'' (whether located on NFS lands inside or outside the linear right-of-way for the powerline facility), that has been designated, prior to failure, by a certified or licensed arborist, qualified vegetation management specialist, or forester under the supervision of the owner or operator to be:

(1) Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and

(2) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the minimum vegetation clearance distance as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement.

* * * * *

Minimum vegetation clearance distance—the calculated distance (stated in feet or meters) that is used to prevent flashover between conductors and vegetation for various altitudes and operating voltages. The MVCD is measured from a conductor's maximum operating sag to vegetation on NFS lands within the linear right-of-way for a powerline facility and on NFS lands adjacent to either side of the linear right-of-way for a powerline facility for purposes of felling or pruning hazard trees, which the owner or operator uses to determine whether vegetation poses a system reliability hazard to the powerline facility.

* * * * *

Operating plan or agreement for a powerline facility (hereinafter ''operating plan or agreement'')—a plan or agreement prepared by the owner or operator of a powerline facility, approved by the authorized officer, and incorporated by reference into the corresponding special use authorization that provides for long-term, cost-effective, efficient, and timely inspection, operation, maintenance, and vegetation management of the powerline facility on NFS lands within the linear right-of-way for the powerline facility and on NFS lands adjacent to either side of the linear right-of-way to fell or prune hazard trees and to construct, reconstruct, and maintain access roads and trails, to enhance electric reliability, promote public safety, and avoid fire hazards.

* * * * *

Powerline facility. One or more electric distribution or transmission lines authorized by a special use authorization, and all appurtenances to those lines supporting conductors of one or more electric circuits of any voltage for the transmission of electric energy, overhead ground wires, and communications equipment that is owned by the owner or operator; that solely supports operation and maintenance of the electric distribution or transmission lines; and that is not leased to other parties for communications uses that serve other purposes.

* * * * *

Vegetation management. (1) *Emergency vegetation management*—unplanned felling and pruning of vegetation on National Forest System lands within the linear right-of-way for a powerline facility and unplanned felling and pruning of hazard trees on abutting National Forest System lands that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard.

(2) *Non-emergency (routine) vegetation management*—planned actions as described in an operating plan or agreement periodically taken to fell or prune vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on abutting National Forest System lands to fell or prune hazard trees to

ensure normal powerline facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

■ 4. Amend § 251.56 by revising paragraphs (h)(2), (h)(3), (h)(5)(viii), (h)(7), and (h)(10)(v) to read as follows:

§ 251.56 Terms and Conditions

* * * * *

(h) * * *

(2) *Use of operating agreements.* Powerline facilities that are not subject to the mandatory reliability standards established by the Electric Reliability Organization and/or that sold less than or equal to 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years immediately preceding March 23, 2018, may be subject to an agreement, instead of an operating plan. Powerline facilities that are not subject to an agreement must be subject to an operating plan.

(3) *Existing operating plans and lack of an operating plan.* The authorized officer shall determine, in consultation with the owner or operator of a powerline facility, whether the existing operating plan for that powerline facility is consistent with paragraph (h) of this section and shall notify the owner or operator of that determination. Within 18 months of the date of notification that the existing operating plan is inconsistent with paragraph (h) of this section, the owner or operator shall modify the existing operating plan to be consistent with paragraph (h) of this section or, if eligible, shall prepare a proposed operating agreement and shall submit the proposed modified operating plan or proposed operating agreement to the authorized officer for review and approval. Existing operating plans that are consistent with paragraph (h) of this section do not have to be submitted for reapproval by the authorized officer. If an owner or operator does not have an operating plan, within 18 months of the date of notification from the authorized officer that a proposed operating plan or agreement must be submitted, the owner or operator shall submit to the authorized officer a proposed operating plan or agreement consistent with paragraph (h) of this section for review and approval. The authorized officer shall provide notification of the requirement to submit a proposed modified operating plan or a proposed operating plan or agreement no later than September 30, 2026. The authorized officer has the discretion to determine the sequence of notification, based on factors enumerated in implementing Forest Service directives.

* * * * *

(5) * * *

(viii) Include the following procedures with regard to whether authorized officer approval is required for vegetation management:

(A) *Routine vegetation management.* Routine vegetation management must have prior written approval from the authorized officer, unless all 3 of the following conditions are met:

(*1*) The owner or operator has submitted a request for approval to the authorized officer in accordance with the specified timeframe in the approved operating plan or agreement;

(*2*) The proposed routine vegetation management is covered by approval of a proposed operating plan or agreement or by subsequent case-by-case environmental analysis and consultation; and

(*3*) The authorized officer has failed to respond to the request in accordance with the specified timeframe in the approved operating plan or agreement.

(B) *Emergency vegetation management.* Emergency vegetation management does not require prior written approval from the authorized officer. The owner or operator shall notify the authorized officer by email of the location and type of emergency vegetation management as soon as practicable, but no later than 24 hours after completion. Within 30 days of completion, the owner or operator shall submit to the authorized officer a written report detailing at a minimum the location, type, and scope of emergency vegetation management conducted, the reason it was conducted, the methods used to conduct it, and the resulting benefit;

* * * * *

(7) *Review and expiration of approved operating plans and agreements.* At least every 10 years from the approval date of an operating plan or agreement, the owner or operator shall review and, as necessary or appropriate, propose updates to the operating plan or agreement to ensure consistency with changed conditions. Proposed updates to an approved operating plan or agreement that are deemed significant by the authorized officer shall be treated as proposed modifications and shall be submitted by the owner or operator for review and approval by the authorized officer in accordance with the procedures described in paragraph (h)(6) of this section. Proposed updates that are deemed non-significant by the authorized officer may be made by written agreement of the owner or operator and the authorized officer. Upon expiration of a special use authorization for a powerline facility, the owner or operator shall prepare a new proposed operating plan or agreement, either solely or in consultation with the authorized officer, and shall submit it to the authorized officer for review and approval in accordance with the procedures described in paragraph (h)(6) of this section.

* * * * *

(10) * * *

(v) Seek to minimize the need for case-by-case approvals for routine vegetation management (including hazard tree felling and pruning), powerline facility inspection, and operation and maintenance of powerline facilities; and

* * * * *

Dated: February 7, 2022.

Meryl Harrell,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 2022–02889 Filed 2–9–22; 11:15 am]

BILLING CODE 3411–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0736; FRL–9093–01–OCSPP]

Bacillus subtilis Strain CH3000; Exemption From The Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Bacillus subtilis* strain CH3000 in or on all food commodities when used in accordance with label directions and good agricultural practices. Chr. Hansens Laboratory Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus subtilis* strain CH3000 under FFDCA when used in accordance with this exemption.

DATES: This regulation is effective February 11, 2022. Objections and requests for hearings must be received on or before April 12, 2022 and must be filed in accordance with the instructions

provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0736, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is 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 OPP Docket is (703) 305–5805.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Public Reading Room are closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0736 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 12, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although EPA strongly encourages those interested in submitting objections or a hearing request to submit objections and hearing requests electronically. *See* Order Urging Electronic Service and Filing (April 10, 2020), *https://www.epa.gov/sites/production/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.* At this time, because of the COVID–19 pandemic, the judges and staff of the Office of Administrative Law Judges are working remotely and not able to accept filings or correspondence by courier, personal delivery, or commercial delivery, and the ability to receive filings or correspondence by U.S. Mail is similarly limited. When submitting documents to the U.S. EPA Office of Administrative Law Judges (OALJ), a person should utilize the OALJ e-filing system at *https://yosemite.epa.gov/OA/EAB/EAB-ALJ_upload.nsf.*

Although EPA's regulations require submission via U.S. Mail or hand delivery, EPA intends to treat submissions filed via electronic means as properly filed submissions during this time that the Agency continues to maximize telework due to the pandemic; therefore, EPA believes the preference for submission via electronic means will not be prejudicial. If it is impossible for a person to submit documents electronically or receive service electronically, *e.g.,* the person does not have any access to a computer, the person shall so advise OALJ by contacting the Hearing Clerk at (202) 564–6281. If a person is without access to a computer and must file documents by U.S. Mail, the person shall notify the Hearing Clerk every time it files a document in such a manner. The address for mailing documents is U.S. Environmental Protection Agency, Office of Administrative Law Judges, Mail Code 1900R, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0736, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Background

In the **Federal Register** of March 22, 2021 (86 FR 15162) (FRL–10021–44), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance exemption petition (PP 0F8844) by Chr. Hansens Laboratory Inc., 9015 W Maple St., Milwaukee, WI 53214. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the fungicide and nematicide *Bacillus subtilis* strain CH3000 in or on all food commodities. That notice referenced a summary of the petition prepared by the petitioner Chr. Hansens Laboratory Inc. and available in the docket via *https://www.regulations.gov.* No comments were received on the notice of filing.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the

legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicological and exposure data on *Bacillus subtilis* strain CH3000 and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the document entitled ''Human Health Risk Assessment of *Bacillus paralicheniformis* strain CH2970 and *Bacillus subtilis* strain CH3000, New Active Ingredients, in CH2970, CH3000, and CH2970/CH3000 Proposed for Registration and Associated Petitions Requesting Tolerance Exemptions'' (*Bacillus paralicheniformis* strain CH2970 and *Bacillus subtilis* strain CH3000 Human Health Assessment). This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

The available data and rationale demonstrated that, with regard to humans, *Bacillus subtilis* strain CH3000 is not toxic, pathogenic, or infective via the pulmonary route of exposure when administered intratracheally at a single dose of 1.03×10^9 colony-forming units per test animal; is not anticipated to be toxic, pathogenic, or infective via the oral route of exposure; and is not anticipated to be toxic or irritating via the dermal route of exposure. Additionally, the acute pulmonary toxicity/pathogenicity study demonstrated a pattern of clearance of *Bacillus subtilis* strain CH3000 from the cecum contents and organs of the test animals. Although there may be minimal dietary exposure to residues of *Bacillus subtilis* strain CH3000 when used in accordance with label directions and good agricultural practices, there are no risks of human health concern due to the lack of potential for adverse effects. There are no current or proposed uses of *Bacillus subtilis* strain CH3000 that would result in non-occupational exposures. Because there are no threshold levels of concern with the toxicity, pathogenicity, or infectivity of *Bacillus subtilis* strain CH3000, EPA determined that no additional margin of safety is necessary to protect infants and children as part of the qualitative assessment conducted. Based upon its evaluation in the *Bacillus paralicheniformis* strain CH2970 and *Bacillus subtilis* strain CH3000 Human Health Assessment, which concludes that there are no risks of concern from aggregate exposure to *Bacillus subtilis* strain CH3000, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Bacillus subtilis* strain CH3000.

B. Analytical Enforcement Methodology

An analytical method is not needed for *Bacillus subtilis* strain CH3000 due to the lack of potential adverse effects, which is the basis for EPA establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of *Bacillus subtilis* strain CH3000 in or on all food commodities when used in accordance with label directions and good agricultural practices.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 4, 2022.

Edward Messina,

Director, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.1388 to subpart D to read as follows:

§ 180.1388 *Bacillus subtilis strain* CH3000; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Bacillus subtilis* strain CH3000 in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2022–02907 Filed 2–10–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0737; FRL–9094–01–OCSPP]

Bacillus paralicheniformis Strain CH2970; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of *Bacillus paralicheniformis* strain CH2970 in or on all food commodities when used in accordance with label directions and good agricultural practices. Chr. Hansens Laboratory Inc. submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus paralicheniformis* strain CH2970 under FFDCA when used in accordance with this exemption.

DATES: This regulation is effective February 11, 2022. Objections and requests for hearings must be received on or before April 12, 2022 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0737, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is 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 OPP Docket is (703) 305–5805.

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SUPPLEMENTARY INFORMATION:

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- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

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C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0737 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before April 12, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b), although EPA strongly encourages those interested in submitting objections or a hearing request to submit objections and hearing requests electronically. *See* Order Urging Electronic Service and Filing (April 10, 2020), *https://www.epa.gov/sites/production/files/2020-05/documents/2020-04-10_-_order_urging_electronic_service_and_filing.pdf.* At this time, because of the COVID–19 pandemic, the judges and staff of the Office of Administrative Law Judges are working remotely and not able to accept filings or correspondence by courier, personal delivery, or commercial delivery, and the ability to receive filings or correspondence by U.S. Mail is similarly limited. When submitting documents to the U.S. EPA Office of Administrative Law Judges (OALJ), a person should utilize the OALJ e-filing system at *https://yosemite.epa.gov/OA/EAB/EAB-ALJ_upload.nsf.*

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pandemic; therefore, EPA believes the preference for submission via electronic means will not be prejudicial. If it is impossible for a person to submit documents electronically or receive service electronically, *e.g.,* the person does not have any access to a computer, the person shall so advise OALJ by contacting the Hearing Clerk at (202) 564–6281. If a person is without access to a computer and must file documents by U.S. Mail, the person shall notify the Hearing Clerk every time it files a document in such a manner. The address for mailing documents is U.S. Environmental Protection Agency, Office of Administrative Law Judges, Mail Code 1900R, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

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II. Background

In the **Federal Register** of March 22, 2021 (86 FR 15162) (FRL–10021–44), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance exemption petition (PP 0F8843) by Chr. Hansens Laboratory Inc., 9015 W Maple St., Milwaukee, WI 53214. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the fungicide and nematicide *Bacillus paralicheniformis* strain CH2970 in or on all food commodities. That notice referenced a summary of the petition prepared by the petitioner Chr. Hansens Laboratory Inc. and available in the docket via *https://www.regulations.gov.* No comments were received on the notice of filing.

III. Final Rule

A. EPA's Safety Determination

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

EPA evaluated the available toxicological and exposure data on *Bacillus paralicheniformis* strain CH2970 and considered their validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which EPA relied and its risk assessment based on those data can be found within the document entitled ''Human Health Risk Assessment of *Bacillus paralicheniformis* strain CH2970 and *Bacillus subtilis* strain CH3000, New Active Ingredients, in CH2970, CH3000, and CH2970/CH3000 Proposed for Registration and Associated Petitions Requesting Tolerance Exemptions'' (*Bacillus paralicheniformis* strain CH2970 and *Bacillus subtilis* strain CH3000 Human Health Assessment). This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

The available data and rationale demonstrated that, with regard to humans, *Bacillus paralicheniformis* strain CH2970 is not toxic, pathogenic, or infective via the pulmonary route of exposure when administered intratracheally at a single dose of 6.3 x 10^8 colony-forming units per test animal; is not anticipated to be toxic, pathogenic, or infective via the oral route of exposure; and is not anticipated to be toxic or irritating via the dermal route of exposure. Additionally, the acute pulmonary toxicity/pathogenicity study demonstrated a pattern of clearance of *Bacillus paralicheniformis* strain CH2970 from the blood, cecum contents, and organs of the test animals. Although there may be minimal dietary exposure to residues of *Bacillus paralicheniformis* strain CH2970 when used in accordance with label directions and good agricultural practices, there are no risks of human health concern due to the lack of potential for adverse effects. There are no current or proposed uses of *Bacillus paralicheniformis* strain CH2970 that would result in non-occupational exposures. Because there are no threshold levels of concern with the toxicity, pathogenicity, or infectivity of *Bacillus paralicheniformis* strain CH2970, EPA determined that no additional margin of safety is necessary to protect infants and children as part of the qualitative assessment conducted. Based upon its evaluation in the *Bacillus paralicheniformis* strain CH2970 and *Bacillus subtilis* strain CH3000 Human Health Assessment, which concludes that there are no risks of concern from aggregate exposure to *Bacillus paralicheniformis* strain CH2970, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Bacillus paralicheniformis* strain CH2970.

B. Analytical Enforcement Methodology

An analytical method for detecting and measuring pesticide residues is not needed for *Bacillus paralicheniformis* strain CH2970 due to the lack of potential for adverse effects, which supports the establishment of the exemption from the requirement of a tolerance without any numerical limitation.

C. Conclusion

Therefore, an exemption from the requirement of a tolerance is established for residues of *Bacillus paralicheniformis* strain CH2970 in or on all food commodities when used in accordance with label directions and good agricultural practices.

IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, EPA has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require EPA's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 4, 2022.

Edward Messina,

Director, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I as follows:

PART 180—TOLERANCES AND EXEMPTIONS FOR PESTICIDE CHEMICAL RESIDUES IN FOOD

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Add § 180.1389 to subpart D to read as follows:

§ 180.1389 *Bacillus paralicheniformis* strain CH2970; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Bacillus paralicheniformis* strain CH2970 in or on all food commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2022–02905 Filed 2–10–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 12–375, FCC 21–60; FR ID 70815]

Rates for Interstate Inmate Calling Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the Commission's *2021 Inmate Calling Services (ICS) Order,* FCC 21–60, in which the Commission, among other actions, expanded its consumer disclosure requirements and added new requirements for providers of calling services for incarcerated people (calling services) that seek waiver of the Commission's interstate and international rate caps. The Commission also required that calling services providers separately disclose, in connection with international calling services rates, the rate component for terminating calls to each country where that provider terminates international calls. This document is consistent with the *2021 ICS Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of these rules.

DATES: The amendments to 47 CFR 64.6110 and the addition of 47 CFR 64.6120, published July 28, 2021 (86 FR 40682), and delayed indefinitely, are effective on February 11, 2022. This rule is effective February 11, 2022.

FOR FURTHER INFORMATION CONTACT: Erik Raven-Hansen, Pricing Policy Division, Wireline Competition Bureau, (202) 418–1532, or email *erik.raven-hansen@fcc.gov.*@fcc.gov.

SUPPLEMENTARY INFORMATION: This document announces that, on January 24, 2022, OMB approved, for a period of three years, the information collection requirements relating to §§ 64.6110 and 64.6120 of the Commission's rules, as contained in the Commission's *2021 ICS Order,* FCC 21–60, published at 86 FR 40682 on July 28, 2021. The OMB Control Number is 3060–1222. The Commission publishes this document as an announcement of the effective date of the rules.

In the *2021 ICS Order,* the Commission directed that § 64.6110 be

revised and § 64.6120 be added to reflect OMB's approval once that approval was received. We therefore revise §§ 64.6110 and 64.6120, previously published at 86 FR 40682, and delayed indefinitely, to remove §§ 64.6110(d) and 64.6120(d), both of which state that providers would be required to comply with the information requirements immediately upon publication by the Commission of a document in the **Federal Register** announcing OMB approval.

If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20002. Please include the OMB Control Number, 3060–1222, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on January 24, 2022 for the information collection requirements contained in the Commission's modifications to the Commission's rules in 47 CFR part 64. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1222.

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

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

OMB Control Number: 3060–1222.

OMB Approval Date: January 24, 2022.

Expiration Date: January 31, 2025.

Title: Inmate Calling Services (ICS) Provider Annual Reporting, Certification, Consumer Disclosure, and Waiver Request Requirements, WC Docket No. 12–375, FCC 21–60.

Form Numbers: FCC Form 2301(a) and FCC Form 2301(b).

Respondents: Business or other for profit.

Number of Respondents and Responses: 20 respondents; 23 responses.

Estimated Time per Response: 5 hours–80 hours.

Frequency of Response: Annual reporting; on occasion; and third party disclosure requirements.

Total Annual Burden: 2,940 hours.

Total Annual Cost: No Cost.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 1, 4(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 617 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i)–(j), 201(b), 218, 220, 225, 255, 276, 403, and 617.

Privacy Act Impact Assessment: No Impact(s).

Nature and Extent of Confidentiality: The Commission anticipates treating as presumptively confidential any particular information identified as proprietary by calling services providers.

Needs and Uses: Section 201 of the Communications Act of 1934, as amended (Act), 47 U.S.C. 201, requires that calling services providers' interstate and international rates and practices be just and reasonable. Section 276 of the Act, 47 U.S.C. 276, requires that payphone service providers (including calling services providers) be fairly compensated for completed calls.

On May 24, 2021, the Commission released the Third Report and Order (86 FR 40682, July 28, 2021), Order on Reconsideration (86 FR 40340, July 28, 2021), and Fifth Further Notice of Proposed Rulemaking (86 FR 40416, July 28, 2021), WC Docket No. 12–375, FCC 21–60 (*2021 ICS Order*), in which it continued its reform of the calling services marketplace. In that Order, the Commission, among other actions, expanded its consumer disclosure requirements and added new requirements for calling services providers seeking waiver of the Commission's interstate and international rate caps. The Commission also required, in connection with international calling services rates, that providers must separately disclose the rate component for terminating calls to each country where that provider terminates international calls.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

For the reasons set forth in the preamble, the Federal Communications Commission amends part 64 of title 47 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 255, 262, 276, 403(b)(2)(B), (c), 616, 620, 716, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

§ 64.6110 [Amended]

■ 2. In § 64.6110, remove paragraph (d).

§ 64.6120 [Amended]

■ 3. In § 64.6120, remove paragraph (d).

[FR Doc. 2022–02897 Filed 2–10–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2021–0004]

RIN 2127–AL88

Federal Motor Vehicle Safety Standards; Compressed Natural Gas Fuel Container Integrity

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the visual inspection labeling requirement in Federal Motor Vehicle Safety Standard (FMVSS) No. 304, ''Compressed natural gas fuel container integrity,'' by modifying the periodic inspection interval for compressed natural gas (CNG) fuel containers installed on vehicles with a gross vehicle weight rating (GVWR) greater than 4,536 kilograms (10,000 pounds). The inspection interval for these vehicles is modified from the currently-specified interval, ''at least every 36 months or 36,000 miles, whichever comes first,'' to ''at least every 12 months.'' For commercial operators of CNG heavy vehicles that often travel 100,000 miles per year or more, this change will eliminate the need to

perform unnecessary multiple visual inspections of their vehicles' CNG fuel containers per year. NHTSA believes this final rule is equally protective of safety as the cadence of inspection required by the current rule. This rulemaking commenced in response to petitions for rulemaking from the American Trucking Associations and Natural Gas Vehicles for America.

DATES:

Effective date: This final rule is effective March 14, 2022.

Compliance date: The compliance date for the amendments in this final rule is March 14, 2023. Optional early compliance is permitted.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than March 28, 2022.

ADDRESSES: Petitions for reconsideration of this final rule must refer to the docket and notice number set forth above and be submitted to the Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Note that all petitions received will be posted without change to *http://www.regulations.gov,* including any personal information provided. All submissions will be placed in the docket for this rulemaking. For more information, please see the Privacy Act heading under Rulemaking Analyses and Notices.

FOR FURTHER INFORMATION CONTACT: Mr. Ian MacIntire, Office of Crashworthiness Standards; telephone: 202–493–0248; facsimile: 202–493–2990, or Mr. Daniel Koblenz, Office of Chief Counsel; telephone: 202–366–2992; facsimile: 202–366–3820. The mailing address for these officials is: National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

NHTSA is issuing this final rule to amend the periodic inspection interval (*i.e.,* inspections that occur on a schedule, rather than after an incident) stated on the visual inspection label that is required under paragraph S7.4 of FMVSS No. 304, ''Compressed natural gas fuel container integrity.'' Under the current standard, CNG fuel containers must be permanently affixed with a label that states, among other things, that the container should be visually inspected after a motor vehicle accident or fire and at least every 36 months or 36,000 miles, whichever comes first, for damage and deterioration (S7.4(g)). The statement is required regardless of the vehicle's GVWR. NHTSA has determined that, although the label's recommended inspection intervals are appropriate for CNG light vehicles (*i.e.,* vehicles with a GVWR less than or equal to 4,536 kilograms (kg) (10,000 pounds (lb)), they are inappropriate for CNG heavy vehicles (*i.e.,* vehicles with a GVWR greater than 4,536 kg), which are generally driven many more miles per year than light vehicles.

NHTSA has reached this conclusion because the driving patterns and conditions under which CNG heavy vehicles travel are very different from those of CNG light vehicles, making the current time and mileage intervals inappropriate for CNG heavy vehicles. CNG light vehicles are typically used in commercial and non-commercial applications for which their annual Vehicle Miles Travelled (VMT) is between 10,000 miles and 12,000 miles. By contrast, CNG heavy vehicles are used almost exclusively in commercial operations in which their annual VMT is much higher, with the annual VMT of the heaviest CNG vehicles often exceeding 100,000 miles. Per accepted industry practice and State-imposed inspection requirements,[1] commercial operators of high-mileage CNG vehicles typically inspect their vehicles in accordance with the inspection interval printed on the container's label. As the current label indicates that operators should perform visual inspections every 36,000 miles, this amounts to multiple inspections per year.

CNG fuel container failures are extremely rare occurrences, and NHTSA is not aware of any data or analyses suggesting that performing multiple visual inspections of CNG fuel containers per year has made failures less likely to occur. The agency requested information on this subject, but the proposal only received six comments, five of which were from industry stakeholders that supported the revision and one was from an individual commenter who also supported the rule, and none of these commenters provided any information on this question. In view of this information, NHTSA has concluded that there is not a safety need for commercial operators of high-mileage CNG heavy vehicles to conduct multiple visual inspections of their vehicles' CNG fuel containers per year. This final rule amends the visual inspection label by eliminating the mileage interval for CNG heavy vehicles, and amending the time interval for these vehicles to once every 12 months. NHTSA believes 12 months is an appropriate interval because the Agency is not aware of any evidence that a more frequent inspection interval would have a safety benefit. Furthermore, a 12-month interval aligns the FMVSS No. 304 visual inspection label with the Federal Motor Carrier Safety Administration's (FMCSA) inspection regulations, which require that commercial vehicles, including fuel systems, be inspected annually.

II. NPRM

NHTSA initiated this rulemaking in response to two petitions for rulemaking the Agency received in 2016 from the American Trucking Associations (ATA) [2] and Natural Gas Vehicles for America (NGV America),[3] both of which requested that NHTSA address the issue of potentially too-frequent visual inspections by eliminating the mileage interval on the visual inspection label required under S7.4 (g) of FMVSS No. 304.

FMVSS No. 304 requires each CNG fuel container to be permanently labeled with the information specified in paragraphs (a) through (h) of S7.4. Currently, paragraph S7.4(g) specifically requires this label to include the following statement:

> This container should be visually inspected after a motor vehicle accident or fire and at least every 36 months or 36,000 miles, whichever comes first, for damage and deterioration.

After receiving the petitions from ATA and NGV America, NHTSA conducted an analysis of whether the current 3-year/36,000-mile visual inspection interval would be appropriate for CNG heavy vehicles, and if not, what an appropriate interval would be. The current inspection interval was chosen based on an analysis of CNG light vehicles, which

[1] As we noted in the NPRM, at least 20 States have adopted into law National Fire Protection Association (NFPA) Code 52, ''Vehicular Natural Gas Fuel Systems,'' which specifies that operators of commercial vehicle visually inspect CNG fuel containers in accordance with the visual inspection label permanently affixed to the container per FMVSS No. 304.

[2] According to its website, ATA is the largest national trade association for the trucking industry and covers every type of motor carrier in the U.S.

[3] According to its website, NGV America is a trade association that represents companies, environmental groups, and organizations interested in the promotion and use of natural gas as motor fuel.

are driven around 10,000 to 12,000 miles annually in both commercial and non-commercial contexts, which works out to approximately one inspection every three years for these vehicles. Because CNG heavy vehicles are expected to be used in exclusively commercial applications and typically have higher annual VMTs than their light vehicle counterparts, a 3-year/36,000-mile visual inspection interval could equate to up to 2–3 visual inspections per year. Further, as it is accepted industry practice (and, in many States, a requirement) for commercial CNG vehicle operators to follow the visual inspection label required under FMVSS No. 304, these commercial operators are generally conduct these multiple inspections.

The visual inspection is a detailed inspection of the fuel container and its components.[4] According to the NGV America guidance on the detailed visual inspection, shielding, enclosures, and coverings, as well as any system access panels are removed. The CNG fuel container and components are inspected for any damage including dents, gouges, scrapes, cuts, abrasions, discoloration, heat damage, and any form of corrosion. The valves and valve covers are inspected for signs of wear, damage, or leakage.

As part of its analysis into the net safety benefits of multiple annual inspections, NHTSA reviewed a 2013 report sponsored by FMCSA on CNG fuel container safety.[5] The report summarized the findings of a study investigating how to improve CNG-related regulations. In this report, the authors (who were contractors for FMCSA) recommended the removal of the mileage interval from the required visual inspection label since it was not intended for high-mileage commercial vehicles and because the study participants stated that multiple visual inspections per year to be ''burdensome and unnecessary.''

NHTSA also analyzed data on all CNG fuel container failures from 1984 to 2015 (the most recent data available).[6] NHTSA's analysis of the CNG fuel container failures found that, over this period, there have been a total of only 16 CNG fuel container failures in the United States in the 32-year period, most of which were caused by problems other than those detectable through a visual inspection, such as crashes, design flaws, or over-pressurization.[7] In fact, based on available information, it is not clear that any of these failures could have been prevented by the periodic visual inspections. Although periodic visual inspections could potentially detect problems such as gouging on the container surface from the mounting brackets, general damage from roadside debris, external corrosion, and damage to valves, such factors were not related to these 16 container failures. Periodic visual inspections would not protect against the possibility of failure due to over-pressurization or internal corrosion, and do not prevent container failures in a vehicle collision or fire. As this dataset did not state how recently or frequently the CNG fuel containers had been visually inspected prior to failure, NHTSA could not draw any conclusions from it relating to the appropriate frequency of visual inspections for fuel containers on heavy CNG vehicles. However, the extreme infrequency of CNG container failures over the 32-year period,[8] and the absence of failures that might have been prevented by way of a more frequent than annual visual inspection, suggest there is not a safety need to conduct multiple visual inspections of CNG containers per year.

On June 21, 2019, NHTSA published the NPRM preceding this final rule, proposing to amend the statement required under S7.4(g) so that it includes separate, discrete periodic inspection intervals for light and heavy CNG vehicles.[9] NHTSA proposed that the inspection interval for CNG fuel containers installed on light vehicles would be unchanged from the current standard, whereas the inspection interval for CNG fuel containers installed on heavy vehicles would be changed to at least once every 12 months, with no mileage interval.

Given the absence of evidence of any increased safety risk associated with performing just one (rather than multiple) inspection per year, NHTSA tentatively concluded in the NPRM that the 3-year/36,000-mile visual inspection interval on the label is not justified by a safety benefit. Accordingly, NHTSA tentatively concluded that changing the label to recommend a 12-month inspection interval, without a mileage interval, eliminated the need to conduct unnecessary visual inspections. An annual inspection interval would also have the advantage of synchronizing the label's inspection interval with FMCSA regulations that state that commercial vehicles must be inspected annually, thus limiting the cost of compliance with the label's recommendations.[10]

III. Summary of and Response to Comments

NHTSA received six comments in response to the NPRM. The comments were submitted by the two petitioners (NGV America and ATA), the National Waste & Recycling Association (NWRA),[11] Hexagon Mobile Pipeline LLC (Hexagon),[12] Agility Fuel Solutions LLC (Agility),[13] and one individual.

The commenters uniformly supported the adoption of the proposed rule, and voiced agreement with NHTSA's analysis and conclusions regarding the costs and safety impacts on operators of CNG heavy vehicles of changing the visual inspection label. NWRA requested that NHTSA impose an inspection documentation requirement. NHTSA has not adopted such a requirement in the final rule, as doing so would be both beyond the scope of this rulemaking, and beyond NHTSA's authority. Adding an inspection documentation requirement would not be in the scope of this rulemaking because we did not propose, or seek comment on, the establishment of an inspection documentation requirement. Such a requirement would be beyond

[4] Compressed Natural Gas Fuel System Inspection Guidance, NGV America Technology and Development Committee, *https://ngvam.wpengine.com/wp-content/uploads/2019/11/CNG-Vehicle-Fuel-System-Inspection-Guidance-1.pdf.*

[5] FMCSA–RRT–13–044, ''Natural Gas Systems: Suggested Changes to Truck and Motorcoach Regulations and Inspection Procedures,'' March 2013, *https://rosap.ntl.bts.gov/view/dot/83.*

[6] The source of this data was the Clean Vehicle Education Foundation (CVEF) Master Incident List, which provides information about all reported CNG incidents in the world through 2015. The CVEF Master Incident List is maintained by NGV America. A copy of the CVEF Master Incident List is available in the docket indicated in the heading of this notice.

[7] Among the 16 CNG fuel container failures, eight were caused by stress corrosion cracking from exposure to chemicals and acid that resulted in degradation of the glass fibers used in some container designs. In 2001, the American National Standards Institute (ANSI) revised the NGV 2 standard to address this issue, and there have been no reported failures of this type since. Of the remaining eight failures, two were caused by failure of pressure relief devices (PRD) to operate in a fire, one was caused by over-pressurization by faulty fueling systems, three were caused by a combination of stress corrosion cracking, physical damage, and over-pressurization, and two container failures were caused by physical damage due to impact in vehicle crashes.

[8] There are too few container failures to evaluate annual trends.

[9] 84 FR 29145.

[11] As self-described on its website, NWRA is a trade association representing nearly 70 percent of the private sector waste and recycling industry. Its nearly 700 members operate in all 50 States and the District of Columbia and are a mix of publicly-traded and privately-owned local, regional, and Fortune 500 national and international companies.

[12] As self-described on its website, Hexagon produces high-pressure composite storage cylinders and transportation modules for CNG and biogas.

[13] As self-described on its website, Agility is a global provider of clean fuel ''solutions'' for medium and heavy duty commercial vehicles.

NHTSA's authority because NHTSA is not authorized to enforce inspection requirements for commercial operators of CNG vehicles. NHTSA does not regulate how motor vehicles or motor vehicle equipment are used and maintained by commercial operators.

Agility suggested several changes to the proposed regulatory text that it believed would improve the readability of the visual inspection label without making substantive changes. We have decided not to adopt these changes. First, we do not have evidence indicating that replacing ''motor vehicle accident'' with ''accident'' would be meaningful. We have treated those terms as interchangeable in previous FMVSS No. 304 rulemakings relating to the inspection label.[14] Second, we believe that placing the phrase ''at least'' before the list of periodic inspection intervals could cause confusion because the label would read as though both ''(a)'' and ''(b)'' of the regulatory text could apply to the same vehicle, which is not correct because the two different inspection intervals apply to different weight classes. Finally, we believe that the change to the description of the weight class in (b), while shorter than the proposed regulatory text, would reduce clarity of the label by eliminating the parallel sentence structures of (a) and (b).

IV. Final Rule

After considering the information submitted by the petitioners and the comments received, we are adopting the changes to the visual inspection label proposed in the NPRM. Under this final rule, the portion of the label describing the recommended periodic inspection interval is bifurcated into separate instructions for light and heavy vehicles.

For light vehicles, the time and mileage inspection intervals are unchanged from the current S7.4(g) (every 3 years or 36,000 miles), since NHTSA believes the intervals described in the current S7.4(g) are still appropriate for light vehicles.[15] However, for heavy CNG vehicles, the label would describe a periodic inspection interval of once per year, with no mileage interval. As noted earlier, this interval for heavy CNG vehicles is consistent with FMCSA's annual inspection interval for commercial vehicles. NHTSA has concluded that this rule is not anticipated to have an impact on vehicle safety. As we explained earlier and in the NPRM, NHTSA is not aware of any evidence that multiple visual inspections of CNG fuel containers per year provides a safety benefit.

NHTSA recognizes that, for *low-mileage* heavy CNG heavy vehicles, the amended label could result in more frequent inspections than now specified under the current label. This is because under the existing label, the vehicles do not have to have a yearly inspection if they are used less than the 12,000 miles a year (on average), while under the revised label, a yearly inspection is specified, regardless of mileage. Two of the commenters, Hexagon and NGV America, addressed this issue and supported the proposed inspection interval for low-mileage vehicles as well. Hexagon stated that an inspection interval of one year was beneficial for low-mileage commercial CNG heavy vehicles because low-mileage commercial operations that use CNG heavy vehicles, such as refuse collection,[16] have more incidents than other sectors. NGV America stated that low-mileage commercial operations often operate in rigorous environmental conditions warranting a yearly inspection, and, moreover, are already subject to the FMCSA's requirement that commercial vehicles undergo an annual inspection.[17] Thus, as these commenters concurred that a one-year inspection interval is appropriate even for low-mileage CNG heavy vehicles, NHTSA concludes the proposed labeling requirement is appropriate for these vehicles as well.

Given the infrequency with which CNG failures currently occur, the Agency believes that conducting multiple visual inspections of CNG containers per year on heavy vehicles is unnecessary. That said, the contrary is not supported—NHTSA has *not* made a determination that fewer than one visual inspection per year *is* supported. In addition, the Agency lacks field data to support recommending a longer visual inspection interval, such as every 3 years or 5 years, and received no feedback or data from commenters that would advocate for such a change. Because heavy vehicles in commercial fleets tend to travel significantly more miles than light vehicles, the CNG fuel containers on heavy vehicles may be exposed to more wear and tear in a given period of time than CNG fuel containers on light vehicles. Accordingly, NHTSA concludes that an annual visual inspection interval is more appropriate than a less frequent interval as inspectors are more likely in an *annual* inspection cycle to identify and remedy damage to the CNG fuel container and fuel system than compared to, say, a 3-year or 5-year inspection interval.

The CNG industry (including container manufacturers, vehicle integrators, CNG vehicle fleet operators) agree that an annual visual inspection of CNG containers on heavy vehicles would reduce inspection costs without a reduction in safety.

V. Analysis of Costs and Benefits

Because NHTSA does not expect this rule to affect vehicle safety, the net benefit of this rule is a reduction in costs to operators of CNG heavy vehicles who will no longer perform multiple visual inspections per year. The magnitude of this reduction in costs depends on the size of the CNG heavy vehicle fleet, the number of excess visual inspections that are performed based on the suggestion on the current label's mileage interval, and the cost of conducting those additional visual inspections. Note that, for purposes of estimating costs and benefits, CNG heavy vehicles were broken down into two categories: CNG medium duty vehicles (with a GVWR greater than 4,536 kg (10,000 lb) and less than or equal to 11,793 kg (26,000 lb)) and CNG heavy duty vehicles (with a GVWR greater than 11,793 kg).

NHTSA estimated the size of the CNG heavy vehicle fleet, which consists of CNG medium duty vehicles and CNG heavy duty vehicles, using data from

[14] See, *e.g.,* 60 FR 57943.

[15] As explained in the NPRM, the time and mileage intervals on the current visual inspection label were based on the best field data available on CNG vehicles at the time FMVSS No. 304 was established in 1995. 61 FR 47086, September 6, 1996. Because, at that time the CNG fleet primarily consisted of light vehicles, this field data reflected the driving patterns of light vehicles, which typically have an annual VMT of approximately 10,000 to 12,000 miles. More recent data on VMT collected by the U.S. Federal Highway Administration (FHWA) shows that the annual VMT for light vehicles has not changed, with annual light vehicle VMT holding steady at about 11,000 miles for both 2014 and 2015. Data obtained from the FHWA Office of Highway Policy Information—Annual Vehicle Distance Traveled in Miles and Related Data—2015 by Highway Category and Vehicle Type. *https://www.fhwa.dot.gov/policyinformation/statistics/2015/vm1.cfm.* As there has not been a major change to the driving patterns of CNG light vehicles since NHTSA established FMVSS No. 304, and NHTSA is not otherwise aware of evidence suggesting that the 3-year/36,000-mile inspection interval is no longer appropriate for CNG light vehicles, NHTSA did not change the inspection interval for light vehicles.

[16] We note that the comment from the National Waste and Recycling Association, which represents the commercial operators of waste collection trucks, indicated its support of the proposed amendments to the visual inspection label.

[17] Agility also commented in support of a 12-month inspection interval for low-mileage CNG commercial vehicles.

NGV America.[18] According to NGV America, there are approximately 25,800 CNG medium duty vehicles and 39,500 CNG heavy duty vehicles currently in operation in the United States.

NHTSA estimated the annual average VMT for CNG heavy vehicles by using a published business model that estimates the minimum annual average VMT that a CNG heavy vehicle operator would be required to maintain to achieve a 20 percent return on investment for converting a diesel heavy vehicle to use CNG.[19] According to this model, if the per-gallon price of diesel is $1.25 more than the per-diesel gallon equivalent (DGE) for CNG, the required average annual VMT required to maintain a 20 percent return on investment is 75,000 miles for CNG medium duty vehicles, and 125,000 miles for CNG heavy duty vehicles.[20] As discussed above, commenters supported NHTSA's assumption in the NPRM that inspections would generally be performed as suggested on the label. Using the more conservative estimate of 108,000 VMT for CNG heavy duty vehicles and 72,000 VMT for CNG medium duty vehicles, we estimate that, under the current 36,000-mile mileage interval, a CNG heavy duty vehicle would be inspected 3 times per year (108,000 ÷ 36,000 = 3), and a CNG medium duty vehicle would be inspected two times per year (72,000 ÷ 36,000 = 2).

NHTSA estimated the per-inspection cost of visual inspections using information provided by ATA in its petition for rulemaking. According to ATA, visual inspections cost between $200 and $500 per vehicle, and require a CNG vehicle to have a 2-day downtime for the inspection at a cost of about $150 per day.[21] Based on these estimates, NHTSA calculated the cost of a single inspection to be $500 ($200 + $150 × 2) to $800 ($500 + $150 × 2), with an average of $650 ($350 + $150 × 2).

As previously mentioned, NGV America's production and sales report estimated the inventory of medium duty and heavy duty CNG vehicles was 25,800 and 39,500, respectively, in 2014. NHTSA believes these estimates are the most accurate available for the CNG industry, and therefore assumes these figures as the average annual inventory for CNG heavy vehicles. As we noted in the NPRM, our analysis may be a low estimate of the total cost saving because projections indicate the annual sale of CNG heavy vehicles used in commercial fleets will increase to 68,000 in 2040, which would lead to a significant increase in the number of these vehicles in the overall heavy vehicle fleet.[22] [23]

Using the above estimates, NHTSA calculated the total annual cost savings from reduced number of visual inspections of CNG containers in the CNG heavy vehicle fleet, regardless of whether the container has the current visual inspection label or the new modified label. Again, this analysis assumes that the heavy vehicle fleet size remains unchanged in the future. With these assumptions along with inspection cost estimates, the potential total annual cost savings due to reduced number of CNG fuel container inspections range between $52.40 million to $83.84 million with an average cost savings of $68.12 million, as shown in Table 1. Because these estimated annual cost savings are constant across all years into the future, annualized values are similar for all discount rates, as shown in Table 2. As noted above, since the CNG heavy vehicle fleet size is expected to increase in the future, the annual cost savings presented in Table 1 are conservative.

TABLE 1—ANNUAL COST SAVINGS FROM CONDUCTING YEARLY INSPECTION OF ALL CNG CONTAINERS ON THE CNG HEAVY VEHICLE FLEET

[2020$]

	Cost of inspection		
	Low	Average	High
Cost of Single Inspection (a)	$500	$650	$800
Number of CNG Heavy Duty Vehicles (b)	39,500	39,500	39,500
Number of CNG Medium Duty Vehicles (c)	25,800	25,800	25,800
Number of Inspections Reduced Per Year for Heavy Duty Vehicles (d)	2	2	2
Number of Inspections Reduced Per Year for Medium Duty Vehicles (e)	1	1	1
Cost Reduction for Heavy Duty Vehicles (f) = (a) × (b) × (d) in Millions	$39.50	$51.35	$63.20
Cost Reduction for Medium Duty Vehicles (g) = (a) × (c) × (e) in Millions	$12.90	$16.77	$20.64

[18] As we explained in the NPRM, although both NGV America and the U.S. Energy Information Agency (EIA) tracks the size of the CNG vehicle fleet, NHTSA believes that NGV America's estimate is more accurate than EIA's because NGV America bases its estimates on data obtained from its members, whereas EIA bases its estimates on vehicle registration data obtained from States. NHTSA believes that using vehicle registrations to estimate the size of the CNG vehicle fleet would systematically undercount the number of CNG vehicles because many States do not require fuel type to be noted on the vehicle registration, and because many CNG heavy vehicles operating today were converted from diesel-fueled vehicles after the first vehicle purchase. The NGV America fleet and sales data from December 2014 is available at *https://www.ngvamerica.org/wp-content/uploads/2018/09/2014-NGV-Production-and-Sales-Report.pdf.*

[19] Dee, Anna Lea, ''What Set of Conditions Would Make the Business Case to Convert Heavy Trucks to Natural Gas?—a Case Study,'' National Energy Policy Institute, 2012. This model accounts for several factors that affect return on investment, including the capital investment required to convert a diesel vehicle to run on CNG; the relative costs of fueling infrastructure and vehicle maintenance between CNG and diesel vehicles; and the relative fuel economy of CNG and diesel vehicles.

[20] According to the Department of Energy, the price of diesel fuel at the time of this analysis was $3.08 per gallon, whereas the price of CNG was $2.49 per diesel gallon equivalent (DGE)—a differential of $0.59. See *https://afdc.energy.gov/files/u/publication/alternative_fuel_price_report_oct_2019.pdf.* Because fuel prices tend to fluctuate over time, our analysis here assumes a price differential of $1.25, which is the same as the analysis in the NPRM.

[21] This cost includes inspection by a trained and qualified inspector and removal and replacement of shields or covers of the CNG fuel containers before and after the inspection. The downtime cost is also assumed that the inspection will occur when the vehicle would otherwise be in-use, not, for example, if it is out of service for some other reason (*e.g.,* if the inspection occurs on the weekend or when a particular fleet vehicle is not required to be in use).

[22] Baker, et al., ''Alternative Fuel Vehicle Forecasts (April 2016),'' Texas A&M Transportation Institute, *https://static.tti.tamu.edu/tti.tamu.edu/documents/PRC-14-28F.pdf.*

[23] While NHTSA did not use the AEO2017 data in its cost/benefit analysis due to underreporting of the current size of the CNG fueled heavy vehicle fleet, we note that the AEO2017 data estimates an increase in the CNG medium and heavy duty vehicle fleet by 2040. According to AEO2017 projected estimates, there would be 16,335 CNG medium duty vehicles and 74,469 CNG heavy duty vehicles in 2040. By contrast, the AEO2017 estimates that in 2015, there were 2,150 CNG medium duty vehicles and 22,350 CNG heavy duty vehicles.

TABLE 1—ANNUAL COST SAVINGS FROM CONDUCTING YEARLY INSPECTION OF ALL CNG CONTAINERS ON THE CNG HEAVY VEHICLE FLEET—Continued

[2020$]

	Cost of inspection		
	Low	Average	High
Total Annual Cost Saving (f) + (g) in Millions	$52.40	$68.12	$83.84

VI. Compliance Date

Because this final rule will eliminate the current requirement that results in multiple visual inspections per year for heavy vehicles in favor of a requirement for an equally safety protective annual inspection, we believe a mandatory compliance date of one year after the date of publication of this document in the **Federal Register** is appropriate, with optional early compliance permitted. We believe one year is sufficient time to make needed changes to the visual inspection label for CNG fuel containers with no additional cost, and that permitting early compliance will provide manufacturers with flexibility.

We note that, while this rule does not apply retroactively to containers manufactured before the mandatory compliance date, there may be instances in which an operator may want to replace a previously-existing visual inspection label with a new label with the amended time interval. As to whether such a replacement would be a violation of the ''make inoperative'' provision of the Safety Act, our answer is no, assuming the container will be permanently labeled with the new label as specified in S7.4 and contains all the information required by S7.4. 49 U.S.C. 30122 states, in relevant part: ''A manufacturer, distributor, dealer, rental company, or motor vehicle repair business may not knowingly make inoperative any part of a device or element of design installed on or in a motor vehicle or motor vehicle equipment in compliance with an applicable motor vehicle safety standard.'' Replacing the previously-existing label with the new label by an entity listed in § 30122 would not be a violation of the make inoperative provision because the new label serves the same function and safety need as the previous label, only more efficiently. Both labels inform the operator of how frequently CNG fuel containers should be inspected, with the new label reflecting the need for motor vehicle safety more accurately. Thus, replacing the label does not make inoperative a device or element of design installed on or in the vehicle in compliance with FMVSS No. 304.[24]

VII. Regulatory Notices and Analyses

Executive Order (E.O.) 12866, E.O. 13563, and DOT Rulemaking Procedures

NHTSA has considered the impact of this final rule under Executive Orders 12866 and 13563, and the Department of Transportation's administrative rulemaking procedures. This final rule was deemed to be non-significant under Executive Order 12866 by the Office of Information and Regulatory Affairs, and is not considered a rulemaking of special note to the Department under DOT Order 1200.6A.

NHTSA is modifying the required label for visual inspection of CNG fuel containers to specify that the container should be visually inspected for damage and deterioration after a motor vehicle accident or fire, and either (a) at least every 12 months when installed on a vehicle with a GVWR greater than 4,536 kg or (b) at least every 36 months or 36,000 miles, whichever comes first, when installed on a vehicle with a GVWR less than or equal to 4,536 kg. NHTSA has not found any evidence that this change will impact motor vehicle safety. NHTSA believes that the only substantive effect of this final rule will be to eliminate unnecessary visual inspections of CNG fuel containers by operators of high-mileage CNG heavy vehicles and align the CNG container inspections for low-mileage CNG heavy vehicles with FMCSA's annual inspection interval.

NHTSA estimates the change will reduce the number of visual inspections per year by approximately 2 inspections for heavy duty CNG vehicles and by approximately 1 inspection for medium duty CNG vehicles. The agency further estimates that the elimination of these visual inspections will result in an average annual cost savings of $68.12 million, assuming the current CNG heavy vehicle fleet size remains unchanged.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) unless the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR part 121.105(a)). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a proposed or final rule will not have a significant economic impact on a substantial number of small entities.

I certify that this final rule will not have a significant impact on a substantial number of small entities. There are two types of businesses that will potentially be impacted by this rule: Manufacturers of CNG fuel containers and commercial operators of CNG heavy vehicles. Small manufacturers of CNG fuel containers are directly impacted by this rule because they are required to modify the language on the visual inspection label. However, as the label itself is already required (only the wording is changing), NHTSA expects this to be a negligible, one-time expense for these businesses. As explained in earlier in this Notice, commercial operators of CNG heavy vehicles are indirectly impacted by this rule because the amended visual inspection label will indirectly cause the elimination of multiple unnecessary visual inspections these businesses must perform per year. Small operators of CNG heavy vehicles will likely see a reduction in maintenance costs because

[24] 49 U.S.C. 30122. Note that the ''make inoperative'' prohibition applies only to manufacturers, distributors, dealers, rental companies, and motor vehicle repair businesses; it would not apply to a commercial operator of a CNG vehicle modifying his or her own vehicle.

of a reduced number of CNG fuel container inspections.

However, NHTSA does not believe those cost impacts will be significant, because the cost savings from reduced inspections would be a small percentage of the overall operational cost of the vehicle. To illustrate, according to AEO, a medium duty CNG vehicle fuel efficiency is 6.9 mpg, and that for heavy vehicle is 5.7 mpg (gasoline gallon equivalent). The cost of CNG fuel is $2.27/gasoline gallon equivalent. A heavy duty truck traveling 108,000 miles per year spends $43,010 (= 108,000/5.7 * $2.27) on fuel alone. The cost savings of doing annual inspections for a heavy duty vehicle is estimated at $1,300 per year. This annual savings is only 3 percent of fuel costs. A medium duty truck traveling 72,000 miles per year spends $23,686 (= 72,000/6.9 * 2.27) on fuel alone. The cost savings of doing annual inspections for a medium duty vehicle is estimated at $650. This annual savings would be only 2.7 percent of fuel costs.

The above comparison is limited to fuel costs. There are other operational costs that have not been accounted for which would make the savings from reduced inspections to be even less than 3 percent compared to the cost of operating the vehicles.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), as amended. The Agency has determined that implementation of this action will not have a significant impact on the quality of the human environment. The rule merely reduces the number of visual inspections that commercial operators of high-mileage CNG heavy vehicles will have to conduct.

Reducing the number of inspections would reduce the downtime and cost of operation of these vehicles. On the days that a CNG heavy vehicle is out-of-service for visual inspection, the operations are either stopped or continued using a conventional-fuel vehicle. As stated above, according to NGV America, there are approximately 25,800 CNG medium duty vehicles and 39,500 CNG heavy duty vehicles currently in operation in the United States. These vehicles therefore make up a very small proportion of the on-road medium and heavy duty vehicle fleet, and the change in their downtime is a very small proportion of their overall use, so any resulting change in medium or heavy duty vehicle operation (including by the regulated vehicles) also would be very small.

NHTSA estimates that this rule would, at most, reduce the number of visual inspections a CNG operator conducts each year by two for heavy duty vehicles and by one for medium duty vehicles. Since an inspection takes one to two days to conduct, there could be at most four extra days of operation per year (2 inspections × 2 days per inspection = 4 days of additional operation) for heavy duty vehicles and two extra days of operation per year (1 inspection × 2 days per inspection) for medium duty vehicles.

Assuming trips that would otherwise be made using a CNG-fueled vehicle are instead made using a diesel-fueled vehicle when the CNG-fueled vehicle is undergoing a visual inspection, then making CNG heavy duty vehicles available for an additional four days annually and CNG medium duty vehicles available for an additional two days annually would reduce greenhouse gas (GHG) emissions, since heavy CNG vehicles have 13–17 percent fewer GHG emissions compared to diesel on a well-to-wheel basis.[25] However, on an annual basis, this reduction in GHG emissions from increased operation of CNG vehicles would be insignificant (*i.e.,* much less than 1 percent) compared to the GHG emissions from the total U.S. heavy vehicle fleet. Similarly, anticipated changes to other air pollutant emissions would also be very small. Thus, any environmental impacts would be appropriately considered *de minimis.*

Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255; Aug. 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The Agency has concluded the rule does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The 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.''

NHTSA rules can have preemptive effect in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision, codified at 49 U.S.C. 30103(b)(1), stating that, when a motor vehicle safety standard is in effect, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to NHTSA's standard prescribed under this chapter. It is this statutory command by Congress (and not today's final rule) that preempts any non-identical State legislative and administrative law addressing the same aspect of performance, so consultation would be inappropriate.

It is this statutory command by Congress (and not today's final rule) that preempts any non-identical State legislative and administrative law addressing the same aspect of performance, so consultation would be inappropriate.

Second, the Supreme Court has recognized the possibility, in some instances, of implied preemption of State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law. That possibility is dependent upon there being an actual conflict between a FMVSS and the State requirement. If and when such a conflict exists, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000), finding implied preemption of State tort law on the basis of a conflict discerned by the court,[26] not on the basis of an intent to preempt asserted by the agency itself.

NHTSA has considered, pursuant to Executive Orders 13132 and 12988, whether this final rule could or should preempt State common law causes of action. To this end, the Agency has examined the nature (*e.g.,* the language and structure of the regulatory text) and objectives of this final rule and finds that this final rule is not intended to preempt State tort law that effectively imposes a higher standard on regulated entities than that would be established by today's final rule. The change in this final rule amends a labeling requirement that applies to newly manufactured CNG fuel containers; it does not conflict with the establishment of a higher standard of safety by means of State tort law that applies to the same subject

[25] Well-to-wheel refers to an analysis that accounts for all the energy and emissions necessary to produce the fuel used in the vehicle (well-to-pump) and the operation energy and emissions associated with the vehicle technology (tail pipe emissions, other emissions and energy efficiency of the vehicle).

[26] The conflict was discerned based upon the nature (*e.g.,* the language and structure of the regulatory text) and the safety-related objectives of FMVSS requirements in question and the impact of the State requirements on those objectives.

matter (*i.e.,* adequate labeling of CNG fuel containers). This rule would not preempt state inspection requirements, including those that rely on the language on the visual inspection label, because this rule does not mandate that the label be followed; states remain free to establish inspection requirements as they deem appropriate. Without any conflict, there could not be any implied preemption of State law, including State tort law.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729; Feb. 7, 1996), requires Executive agencies make every reasonable effort to ensure the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) specifies whether administrative proceedings are to be required before parties file suit in court; (6) adequately defines key terms; and (7) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceedings before they may file suit in court.

Privacy Act

All submissions, including public comments on this final rule, will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There are no information collection requirements associated with this final rule.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, as amended by Public Law 107–107 (15 U.S.C. 272 note), directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or is otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the SAE International. The NTTAA directs us to provide Congress (through OMB) with explanations when the agency decides not to use available and applicable voluntary consensus standards.

This final rule accords with the NTTAA. FMVSS No. 304 has historically drawn largely from ANSI NGV 2. The changes in this final rule to the visual inspection label were made in accordance with data provided by NGV America and ATA and the recommendations developed by industry technical working groups.[27]

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation, with base year of 1995). UMRA also requires an agency issuing an NPRM or final rule subject to the Act to select the ''least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.'' This final rule would not result in a Federal mandate that will likely result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation, with base year of 1995).

Executive Order 13609 (Promoting Regulatory Cooperation)

The policy statement in section 1 of Executive Order 13609 provides, in part: The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

The European regulation for CNG vehicles, ECE R.110, ''I. Specific components of motor vehicles using compressed natural gas (CNG) and/or liquefied natural gas (LNG) in their propulsion system,'' [28] requires a detailed visual inspection of CNG fuel containers on vehicles at least every 48 months and after an accident or fire. However, the working pressure of CNG fuel containers in Europe is 20 Megapascals (MPa) (3,000 pounds per square inch (psi)), while that in the U.S. is typically 26 MPa (3,600 psi). The higher container pressure in the U.S. necessitates more frequent visual inspections than that conducted in Europe. Therefore, NHTSA did not consider harmonizing with ECE R.110.

Regulation Identifier Number

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicles, Motor vehicle safety.

[27] The NGV America Technology & Development Committee's Guidance on Fuel System Inspection published in November 2017 specifies annual visual inspection for CNG fuel containers on heavy vehicles as a practical approach to inspection and maintenance of the fuel container and fuel system which would match intervals and procedures with other vehicle maintenance tasks, such as engine oil and filter changes, that are conducted on an annual basis per FMCSR 396.17. The CSA group, which maintains NGV 2, is considering modifying the inspection interval in NGV 2 to an annual inspection following the NGV America Technology & Development Committee's Guidance document.

[28] *http://www.unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/2015/R110r3e.pdf.*

In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. In § 571.304, revise S7.4(g) to read as follows:

§ 571.304 Standard No. 304; Compressed natural gas fuel container integrity.

* * * * *

S7.4 * * *

(g) The statement: ''This container should be visually inspected for damage and deterioration after a motor vehicle accident or fire, and either (a) at least every 12 months when installed on a vehicle with a GVWR greater than 4,536 kg, or (b) at least every 36 months or 36,000 miles, whichever comes first, when installed on a vehicle with a GVWR less than or equal to 4,536 kg.''

* * * * *

Issued under authority delegated in 49 CFR 1.95 and 501.4.

Steven S. Cliff,

Deputy Administrator.

[FR Doc. 2022–02588 Filed 2–10–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 49 of the Code of Federal Regulations, Parts 400 to 571, revised as of October 1, 2021, in § 571.108, remove S5.1 and S5.2.

[FR Doc. 2022–03043 Filed 2–10–22; 8:45 am]

BILLING CODE 0099–10–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

International Fisheries Regulations

CFR Correction

This rule is being published by the Office of the Federal Register to correct an editorial or technical error that appeared in the most recent annual revision of the Code of Federal Regulations.

■ In Title 50 of the Code of Federal Regulations, Parts 228 to 599, revised as of October 1, 2021, in § 300.21, the definition of ''Vessel monitoring system (VMS)'' is reinstated to read as follows:

§ 300.21 Definitions.

* * * * *

Vessel monitoring system (VMS) means an automated, remote system that provides information about a vessel's identity, location and activity, for the purposes of routine monitoring, control, surveillance and enforcement of area and time restrictions and other fishery management measures.

* * * * *

[FR Doc. 2022–03042 Filed 2–10–22; 8:45 am]

BILLING CODE 0099–10–D

Proposed Rules

Federal Register
Vol. 87, No. 29
Friday, February 11, 2022

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0099; Project Identifier 2019–CE–019–AD]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) AD 89–24–06 R1, which applies to all Boeing of Canada, Ltd. and de Havilland (now Viking Air Limited) Model DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes. This AD requires repetitively inspecting the elevator quadrant for damage and taking corrective action as necessary. Since the FAA issued AD 89–24–06 R1, the aviation authority for Canada revised its mandatory continuing airworthiness information (MCAI) to correct this unsafe condition on these products. The MCAI identifies the unsafe condition as damage to the flight control system. This proposed AD would retain the actions of AD 89–24–06 R1, extend the compliance time intervals for the repetitive inspections, add the Model DHC–6–400 airplane to the applicability, and add a fluorescent penetrant inspection requirement. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by March 28, 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 NPRM, contact Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com;* website: *https://www.vikingair.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0099; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the MCAI, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aviation Safety Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7323; email: *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0099; Project Identifier 2019–CE–019–AD'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Darren Gassetto, Aviation Safety Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 89–24–06 R1, Amendment 39–6670 (55 FR 29347, July 19, 1990) (AD 89–24–06 R1) for all Boeing of Canada, Ltd. and de Havilland (type certificate currently held by Viking Air Limited) Model DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes. AD 89–24–06 R1 requires repetitively inspecting the elevator quadrant, P/N C6CFM 1138–27 (Pre Mod 6/1394), P/N C6CFM 1450–27 (Post Mod 6/1394 or production cut-in (PCI) S/N 331, Pre Mod 6/1678), or P/N C6CFM 1450–29 (Post Mod 6/1678 or PCI S/N 602), for distortion (warping, buckling, and score marks on the quadrant topside face caused by rubbing against the side of the cable guard) and

replacing if distortion is found. AD 89–24–06 R1 also requires inspecting the elevator quadrant mounting support bracket, P/N C6CFM 1142–1, for cracks if distortion in the elevator quadrant is found and replacing any cracked P/N C6CFM 1142–1.

Actions Since AD 89–24–06 R1 Was Issued

Since the FAA issued AD 89–24–06 R1, the type certificate holder for Model DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes changed from de Havilland to Viking Air Limited. In 2012, the FAA issued Viking Air Limited a type certificate for the Model DHC–6–400 airplane as part of the DHC–6 series.

Transport Canada, which is the aviation authority for Canada, superseded its prior ADs on this unsafe condition and issued Canadian AD CF–1972–06R5, dated June 22, 2018 (referred to after this as ''the MCAI''), to require a fluorescent penetrant inspection and expand the model applicability to include the Viking Air Limited Model DHC–6–400 airplane. The MCAI states:

> Damage to the flight control system of DHC–6 aeroplanes was found during inspection. The damage has been attributed to ground gusts. The damage included cracks in the base of the lower control column, cracks and buckles in the elevator/rudder pulley bracket, and distortion of the elevator quadrant. Damage to the elevator quadrant may produce abnormal loads on the quadrant support bracket that damage the bracket.
>
> Damaged flight control components may fail when subjected to service loads, resulting in loss of control of the aeroplane.
>
> This revision of the [Transport Canada] AD clarifies the applicability of the corrective actions and endorses Service Bulletin (SB) 6/511 as a means of accomplishing some of the required inspections. In corrective action Part III, dye penetrant inspection has been replaced by fluorescent penetrant inspection.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0099.

Related Service Information Under 1 CFR Part 51

The FAA reviewed DHC–6 (Twin Otter) Service Bulletin 6–511, Revision A, dated June 22, 1990. This service bulletin specifies procedures for repetitively inspecting the elevator quadrant for distortion (warping, buckling, and score marks), performing a one-time dye penetrant inspection of the elevator quadrant support bracket for cracks, and taking corrective actions. 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**.

FAA's Determination

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA is issuing this NPRM after determining the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would retain the actions of AD 89–24–06 R1, extend the compliance time intervals for the repetitive inspections, add the Model DHC–6–400 airplane to the applicability, and add a fluorescent penetrant inspection requirement with credit for the visual inspections done before the effective date of this proposed AD.

Differences Between This Proposed AD and the MCAI

The MCAI addresses actions on the the control column lower assembly, the elevator pulley bracket system, and the elevator quadrant. This proposed AD would only require actions on the elevator quadrant and elevator quadrant support bracket. The FAA is not proposing to require the repetitive inspections of the control column lower sub-assembly, lower horizontal torque tube, and top and bottom channels of the pulley bracket assembly, and the modifications that terminate those inspections, because those actions are addressed by AD 69–05–01 R2, Amendment 39–3824 (45 FR 45258, July 3, 1980) and AD 69–08–12 R1, Amendment 39–867 (34 FR 18226, November 14, 1969).

The MCAI applies to Viking Air Limited Model DHC–6 series 110, DHC–6 series 210, DHC–6 series 310, and DHC–6 series 320, and this proposed AD would not because these models do not have an FAA type certificate. Transport Canada Model DHC–6 series 1, DHC–6 series 100, DHC–6 series 200, DHC–6 series 300, and DHC–6 series 400 airplanes correspond to FAA Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes, respectively.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 133 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Elevator quadrant and support bracket visual inspection.	.5 work-hour × $85 per hour = $42.50.	N/A	$42.50 per inspection cycle.	$5,652.50 (for the affected 133 airplanes) per inspection cycle.
Fluorescent penetrant inspection of the elevator quadrant support bracket.	1 work-hour × $85 per hour = $85.	N/A	$85	$10,795 (for the affected 127 airplanes).

The FAA estimates the following costs to do any repairs or replacements that would be required based on the results of the proposed inspections. The FAA has no way of determining the number of airplanes that might need these repairs/replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per airplane
Replacement of elevator quadrant	1.5 work-hours × $85 per hour = $127.50	$825	$952.50
Fluorescent penetrant inspection of the elevator quadrant support bracket.	1 work-hour × $85 per hour = $85	N/A	85
Replacement of elevator quadrant support bracket	2 work-hours × $85 per hour = $170	485	655

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

(2) Would not affect intrastate aviation in Alaska, and

(3) Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 89–24–06 R1, Amendment 39–6670 (55 FR 29347, July 19, 1990); and

■ b. Adding the following new airworthiness directive:

Viking Air Limited (Type Certificate previously held by Bombardier Inc., de Havilland, Inc.): Docket No. FAA–2022–0099; Project Identifier 2019–CE–019–AD.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by March 28, 2022.

(b) Affected ADs

This AD replaces Airworthiness Directive (AD) 89–24–06 R1, Amendment 39–6670 (55 FR 29347, July 19, 1990) (AD 89–24–06 R1).

(c) Applicability

This AD applies to Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2700, Flight Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as damage to the flight control system. The FAA is issuing this AD to prevent failure of the flight control system. The unsafe condition, if not addressed, could result in loss of control of the airplane.

(f) Compliance

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

(g) Elevator Quadrant and Support Brackets: Inspections, Replacements, and Modifications

(1) Visually inspect the elevator quadrant for indications of distortion (warping, buckling, or score marks) by following paragraphs III.A.2.(a) and III.A.2.(b) of the Accomplishment Instructions in DHC–6 (Twin Otter) Service Bulletin 6–511, Revision A, dated June 22, 1990 (DHC–6 SB 6–511, Revision A) at the following applicable compliance times:

(i) For Model DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes, before further flight after the effective date of this AD or within 400 hours time-in-service (TIS) after the last inspection required by AD 89–24–06 R1, whichever occurs later, and thereafter at intervals not to exceed 400 hours TIS; or

(ii) For Model DHC–6–400 airplanes, before further flight after the effective date of this AD and thereafter at intervals not to exceed 400 hours TIS.

Note 1 to paragraph (g)(1): The elevator quadrant may be identified as P/N C6CFM1138–27 (Pre Mod 6/1394), P/N C6CFM1450–27 (Post Mod 6/1394 or production cut-in (PCI) S/N 331, Pre Mod 6/1678), or P/N C6CFM1450–29 (Post Mod 6/1678 or PCI S/N 602), and is referred to as assembly P/N C6CF1137–1, –3, –5, or –7.

(2) If any indication of distortion is found on the elevator quadrant during any inspection required by paragraph (g)(1) of this AD, before further flight, replace the elevator quadrant with a serviceable part and inspect the elevator quadrant support bracket assembly for cracks by following paragraphs III.B.1. through III.B.4.(b) of the Accomplishment Instructions in DHC–6 SB 6–511, Revision A. This AD requires that you do a fluorescent penetrant inspection as the type of required dye penetrant inspection. If a crack is found in the elevator quadrant support bracket, before further flight, replace with a serviceable part by following paragraphs III.B.5 through III.B.12 of the Accomplishment Instructions in DHC–6 SB 6–511, Revision A.

(3) For Model DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes: Within 400 hours TIS after the effective date of this AD, unless already done within the preceding 12 months before the effective date of this AD, inspect the elevator quadrant support bracket assembly for cracks by

following paragraphs III.B.1. through III.B.4.(b) of the Accomplishment Instructions in DHC–6 SB 6–511, Revision A. This AD requires that you do a fluorescent penetrant inspection as the type of required dye penetrant inspection. If a crack is found in the elevator quadrant support bracket, before further flight, replace with a serviceable part by following paragraphs III.B.5 through III.B.12 of the Accomplishment Instructions in DHC–6 SB 6–511, Revision A.

(h) Credit for Previous Actions

(1) For Model DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes: This paragraph provides credit for the inspection required by paragraph (g)(1) of this AD if you performed the inspection before the effective date of this AD using paragraph (a)(1) of AD 89–24–06 R1.

(2) For Model DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes: This paragraph provides credit for the fluorescent penetrant inspection and subsequent replacement of the elevator quadrant support bracket due to a crack found from the fluorescent penetrant inspection required by paragraph (g)(2) of this AD if performed before the effective date of this AD using paragraphs (a)(3) and (4) of AD 89–24–06 R1.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, New York ACO 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 (j)(1) of this AD.

(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.

(j) Related Information

(1) For more information about this AD, contact Darren Gassetto, Aviation Safety Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7323; email: *9-avs-nyaco-cos@faa.gov.*

(2) Refer to Transport Canada AD Number CF–1972–06R5, dated June 22, 2018, for more information. You may examine the Transport Canada AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0099.

(3) For service information identified in this AD, contact Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com;* website: *https://www.vikingair.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (817) 222–5110.

Dated: Issued on February 4, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–02888 Filed 2–10–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 193

[Docket No. FAA–2002–13236]

Aviation Safety Action Program

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

ACTION: Notice of availability; request for comments.

SUMMARY: The FAA is proposing to amend Order 8000.82 that designates information provided to the agency from a voluntary Aviation Safety Action Program (ASAP) as protected from public disclosure in accordance with the provisions of the FAA regulations related to the protection of voluntarily submitted information. The FAA is required to protect the information from disclosure to the public, including disclosure under the Freedom of Information Act (FOIA) or other laws, following issuance of such order. The proposed designation would apply to air carriers, repair stations, or other entities who have an FAA-accepted ASAP, and their covered employees. The intent of this action is to encourage participation in the ASAP.

DATES: Comments must be received on or before March 14, 2022.

ADDRESSES: Send comments identified by Docket Number FAA–2002–13236 using any of the following methods:

You may send comments identified by docket number FAA–2002–13236 using 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 (DOT), 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.
- *Privacy:* DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*
- *Docket:* Background documents or comments received may be read at *https://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Randy McDonald, Flight Standards, Air Transportation Division, Air Carrier Training and Voluntary Safety Programs Branch, Federal Aviation Administration by email at: *randy.mcdonald@faa.gov;* phone: 202–267–8166.

SUPPLEMENTARY INFORMATION:

I. Overview of ASAP

On September 3, 2003, the Federal Aviation Administration (FAA) issued Order 8000.82, which designated information voluntarily provided under the Aviation Safety Action Program (ASAP), described in FAA Advisory Circular 120–66B, as protected from public disclosure.[1] This includes disclosure under FOIA (5 U.S.C. 552) or other laws. The designation intended to encourage participation in the ASAP by air carriers that operated under 14 CFR part 121 and domestic repair stations certificated under 14 CFR part 145 that have an FAA-accepted ASAP and their covered employees.

The FAA is proposing to issue Order 8000.82A, which amends and expands Order 8000.82, by designating as protected from public disclosure information submitted to the agency by a larger group of entities (''eligible entities'' as defined in AC 120–66C, Aviation Safety Action Program). The information voluntarily submitted by the eligible entities, as described below, would be protected from public disclosure in accordance with the provisions of part 193. In accordance with § 193.11(d), the FAA is publishing this proposed amended designation in the **Federal Register** as a notice and requesting comments.

II. Background

Under 49 U.S.C. 40123, certain voluntarily provided safety and security information is protected from disclosure to encourage persons to provide the information to the FAA. The FAA must issue an order making certain findings before the information is protected from

[1] *See* FAA Order 8000.82 at 68 FR 54767 (September 18, 2003).

disclosure. Part 193 describes the notice procedure for the FAA to designate information as protected. If the Administrator issues an order designating information as protected under 49 U.S.C. 40123, that information will be exempt from public disclosure under FOIA exemption 3. Such information will not be disclosed under FOIA, or other laws except as provided in 49 U.S.C. 40123, 14 CFR part 193, and the order designating the information as protected.

III. Summary of the ASAP Voluntary Information Sharing Program

A. *Who may participate?* Under AC 120–66C, air carriers, repair stations, and other entities (collectively referred to as ''eligible entities'') who have an FAA-approved ASAP, and their covered employees, may participate in ASAP. The proposed amended designation, *i.e.,* Order 8000.82A, covers the expansion of ASAP to such eligible entities. In contrast, the prior AC 120–66B and the original designation, *i.e.,* Order 8000.82, were only intended to apply to air carriers that operated under 14 CFR part 121 and for domestic repair stations certificated under 14 CFR part 145 that have an FAA-accepted ASAP and their covered employees.

B. *What voluntarily provided information would be protected from disclosure under this proposed amended designation?* The type of information to be protected in proposed Order 8000.82A remains the same as in Order 8000.82.

The following information would be protected from disclosure when provided in a report to the FAA that meets the acceptance criteria under the ASAP Program:

(1) The employee's ASAP report, and the content of that report.

(2) The identity of the eligible entity associated with an accepted ASAP report.

(3) The name of the employee who submits an accepted ASAP report(s).

(4) The information from sources other than the FAA of an Event Review Committee (ERC) investigation concerning an accepted ASAP report.

(5) Evidence and other information gathered during an ERC investigation by persons other than the FAA.

(6) Statistical analysis and trend information provided by the eligible entity that is based on events reported under a particular eligible entity's ASAP.

(7) An eligible entity's database of reports and events collected over time from that eligible entity's ASAP.

(8) Corrective action on sole source reports when such corrective action is successfully completed.

In accordance with Section 320 of the FAA Reauthorization Act of 2018, Public Law 115–254, 132 Stat. 3270 (Oct. 5, 2018), ASAP reports that are excluded do not receive protection under 49 U.S.C. 40123.

C. *How do you participate?* Eligible entities, as described in this proposed amendment, participate by executing an ASAP memorandum of understanding (MOU) with the FAA and by voluntarily sharing information from the ASAP with the FAA.

D. *What is the duration of this information-sharing program?* This information-sharing program continues for a given eligible entity until the associated ASAP MOU is terminated by any of the parties to the MOU.

IV. Proposed Findings

The FAA proposes to designate information in an accepted ASAP report received from an eligible entity under its FAA-approved ASAP program in accordance with this amendment as protected under 49 U.S.C. 40123 and 14 CFR 193.7. The FAA proposes this designation based on the following findings made under 14 CFR 193.11(c).

A. *Summary of why the FAA finds that the information will be provided voluntarily.*

The protection that resulted from Order 8000.82 alleviated concerns of ASAP-holding entities that disclosure of voluntarily submitted information could result in its use for other than the safety enhancement purposes for which the ASAP was created. Further, under ASAP, the FAA takes no action against an individual who submits a report that is accepted (and not subsequently excluded). The history of protection under ASAP and the enforcement-related incentive encourage voluntary submission of the information. Therefore, the FAA finds that eligible entities will voluntarily provide ASAP information to the FAA. Additionally, since the implementation of the original part 193 ASAP program, the FAA has seen an increase in the sharing of ASAP information with the FAA beyond the FAA ERC representative by those originally covered under the program, and expects a similar increase as the program is expanded to other entities.

B. *Description of the type of information that may be voluntarily provided under the amended program and a summary of why the FAA finds that the information is safety- or security-related.*

The FAA expects the eligible entities covered under the proposed designation will share the same type of information as entities covered under Order 8000.82. An ASAP is created specifically to provide a means for employees to report safety-related events. All individual ASAP reports are clearly labeled as such and must be signed by each employee seeking the enforcement incentives available under an ASAP. Two types of reports are ordinarily submitted under the ASAP: (1) Safety-related reports that appear to involve one or more violations of the regulations (*e.g.,* deviating from an Air Traffic Control (ATC)-assigned altitude); and (2) reports that identify a general safety concern, but do not appear to involve a violation of the regulations (*e.g.,* flight crewmember concerns that the design of a flight checklist could lead to an error).

Each ASAP report must contain sufficiently detailed information about a safety event so that it can be evaluated by a third party. If the report is submitted by a flight crewmember, and the safety event involves a deviation from an ATC clearance, the ASAP report would include the date, time, place, altitude, flight number, and ATC frequency, along with a description of the safety-related event. The only types of reports that are expected to be submitted under an ASAP are those that are safety- or security-related.

C. *Summary of why the FAA finds that the disclosure of the information would inhibit persons from voluntarily providing that type of information.*

Eligible entities and their employees are reluctant to share sensitive safety information with the FAA, including employee self-reports of alleged violations, if such submissions might be subject to public disclosure. Among other reasons, entities are concerned that the disclosure of voluntarily provided information to the public could be incomplete, unreliable, and sensitive. As a result, entities are concerned that disclosure of such information could unduly and adversely affect competitive advantage and public perception, and would be used for other than the safety enhancement purposes for which the ASAP was created. Individuals are concerned that disclosure of their reports would adversely affect their privacy interests.

D. *Summary of why the receipt of that type of information aids in fulfilling the FAA's safety and security responsibilities.*

The FAA finds that receipt of ASAP information aids in fulfilling the FAA's safety and security responsibilities because of its capacity to provide early identification of needed safety improvements. An ASAP offers significant potential for incident and

accident avoidance. FAA experience has clearly established that an ASAP can produce safety-related data that is not available from any other source. For example, ASAP reports concerning altitude deviations have identified common causal factors that produce such incidents. Receipt of this previously unavailable information has provided the FAA with an improved basis for modifying procedures, policies, and regulations in order to improve safety and efficiency.

E. *Summary of why withholding such information from disclosure would be consistent with the FAA's safety and security responsibilities, including a statement as to the circumstances under which, and a summary of why, withholding such information from disclosure would not be consistent with the FAA's safety and security responsibilities, as described in 14 CFR 193.9.*

Withholding ASAP information from disclosure is consistent with the FAA's safety and security responsibilities because, unless the FAA can provide assurance that it will not be disclosed, the FAA will likely not receive the information. If the FAA does not receive the information, the FAA will be hampered in efforts to understand safety-related issues within an eligible entity's operational environment and ensure safety improvements that receipt of the information otherwise enables.

The FAA may disclose information submitted to the agency that is designated as protected under part 193 when withholding it would not be consistent with the FAA's safety and security responsibilities under the circumstances described in 14 CFR 193.9(a)(1)–(4). For example, to explain the need for changes in FAA policies, procedures, and regulations, the FAA may disclose de-identified (*i.e.,* no eligible entity or employee identity) and summarized information that has been derived from ASAP information or extracted from reports under ASAP. The FAA may disclose de-identified or summarized ASAP information that identifies a systemic problem in the aviation system when other people need to be advised of the problem in order to take corrective action.

F. *Summary of how the FAA will distinguish information protected under part 193 from information the FAA receives from other sources.*

The process for distinguishing information from the eligible entities as protected will remain unchanged. All employee ASAP reports are clearly labeled as such. A single report must be signed by all employees seeking the enforcement incentives available under an ASAP for the event. Any such employee must submit a separate signed report.

Any other information received by the FAA from the eligible entity concerning the content of ASAP reports (such as statistical analyses, program review reports, and trend information), must be clearly labeled as follows in order to be protected under this designation:

WARNING: The information in this document may be protected from disclosure under 49 U.S.C., section 40123 and 14 CFR part 193.

G. *Proposed Designation.*

Accordingly, the FAA hereby proposes to designate the previously described information to be protected from disclosure in accordance with 49 U.S.C. 40123 and 14 CFR part 193, when submitted pursuant to an approved ASAP program.

V. Comments Invited

The FAA invites interested persons to comment on the proposed amended designation by submitting written comments, data, views. The Agency also invites comments relating to the economic, environmental, energy, or federalism, impacts that might result from adopting the proposal in this notice.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed designation. Before taking action on this proposed designation, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The Agency may change this proposal in light of the comments it receives.

VI. Availability of Proposed Designation

An electronic copy of the proposed designation may be obtained from the internet by—

1. Searching the Federal eRulemaking Portal (*https://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies web page at *https://www.faa.gov/regulations_policies;* or

3. Accessing the Government Publishing Office's web page at *https://www.govinfo.gov.*

Issued in Washington, DC.

Robert C. Carty,

Acting Executive Director, Flight Standards Service.

[FR Doc. 2022–02726 Filed 2–10–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0062; FRL–9504–01–R4]

Air Plan Approval; NC; Great Smoky Mountains National Park, Raleigh-Durham-Chapel Hill and Rocky Mount Areas Limited Maintenance Plans for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions submitted by the State of North Carolina, through the North Carolina Department of Environment and Natural Resources, Division of Air Quality (NCDAQ), in a letter dated September 22, 2020. The SIP revisions include the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plans (LMPs) for the Great Smoky Mountains National Park (GSMNP), Raleigh-Durham-Chapel Hill (Triangle) and Rocky Mount, North Carolina Areas (collectively, ''Areas''). EPA is proposing to approve the LMPs for the Areas because each LMP provides for the maintenance of the 1997 8-hour ozone NAAQS within each of the Areas through the end of the second 10-year portion of the maintenance period. The effect of this action would be to make certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Areas federally-enforceable as part of the North Carolina SIP.

DATES: Written comments must be received at the address below on or before March 14, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0062 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary

submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Dianna Myers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9207. Ms. Myers can also be reached via electronic mail at *myers.dianna@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Summary of EPA's Proposed Action

In accordance with the Clean Air Act (CAA or Act), EPA is proposing to approve the GSMNP, Triangle and Rocky Mount LMPs for the 1997 8-hour ozone NAAQS, adopted and submitted by NCDAQ as revisions to the North Carolina SIP on September 22, 2020. On April 15, 2004, EPA published a final rule designating the GSMNP, Triangle and Rocky Mount Areas nonattainment for the 1997 8-hour ozone NAAQS.[1] Subsequently, EPA approved maintenance plans and redesignated the Triangle, GSMNP, and Rocky Mount Areas attainment for the 1997 8-hour ozone NAAQS.[2]

The Areas' LMPs for the 1997 8-hour ozone NAAQS, submitted by NCDAQ on September 22, 2020, are designed to maintain the 1997 8-hour ozone NAAQS within the GSMNP, Triangle and Rocky Mount Areas through the end of the second 10-year portion of the maintenance period beyond redesignation. EPA is proposing to approve the plans because they meet all applicable requirements under CAA sections 110 and 175A.

As a general matter, the GSMNP, Triangle and Rocky Mount LMPs for the 1997 8-hour ozone NAAQS rely on the same control measures and contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of each area's maintenance period as the maintenance plans submitted by NCDAQ for the first 10-year period.

II. Background

Ground-level ozone is formed when oxides of nitrogen (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma and other lung diseases.

Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure.[3]

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).[4] EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour ozone NAAQS would be more protective of human health, especially in children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the GSMNP, Triangle and Rocky Mount Areas nonattainment for the 1997 8-hour ozone NAAQS. The GSMNP nonattainment area included portions of Haywood and Swain Counties. The Triangle nonattainment area included Durham, Franklin, Granville, Johnston, Orange, Person and Wake Counties in their entirety and the Townships of Baldwin, Center, New Hope and Williams in Chatham County. The Rocky Mount nonattainment area included Edgecombe and Nash Counties in their entirety. The designations became effective on June 15, 2004.[5] Similarly, on May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS. EPA designated the counties and townships that comprised the Areas as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. These designations became effective on July 20, 2012.[6] In addition, on November 16, 2017, areas were designated for the 2015 8-hour ozone NAAQS. The counties and townships that comprised the Areas were designated as attainment/unclassifiable for the 2015 8-hour ozone NAAQS, with an effective date on January 16, 2018.[7]

A state may submit a request to redesignate a nonattainment area that is attaining a NAAQS, and, if the area has met other required criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the area's redesignation to attainment.[8] One of the criteria for

[1] *See* 69 FR 23857.

[2] *See* 72 FR 72948 (December 26, 2007), 74 FR 63995 (December 7, 2009), and 71 FR 64891 (November 6, 2006).

[3] *See* ''Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone,'' January 6, 2010, and 75 FR 2938 (January 19, 2010).

[4] In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and tightened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone NAAQS and tightened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

[5] *See* 69 FR 23858.

[6] *See* 77 FR 30088.

[7] *See* 82 FR 54232.

[8] Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully

Continued

redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending 10 years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. At the end of the eighth year after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.,* ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing maintenance plans.[9] The Calcagni memo provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). *See* Calcagni memo at page 9. EPA clarified in three subsequent guidance memos that certain areas could meet the CAA section 175A requirement to provide for maintenance by showing that the area was unlikely to violate the NAAQS in the future, using information such as the area's design value [10] being well below the standard and the area having a historically stable design value.[11] EPA refers to a maintenance plan containing this streamlined demonstration as an LMP.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including: An attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, states seeking an LMP must still submit their section 175A maintenance plan as a revision to their SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,[12] EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.[13]

In this case, EPA is proposing to approve the Areas' LMPs for the 1997 8-hour ozone NAAQS, because the State has made a showing, consistent with EPA's prior LMP guidance, that the Areas' ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable and that it has met the other maintenance plan requirements. NCDAQ has submitted the LMPs for the GSMNP, Triangle and Rocky Mount 1997 8-hour ozone NAAQS maintenance areas to fulfill the second maintenance plan requirement in the Act. EPA's evaluation of the Areas' LMPs for the 1997 8-hour ozone NAAQS is presented below.

On July 24, 2009, NCDAQ submitted to EPA a request to redesignate the GSMNP Area to attainment for the 1997 8-hour ozone NAAQS. This submittal included a plan to provide for maintenance of the 1997 8-hour ozone NAAQS in the GSMNP Area through 2020 as a revision to the North Carolina SIP. EPA approved the GSMNP Maintenance Plan and the State's request to redesignate the GSMNP Area to attainment for the 1997 8-hour ozone NAAQS effective January 6, 2010.[14] On June 7, 2007, NCDAQ submitted to EPA a request to redesignate the Triangle Area to attainment for the 1997 8-hour ozone NAAQS. This submittal included a plan to provide for maintenance of the 1997 8-hour ozone NAAQS in the Triangle Area through 2017 as a revision to the North Carolina SIP. EPA approved the Triangle Maintenance Plan and the State's request to redesignate the Triangle Area to attainment for the 1997 8-hour ozone NAAQS effective December 26, 2007.[15] On June 19, 2006, NCDAQ submitted to EPA a request to redesignate the Rocky Mount Area to attainment for the 1997 8-hour ozone NAAQS. This submittal included a plan to provide for maintenance of the 1997 8-hour ozone NAAQS in the Rocky Mount Area through 2017 as a revision to the North Carolina SIP. EPA approved the Rocky Mount Maintenance Plan and the State's request to redesignate the Rocky Mount Area to attainment for the 1997 8-hour ozone NAAQS effective January 5, 2007.[16]

Under CAA section 175A(b), states must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. EPA's final implementation rule for the 2008 8-hour ozone NAAQS revoked the 1997 8-hour ozone NAAQS and stated that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[17]

In *South Coast Air Quality Management District* v. *EPA,* the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 8-hour ozone NAAQS, second maintenance plans were not required for ''orphan maintenance areas,'' *i.e.,* areas that had been redesignated to attainment for the 1997 8-hour ozone NAAQS maintenance areas and were designated attainment for the 2008 ozone NAAQS. *South Coast,* 882 F.3d 1138 (D.C. Cir. 2018). Thus, states with these ''orphan maintenance areas'' under the 1997 8-hour ozone NAAQS must submit maintenance plans for the second maintenance period. Accordingly, on September 22, 2020, North Carolina submitted a second maintenance plan for the GSMNP,

approved maintenance plan under CAA section 175A.

[9] *See* John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni memo).

[11] *See* ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

[12] The prior memos addressed: Unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM_{10} (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment for the carbon monoxide (CO) NAAQS.

[13] *See, e.g.,* 79 FR 41900 (July 18, 2014) (Approval of second ten-year LMP for Grant County 1971 SO_2 maintenance area).

[14] *See* 74 FR 63995 (December 7, 2009).

[15] *See* 72 FR 72948 (December 26, 2007).

[16] *See* 71 FR 64891 (November 6, 2006).

[17] *See* 80 FR 12264, 12315 (March 6, 2015).

Triangle and Rocky Mount Areas that show that the Areas are expected to remain in attainment of the 1997 8-hour ozone NAAQS through the following dates: GSMNP Area through January 6, 2030; Rocky Mount Area through January 5, 2027; and Triangle Area through December 26, 2027.

In recognition of the continuing record of air quality monitoring data showing ambient 8-hour ozone concentrations in the Areas are well below the 1997 8-hour ozone NAAQS, NCDAQ chose the LMP option for the development of the Areas' second 1997 8-hour ozone NAAQS maintenance plans. On September 22, 2020, NCDAQ adopted and submitted the second 10-year 1997 8-hour ozone maintenance plans to EPA as revisions to the North Carolina SIP.

III. North Carolina's SIP Submittals

As mentioned above, on September 22, 2020, NCDAQ submitted the GSMNP, Triangle and Rocky Mount LMPs for the 1997 8-Hour ozone NAAQS to EPA as revisions to the North Carolina SIP. The submittal includes the LMPs, air quality data, emissions inventory information, and appendices, as well as evidence of adoption of the plan by NCDAQ. Appendices to the plan include comments and responses between EPA and NCDAQ; documentation of notice, hearing, and public participation prior to adoption of the plan by NCDAQ on September 22, 2020; and an explanation that North Carolina's LMP submittals for the remainder of the 20-year maintenance period for the 1997 8-hour ozone NAAQS in the remaining GSMNP, Triangle and Rocky Mount 1997 8-hour ozone areas are in response to the Court overturning aspects of EPA's Implementation Plan rule. In addition, the LMPs went through interagency consultation.

The GSMNP, Triangle and Rocky Mount LMPs for the 1997 8-Hour ozone NAAQS each include same or similar emission reduction strategies as each Area's first 10-year Maintenance Plan, as well as additional emissions reduction measures to provide for the maintenance of the 1997 8-hour ozone NAAQS through the following dates: GSMNP Area through January 6, 2030; Rocky Mount Area through January 5, 2027; and Triangle Area through December 26, 2027. Specifically, the measures upon which the second 10-year LMPs for the Areas rely include the continuation of the Clean Air Bill/Vehicle Emissions Inspection and Maintenance Program,[18] Clean Smokestacks Act, and the Open Burning Rule found in Chapter 15A NCAC 02D.1903. Each Area's LMP also relies on continued implementation of federal measures (*e.g.,* Tier 2 Motor Vehicle Emission and Fuel Standards; Heavy-duty Gasoline and Diesel Highway Vehicle Standards; Large Nonroad Diesel Engine Standards; Nonroad Spark-Ignition Engine and Recreational Engine Standards; Tier 3 Motor Vehicle Emission and Fuel Standards; [19] and the Tennessee Valley Authority (TVA) Consent Decree).

IV. EPA's Evaluation of North Carolina's SIP Submittals

EPA has reviewed the Areas' LMPs for the 1997 8-hour ozone NAAQS, which is designed to maintain the 1997 8-hour ozone NAAQS within the Areas through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). The following is a summary of EPA's interpretation of the section 1745A requirements [20] and EPA's evaluation of how each requirement is met.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on typical summer day emissions of VOCs and NO_X, as these pollutants are precursors to ozone formation. The GSMNP, Triangle and Rocky Mount LMPs include an ozone attainment inventory for each of the Areas that reflect typical summer day emissions for 2014. Table 1 presents a summary of the inventory for 2014 contained in the LMPs.

TABLE 1—AVERAGE SUMMER DAY 2014 NO_X AND VOC EMISSIONS BY SECTOR (TONS/DAY) IN GSMNP, TRIANGLE AND ROCKY MOUNT

Maintenance area	Sector	2014	
		NO_X	VOC
GSMNP	Fire	0.000	0.000
	Nonpoint	0.000	0.039
	Nonroad	0.002	0.029
	Onroad	0.184	0.245
	Point	0.000	0.000
	Total	0.186	0.313

[18] On September 25, 2018, EPA approved removal of 26 counties from North Carolina's expanded Inspection and Maintenance program. The removal affected the following counties subject to this action: Haywood, Granville, Orange, Chatham, Edgecombe, and Nash. *See* 83 FR 48383. On September 11, 2019, EPA published a final rule approving revisions to North Carolina's expanded Inspection and Maintenance model year coverage for vehicles in 22 counties. The revision affected the following counties subject to this action: Durham, Johnston, Franklin and Wake. *See* 84 FR 47889.

[19] *See* 79 FR 23414 (April 28, 2014).

[20] *See* Calcagni memo.

TABLE 1—AVERAGE SUMMER DAY 2014 NO_X AND VOC EMISSIONS BY SECTOR (TONS/DAY) IN GSMNP, TRIANGLE AND ROCKY MOUNT—Continued

Maintenance area	Sector	2014	
		NO_X	VOC
Rocky Mount	Fire	0.005	0.055
	Nonpoint	1.382	5.895
	Nonroad	1.453	0.946
	Onroad	8.841	4.391
	Point	2.938	1.576
	Total	14.619	12.863
Triangle	Fire	0.014	0.146
	Nonpoint	6.103	51.294
	Nonroad	14.970	15.782
	Onroad	64.856	32.603
	Point	40.457	7.383
	Total [21]	126.400	107.208

The Emissions Inventory section of the LMPs for the GSMNP, Triangle and Rocky Mount Areas describes the methods, models and assumptions used to develop the attainment inventory. These estimates were derived from emissions values provided by EPA for use in developing maintenance plans for the 1997 8-hour ozone NAAQS.[22] For the Rocky Mount Area, NCDAQ used the emissions summaries generated by EPA from the 2014 Version 7.1 modeling platform.[23] Because EPA's emissions estimates are provided at the county level and the GSMNP and Triangle Areas include one or more partial counties, NCDAQ developed methodologies to estimate the proportion of county emissions occurring in these maintenance areas. These methodologies utilize a combination of more specific locational data as well as local expert judgment.[24] The emissions data in the 2014v7.1 platform are primarily based on the 2014NEIv1 for point sources, nonpoint sources, commercial marine vessels (CMV), onroad and nonroad mobile sources, and fires. The GSMNP and Triangle area estimates reflect some adjustments to EPA's estimates as described on pages 11 through 16 of the submittal.

Based on our review of the methods, models, and assumptions used by DAQ to develop the VOC and NO_X estimates, we propose to find that the Areas' LMPs include a comprehensive, reasonably accurate inventory of actual ozone precursor emissions in attainment year 2014, and propose to conclude that the plans' inventories are acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

The maintenance demonstration requirement is considered to be satisfied in an LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the NAAQS, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low.[25] These criteria are evaluated below with regard to the GSMNP, Triangle and Rocky Mount Areas.

1. Evaluation of Ozone Air Quality Levels

To attain the 1997 8-hour ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the NAAQS is attained if the design value is 0.084 ppm (84 parts per billion or ''ppb'') [26] or below. EPA has evaluated the quality assured and certified 2017–2019 monitoring data (which was the most recent data at the time of submission) and determined that the 2017–2019 design values for the Areas are as follows: 63 ppb, or 75 percent of the level of the 1997 8-hour ozone NAAQS for the GSMNP Area; 64 ppb, or 74 percent of the level of the NAAQS for the Triangle Area; and 61 ppb, or 73 percent of the level of the NAAQS for the Rocky Mount Area. In addition, EPA evaluated the quality assured and certified 2018–2020 monitoring data (which is the current most recent monitoring data) and determined that the 2018–2020 design values for the Areas are as follows: 62 ppb, or 74 percent of the level of the 1997 8-hour ozone NAAQS for the GSMNP Area; 60 ppb, or 71 percent of the level of the NAAQS for the Triangle Area; and 58 ppb, or 69 percent of the level of the NAAQS for the Rocky Mount Area. Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (*e.g.,* below 85 percent of the NAAQS, or in this case below 71 ppb), then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Such a demonstration assumes continued applicability of prevention of significant deterioration requirements and any control measures already in the SIP, and that Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance.

[21] The totals represented in the table may be slightly different than the inventories in the LMPs based on rounding convention.

[22] U.S. EPA, ''1997 Ozone NAAQS Air Quality Monitoring and Modeling Data'' downloaded from *https://www.epa.gov/sites/production/files/2018-11/ozone_1997_naaqs_air_qual_monitoring_and_modeling_data_nov_19_2018_1.xlsx,* accessed April 2020.

[23] U.S. EPA, ''Air Emissions Modeling, 2014 Version 7.1 Platform,'' is available from *https://www.epa.gov/air-emissions-modeling/2014-version-71-platform,* accessed April 2020 (note that the version 7 platform, which included 2028 projections is not available on EPA's website).

[24] NCDAQ also coordinated with the National Park Service for the GSMNP area.

[25] *See* Calcagni Memo.

[26] EPA set the 1997 8-hour ozone NAAQS in ppm. To convert ppm to ppb the decimal is moved three places to the right (*i.e.,* 0.084 ppm is equal to 84 ppb). NCDAQ provided the values in ppb for easy reference.

Table 2 presents the design values for each monitor in the GSMNP, Triangle and Rocky Mount Areas over the 2011–2020 period.[27] As shown in Table 2, all sites have been well below the level of the 1997 8-hour ozone NAAQS since the 2009–2011 design value, and the most current design value for each of the Areas is below 85 percent of the NAAQS, consistent with prior LMP guidance.

TABLE 2—1997 8-HOUR OZONE NAAQS DESIGN VALUES (ppb) AT MONITORING SITES IN THE GSMNP, TRIANGLE AND ROCKY MOUNT AREAS FOR THE 2011–2020 TIME PERIOD

Location	County	1997 Ozone NAAQS area	AQS Site ID	2009–2011 DV	2010–2012 DV	2011–2013 DV	2012–2014 DV	2013–2015 DV	2014–2016 DV	2015–2017 DV	2016–2018 DV	2017–2019 DV	2018–2020 DV
SW Corner of Roof Haywood Co Health Department Building.	Haywood	GSMNP	37–087–0004	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)	(a)
Waynesville School	Haywood	GSMNP	37–087–0008	a 65	a 65	61	60	60	62	61	61	59	58
Frying Pan Mountain	Haywood	GSMNP	37–087–0035	(* b)	(* b)	(* b)	67	65	66	64	63	62	61
Purchase Knob	Haywood	GSMNP	37–087–0036	67	68	65	65	64	65	64	64	63	62
Bryson City	Swain	GSMNP	37–173–0002	62	62	58	57	57	60	60	60	58	56
Acquoni Rd	Swain	GSMNP	37–173–0007	(*)	(*)	(*)	58	59	61	58	58	(* c)	58
Pittsboro	Chatham	Triangle	37–037–0004	66	65	61	59	58	(*)	(*)	(*)	(*)	(*)
Duke Street d	Durham	Triangle	37–063–0013	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
Durham d Armory	Durham	Triangle	37–063–0015	70	72	68	66	61	62	61	62	61	59
Franklinton	Franklin	Triangle	37–069–0001	69	71	68	64	61	(*)	(*)	(*)	(*)	(*)
Butner	Granville	Triangle	37–077–0001	72	72	69	66	63	64	64	65	64	60
West Johnston Co	Johnston	Triangle	37–101–0002	71	74	70	67	63	65	63	63	61	59
Bushy Fork	Person	Triangle	37–145–0003	70	74	69	66	61	63	61	62	62	59
Millbrook School	Wake	Triangle	37–183–0014	71	72	68	65	63	65	66	66	64	60
Fuquay-Varina	Wake	Triangle	37–183–0016	73	75	71	65	62	(*)	(*)	(*)	(*)	(*)
Leggett	Edgecombe	Rocky Mount	37–065–0099	70	71	69	65	62	(* b)	62	62	61	58

[a] The monitor at the Haywood County Health Department building was discontinued in 2011 due to remodeling. The monitor was moved across the street to an elementary school (the Waynesville School monitor). EPA approved combining the data from the two sites to provide design values for 2009–2011 and 2010–2012.
[b] This design value did not meet the three–year completeness requirement of 90%.
[c] This design value did not meet the three–year completeness requirement of 90% due to instrument malfunctions with various components of the analytic system during much of July and August 2017.
[d] The DAQ decided to consolidate the Duke Street ozone monitor and Durham Health PM monitors at one site, located across the street from the Duke Street location. EPA approved combining the data from the two sites to provide design values for 2005–2007 and 2006–2008.
* These monitors were either discontinued or had incomplete data.

Therefore, the GSMNP, Triangle and Rocky Mount Areas are eligible for the LMP option, and EPA proposes to find that the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and NO_X emissions control programs, adequately provide for the maintenance of the 1997 8-hour ozone NAAQS in the Areas through the second 10-year maintenance period and beyond.

2. Stability of Ozone Levels

As discussed above, the GSMNP, Triangle and Rocky Mount Areas have maintained air quality well below the 1997 8-hour ozone NAAQS over the past ten years. Additionally, the design value data shown within Table 2 illustrates that ozone levels have been relatively stable over this timeframe, with a modest downward trend. For example, the data within Table 2 indicates that the largest, year over year change in design value in these ten years was 4 ppb for the GSMNP Area, which occurred between the 2012 design value and 2013 design value at monitor 37–087–0008 (Waynesville School) and at monitor 37–173–0002 (Bryson City), representing approximately a 6 percent decrease; 6 ppb for the Triangle Area, which occurred between the 2013 design value and 2014 design value at monitor 37–183–0016 (Fuquay-Varina), representing approximately an 8 percent decrease; and 4 ppb for the Rocky Mount Area, which occurred between the 2013 design value and 2014 design value at monitor 37–065–0099 (Leggett), representing approximately a 6 percent decrease.

Furthermore, overall trends in design values for the Areas between 2011–2020 indicates decreases in the monitored ozone concentrations. See, *e.g.,* Table 2, above. The overall downward trend in design values for the GSMNP Area for monitor 37–087–0036 (Purchase Knob) was from 67 ppb to 62 ppb, a 7 percent decrease; the overall downward trend in the Triangle Area for monitor 37–077–0001 (Butner) was from 72 ppb to 60 ppb, a 17 percent decrease; and the overall downward trend for the only Rocky Mount monitor 37–065–0099 (Leggett) was from 70 ppb to 58 ppb, a 17 percent decrease.

The downward trend in ozone levels, coupled with the relatively small, year-over-year variation in ozone design values, makes it reasonable to conclude that the GSMNP, Triangle and Rocky Mount Areas will not exceed the 1997 8-hour ozone NAAQS during the second 10-year maintenance period.

3. Projected Emissions

Although under the LMP option there is no requirement to project emissions over the maintenance period, NCDAQ included an analysis of ozone precursor emissions trends expected over the course of the second maintenance period. NCDAQ provided a VOC and NO_X emissions trends analysis from 2014 to 2028. The year 2014 was selected as a baseline for the projection because that is the most recent year for which a complete set of data is available from the EPA's National Emissions Inventory (NEI) database.[28] Projected

[27] NCDAQ provided monitoring data for years 2001 through 2019 and projected 2023 design values for each monitor as supporting weight of evidence. The values can be found on Page 8 of the submittal. The monitoring data shows the general downward trend in design values at the monitoring sites. The data also shows the highest design value projected in 2023 is 53.8 ppb, 57.5 ppb and 51.3 ppb for GSMNP, Triangle and Rocky Mount, respectively.

[28] The 2017 NEI is currently available, however the 2014 NEI was the most recent NEI available at the time the second maintenance plan was developed by the State, and therefore, the 2014 NEI was used.

emissions data for the year 2028 were obtained from EPA.[29]

The emissions projection trends show that between 2014 and 2028, VOC emissions are estimated to fall by 67 percent within the GSMNP Area; 28 percent in the Triangle Area; and 27 percent in the Rocky Mount Area. The emissions projection trends show that between 2014 and 2028, NO_X emissions are estimated to fall by 80 percent in the GSMNP Area; 52 percent in the Triangle Area; and 68 percent in the Rocky Mount Area. These projected declining emissions trends further support the proposed conclusion that it is unlikely that the Areas would violate the 1997 8-hour ozone NAAQS in the future. Table 3 presents a summary of projected emissions for 2028 contained in the maintenance plan.[30]

TABLE 3—AVERAGE SUMMER DAY PROJECTED 2028 NO_X AND VOC EMISSIONS BY SECTOR

[Tons/year]

Maintenance area	Sector	2028	
		NO_X	VOC
GSMNP	Fire[31]	0.000	0.000
	Nonpoint	0.000	0.032
	Nonroad	0.001	0.017
	Onroad	0.036	0.055
	Point	0.000	0.000
	Total	0.037	0.104
Rocky Mount	Fire	0.005	0.055
	Nonpoint	1.133	6.667
	Nonroad	0.807	0.903
	Onroad	1.804	0.983
	Point	0.892	0.774
	Total	4.641	9.382
Triangle	Fire	0.012	0.128
	Nonpoint	5.867	45.769
	Nonroad	9.167	14.533
	Onroad	15.113	10.646
	Point	30.654	5.631
	Total[32]	60.813	76.707

In addition to the long history of monitored ozone concentrations in these Areas that are well-below the NAAQS, additional supporting information that the Areas are expected to continue to maintain the NAAQS can be found in an analysis of future year design values that EPA recently completed for the Revised Cross-State Air Pollution Rule (CSAPR) Update for the 2008 Ozone NAAQS.[33] The modeled-projected analysis for monitors in the GSMNP, Triangle and Rocky Mount Areas, made for the year 2023, resulted in fewer than five days with modeled ozone concentrations greater than or equal to 60 ppb, indicating that future-year design values are expected to remain well below the NAAQS. EPA is not proposing to make any finding in this action regarding interstate transport obligations for any state.

C. Monitoring Network and Verification of Continued Attainment

EPA periodically reviews the ozone monitoring network that NCDAQ operates and maintains in accordance with 40 CFR part 58. This network plan, which is submitted annually to EPA, is consistent with the ambient air quality monitoring network assessment. The annual network plan developed by NCDAQ follows a public notification and review process. EPA has reviewed and approved the 2020 Ambient Air Monitoring Network Plan (''2020 Annual Network Plan'').[34]

To verify the attainment status of the Areas over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, NCDAQ's monitoring network in the Areas have been approved by EPA in accordance with 40 CFR part 58, and the State has committed to continue to maintain a network in accordance with EPA requirements. EPA proposes to find that NCDAQ's monitoring network is adequate to verify continued attainment of the 1997 8-hour ozone NAAQS in each of the Areas.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS

[29] *https://www.epa.gov/air-emissions-modeling/2014-2016-version-7-air-emissions-modeling-platforms.* EPA's emissions projections to 2028 were made from the 2011 NEI, as that iteration of the NEI was the most recently available version when the projection work was performed. Although this projection does not correspond exactly with the end of the second ten-year maintenance period, it provides additional support for EPA's proposed finding that the Area will maintain the NAAQS due to its low and historically stable design values. See the Emissions Inventory section of the LMP for additional information regarding the 2028 projections.

[30] The inventory documentation for this platform can be found here: *https://www.epa.gov/air-emissionsmodeling/2011-version-63-platform.*

[31] The DAQ replaced the 2028 fire sector emissions, which reflected estimates carried forward from the 2011 NEI, with values carried forward from the 2014 NEI.

[32] The totals represented in the table may be slightly different based on rounding convention.

[33] On April 30, 2021, EPA published the final Revised CSAPR Update using updated modeling that focused on analytic years 2023 and 2028 and an interpolation analysis of these modeling results to generate air quality and contribution values for the 2021 analytic year. *See* 86 FR 23054. *https://www.govinfo.gov/content/pkg/FR-2021-04-30/pdf/2021-05705.pdf.*

[34] The letter approving the network plan is in the docket for this proposed rulemaking.

or to promptly remedy any NAAQS violations that might occur during the maintenance period. These contingency measures are required to be implemented expeditiously once they are triggered by a future violation of the NAAQS or some other trigger. The state should identify specific triggers which will be used to determine when the contingency measures need to be implemented.

The LMPs state that the two main elements of the North Carolina contingency plans are tracking and triggering mechanisms to determine when control measures are needed, and a process for developing and adopting appropriate control measures. There are three potential triggers for the contingency plans. The primary trigger of each plan will be a violation of the 1997 8-hour ozone NAAQS at any of the maintenance area monitors. The secondary trigger will be a monitored air quality pattern that suggests an actual 1997 8-hour ozone NAAQS violation may be imminent. The tertiary trigger will be a monitored fourth highest exceedance of the NAAQS. Upon either the primary or secondary triggers being activated, NCDAQ will commence analyses to determine what additional measures, if any, will be necessary to attain or maintain the ozone standard. If activation of either the primary or secondary triggers occurs, each plan provides a regulatory adoption process for revising emission control strategies. Activation of the tertiary trigger will result in an analysis to understand the cause of the exceedance and to identify voluntary measures if needed. The primary trigger date will be 60 days from the date on which an ozone monitor in a maintenance area records a 4th highest value that, when averaged with the two previous ozone seasons' fourth highest values, results in a 3-year average equal to or greater than 85 ppb. The secondary trigger date will be 60 days from the date on which an ozone monitor in a maintenance area records a 4th highest value of 85 ppb or greater for which the previous season had a 4th highest value of 85 ppb or greater. The tertiary trigger date will be 60 days from the date on which an ozone monitor in a maintenance area records a 4th highest value of 85 ppb or greater.[35]

The DAQ commits to begin implementing as expeditiously as practicable, but no later than 24 months of the primary or secondary trigger, at least one control measure that is determined to be most appropriate for reducing NO_X emissions to attain and maintain the standard based on the analyses performed.

EPA proposes to find that the contingency provisions in North Carolina's second maintenance plans for the 1997 8-hour Ozone NAAQS meet the requirements of the CAA section 175A(d).

E. Conclusion

EPA proposes to find that the GSMNP, Triangle and Rocky Mount LMPs for the 1997 8-hour ozone NAAQS include an approvable update of the various elements (including attainment inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions) of the initial EPA-approved Maintenance Plans for the 1997 8-hour ozone NAAQS. EPA also proposes to find that the GSMNP, Triangle and Rocky Mount Areas, qualify for the LMP option, and adequately demonstrate maintenance of the 1997 8-hour ozone NAAQS through the documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and historically stable design values. EPA believes the GSMNP, Triangle and Rocky Mount LMPs for the 1997 8-hour ozone NAAQS, which retain all existing control measures, are sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in each of the Areas over the second maintenance period (*i.e.,* through January 6, 2030 for the GSMNP Area, through January 5, 2027 for the Rocky Mount Area, and through December 26, 2027 for the Triangle Area) and thereby satisfy the requirements for such plans under CAA section 175A(b). EPA is therefore proposing to approve North Carolina's September 22, 2020, submission of each Area's LMP for the 1997 8-hour ozone NAAQS as a revision to the North Carolina SIP.

V. Transportation Conformity and General Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations or delay timely attainment of the NAAQS. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93 subpart A requires that transportation plans, programs and projects conform to SIPs and establishes the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicles emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. A MVEB is defined as ''the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions'' *See* 40 CFR 93.101.

Under the conformity rule, LMP areas may demonstrate conformity without a regional emissions analysis. *See* 40 CFR 93.109(e). EPA made findings that the MVEBs in the first 10-years of the 1997 8-hour zone maintenance plan for the GSMNP, Triangle and Rocky Mount Areas were adequate for transportation conformity purposes. In a **Federal Register** notice published on December 7, 2009, EPA notified the public of the adequacy finding for the GSMNP Area through final rulemaking; the adequacy determination for GSMNP Area became effective on January 6, 2010. *See* 74 FR 63995. In a **Federal Register** notice published on December 26, 2007, EPA notified the public of the adequacy finding for the Triangle Area through final rulemaking; the adequacy determination for the Triangle Area became effective on December 26, 2007. *See* 72 FR 72948. In a **Federal Register** notice published on November 6, 2006, EPA notified the public of the adequacy finding for the Rocky Mount Area through direct final rulemaking; the adequacy determination for the Rocky Mount Area became effective on January 5, 2007. *See* 71 FR 64891.[36]

After approval of or an adequacy finding for each of these LMPs, there is no requirement to meet the budget test pursuant to the transportation conformity rule for the respective maintenance area. All actions that would require a transportation conformity determination for the GSMNP, Triangle and Rocky Mount Areas under EPA's transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 as

[35] See the Contingency Plan Section of each LMP for further information regarding the contingency plan, including measures that North Carolina will consider for adoption if any of the triggers are activated.

[36] NCDAQ submitted a SIP revision to update the MVEBs for the Rocky Mount Area on February 7, 2011. EPA approved the updated MVEBs on September 27, 2012. *See* 77 FR 59335. The approval was made through direct final rulemaking and became effective on November 26, 2012.

a result of EPA's adequacy finding for these LMPs. *See* 69 FR 40004 (July 1, 2004).

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determinations, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108), meet the criteria for consultation (40 CFR 93.105) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.113), as well as meet the hot-spot requirements for projects (40 CFR 93.116).[37] Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, in order for projects to be approved they must come from a currently conforming RTP and TIP. *See* 40 CFR 93.114 and 40 CFR 93.115.

VI. Proposed Actions

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the GSMNP, Triangle and Rocky Mount LMPs for the 1997 8-hour ozone NAAQS, submitted by NCDAQ on September 22, 2020, as revisions to the North Carolina SIP. EPA is proposing to approve the LMPs because each LMP includes an acceptable update of the various elements of the 1997 8-hour ozone NAAQS Maintenance Plans approved by EPA for the first 10-year period (including emissions inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions), and retains the relevant portions of the SIP.

EPA also finds that the GSMNP, Triangle and Rocky Mount Areas, former nonattainment areas for the 1997 8-hour ozone NAAQS, qualify for the LMP option, and therefore, the Areas' LMPs adequately demonstrate maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes each of the Areas' 1997 8-Hour Ozone LMPs to be sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS over the second 10-year maintenance periods (which extends through January 6, 2030 for the GSMNP Area, through January 5, 2027 for the Rocky Mount Area; and through December 26, 2027 for the Triangle Area), and thereby satisfy the requirements for such a plan under CAA section 175A(b).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely propose to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not significant regulatory actions 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);
- Do not impose information collection burdens under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandates or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do 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).

These SIP revisions are not proposed 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 as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: February 3, 2022.

Daniel Blackman,

Regional Administrator, Region 4.

[FR Doc. 2022–02718 Filed 2–10–22; 8:45 am]

BILLING CODE 6560–50–P

[37] A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of this section (93.109(e)) is still required, including the hot-spot requirements for projects in CO, PM_{10}, and fine particulate matter ($PM_{2.5}$) areas.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2021–0949; FRL–9532–01–R5]

Air Plan Approval; Ohio; Redesignation of the Ohio Portion of the Cincinnati, Ohio-Kentucky Area to Attainment of the 2015 Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Cincinnati, Ohio-Kentucky area (Area) is attaining the 2015 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) and to approve a request from the Ohio Environmental Protection Agency (OEPA) to redesignate the Ohio portion of the Area to attainment for the 2015 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA). The Area includes Butler, Clermont, Hamilton, and Warren Counties in Ohio and Boone, Campbell, and Kenton Counties in Kentucky. OEPA submitted this request on December 21, 2021. EPA is also proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), the state's plan for maintaining the 2015 8-hour ozone standard through

2035 in the Area. Finally, EPA is proposing to approve the state's 2026 and 2035 volatile organic compound (VOC) and oxides of nitrogen (NO_X) Motor Vehicle Emission Budgets (MVEBs) for the Ohio portion of the Area.

DATES: Comments must be received on or before March 14, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2021–0949 at *https://www.regulations.gov* or via email to *arra.sarah@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://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Olivia Davidson, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0266, *davidson.olivia@epa.gov.* The EPA Region 5 office 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.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What are the actions EPA is proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that the Area, currently designated nonattainment, is attaining the 2015 ozone standard. This is based on quality-assured and certified monitoring data for 2019–2021 and EPA's findings that the Ohio portion of the Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve OEPA's request to change the legal designation of the Ohio portion of the Area from nonattainment to attainment for the 2015 ozone standard. EPA is also proposing to approve, as a revision to the Ohio SIP, the state's maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the Area. The maintenance plan is designed to keep the Area in attainment of the 2015 ozone NAAQS through 2035. Finally, EPA is proposing to approve the newly established 2026 and 2035 MVEBs for the Ohio portion of the Area for transportation conformity purposes.

II. What is the background for these actions?

EPA has determined that ground-level ozone is detrimental to human health. On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). See 80 FR 65291 (October 26, 2015). Under EPA's regulations at 40 CFR part 50, the 2015 8-hour ozone NAAQS is attained in an area when the 3-year average of the annual fourth highest daily maximum 8-hour average concentration is equal to or less than 0.070 ppm, when truncated after the thousandth decimal place, at all of the ozone monitoring sites in the area. *See* 40 CFR 50.15 and appendix P to 40 CFR part 50.

Upon promulgation of a new or revised NAAQS, section 107(d)(1)(B) of the CAA requires EPA to designate as nonattainment any areas that are violating the NAAQS, based on the most recent three years of quality assured ozone monitoring data. The Cincinnati area was designated as a marginal nonattainment area for the 2015 ozone NAAQS on June 4, 2018 (83 FR 25776, effective August 3, 2018).

III. What are the criteria for redesignation?

Section 107(d)(3)(E) of the CAA allows redesignation of an area to attainment of the NAAQS provided that: (1) The Administrator (EPA) determines that the area has attained the NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k) of the CAA; (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations, and other permanent and enforceable emission reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA; and (5) the state containing the area has met all requirements applicable to the area for the purposes of redesignation under section 110 and part D of the CAA.

On April 16, 1992, EPA provided guidance on redesignations in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 (57 FR 13498) and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. ''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton. Director, Technical Support Division, June 18, 1990;
2. ''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. ''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (the ''Calcagni Memorandum'');
5. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;
6. ''Technical Support Documents (TSDs) for Redesignation of Ozone and Carbon

Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

8. ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. What is EPA's analysis of Ohio's redesignation request?

A. Has the area attained the 2015 8-hour ozone NAAQS?

For redesignation of a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). An area is attaining the 2015 ozone NAAQS if it meets the 2015 ozone NAAQS, as determined in accordance with 40 CFR 50.15 and appendix P of part 50, based on three complete, consecutive calendar years of quality-assured air quality data for all monitoring sites in the area. To attain the NAAQS, the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (ozone design values) at each monitor must not exceed 0.070 ppm. The air quality data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System (AQS). Ambient air quality monitoring data for the 3-year period must also meet data completeness requirements. An ozone design value is valid if daily maximum 8-hour average concentrations are available for at least 90 percent of the days within the ozone monitoring seasons,[1] on average, for the three-year period, with a minimum data completeness of 75 percent during the ozone monitoring season of any year during the three-year period. *See* section 4 of appendix U to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data from monitoring sites in the Area for the 2019–2021 period. These data have been quality assured, are recorded in the AQS, and have been certified. These data demonstrate that the Area is attaining the 2015 ozone NAAQS. The annual fourth-highest 8-hour ozone concentrations and the 3-year average of these concentrations (monitoring site ozone design values) for each monitoring site are summarized in Table 1.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF THE 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE AREA

State	County	Monitor	2019 4th high (ppm)	2020 4th high (ppm)	2021 4th high (ppm)	2019–2021 average (ppm)
Ohio	Butler	39–017–0018	0.067	0.070	0.064	0.067
		39–017–0023	0.067	0.067	0.066	0.066
		39–017–9991	0.065	0.064	0.063	0.064
	Clermont	39–025–0022	0.071	0.064	0.065	0.066
	Hamilton	39–061–0006	0.072	0.070	0.070	0.070
		39–061–0010	0.067	0.070	0.064	0.067
		39–061–0040	0.071	0.068	0.069	0.069
	Warren	39–165–0007	0.070	0.071	0.069	0.070
Kentucky	Boone	21–015–0003	0.062	0.062	0.061	0.061
	Campbell	21–037–3002	0.062	0.063	0.064	0.063

The 3-year ozone design value for 2019–2021 is 0.07 ppm,[2] which meets the 2015 ozone NAAQS. Therefore, in today's action, EPA proposes to determine that the Area is attaining the 2015 ozone NAAQS.

EPA will not take final action to determine that the Area is attaining the NAAQS nor to approve the redesignation of this area if the design value of a monitoring site in the area exceeds the NAAQS after proposal but prior to final approval of the redesignation. As discussed in section IV.D.3. below, OEPA has committed to continue monitoring ozone in this area to verify maintenance of the 2015 ozone NAAQS.

B. Has Ohio met all applicable requirements of section 110 and part D of the CAA for the area, and does the Ohio portion of the area have a fully approved SIP under section 110(k) of the CAA?

As criteria for redesignation of an area from nonattainment to attainment of a NAAQS, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (*see* section 107(d)(3)(E)(v) of the CAA) and that the state has a fully approved SIP under section 110(k) of the CAA (*see* section 107(d)(3)(E)(ii) of the CAA). EPA proposes to find that Ohio has a fully approved SIP under section 110(k) of the CAA. Additionally, EPA proposes to find that the Ohio SIP satisfies the criterion that it meets applicable SIP requirements, for purposes of redesignation, under section 110 and

[1] The ozone season is defined by state in 40 CFR 58 appendix D. For the 2012–2014 and 2013–2015 time periods, the ozone seasons for Ohio, Indiana, and Kentucky were April–October, April–September, and March–October, respectively. Beginning in 2016, the ozone seasons for Ohio, Indiana and Kentucky are March–October. See, 80 FR 65292, 65466–67 (October 26, 2015).

[2] The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

part D of title I of the CAA (requirements specific to nonattainment areas for the 2015 ozone NAAQS). In making these proposed determinations, EPA ascertained which CAA requirements are applicable to the Area and the Ohio SIP and, if applicable, whether the required Ohio SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs are required to be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992, Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. *See also* the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved but are not required as a prerequisite to redesignation. *See* section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See also* 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

1. Ohio Has Met All Applicable Requirements of Section 110 and Part D of the CAA Applicable to the Ohio Portion of the Area for Purposes of Redesignation

a. Section 110 General Requirements for Implementation Plans

Section 110(a)(2) of the CAA delineates the general requirements for a SIP. Section 110(a)(2) provides that the SIP must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it must: (1) Include enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; (2) provide for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; (3) provide for implementation of a source permit program to regulate the modification and construction of stationary sources within the areas covered by the plan; (4) include provisions for the implementation of part C prevention of significant deterioration (PSD) and part D new source review (NSR) permit programs; (5) include provisions for stationary source emission control measures, monitoring, and reporting; (6) include provisions for air quality modeling; and, (7) provide for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires SIPs to contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of certain air pollutants, *e.g.,* NO_X SIP call.[3] However, like many of the 110(a)(2) requirements, the section 110(a)(2)(D) SIP requirements are not linked with a particular area's ozone designation and classification. EPA concludes that the SIP requirements linked with an area's ozone designation and classification are the relevant measures to evaluate when reviewing a redesignation request for the area. The section 110(a)(2)(D) requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area within the state. Thus, we believe these requirements are not applicable requirements for purposes of redesignation. *See* 65 FR 37890 (June 15, 2000), 66 FR 50399 (October 19, 2001), 68 FR 25418, 25426–27 (May 13, 2003).

In addition, EPA believes that other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's ozone attainment status are not applicable requirements for purposes of redesignation. The relevant area will still be subject to these requirements after the area is redesignated to attainment of the 2015 ozone NAAQS. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This approach is consistent with EPA's existing policy on applicability (*i.e.,* for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania proposed and final rulemakings, 61 FR 53174–53176 (October 10, 1996) and 62 FR 24826 (May 7, 1997); Cleveland-Akron-Loraine, Ohio final rulemaking, 61 FR 20458 (May 7, 1996); and Tampa, Florida final rulemaking, 60 FR 62748 (December 7, 1995). *See also* the discussion of this issue in the Cincinnati, Ohio ozone redesignation 65 FR 37890 (June 19, 2000), and the Pittsburgh, Pennsylvania ozone redesignation 66 FR 50399 (October 19, 2001).

We have reviewed Ohio's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation. On August 11, 2021 (86 FR 43962), EPA approved elements of the SIP submitted by Ohio to meet the requirements of section 110 for the 2015 ozone standard. The requirements of section 110(a)(2), however, are statewide requirements that are not linked to the 8-hour ozone nonattainment status of the Area. Therefore, EPA concludes that these infrastructure requirements are not applicable requirements for purposes of review of the state's 8-hour ozone redesignation request.

b. Part D Requirements.

Section 172(c) of the CAA sets forth the basic requirements of air quality plans for states with nonattainment areas that are required to submit them pursuant to section 172(b). Subpart 2 of part D, which includes section 182 of the CAA, establishes specific requirements for ozone nonattainment areas depending on the areas' nonattainment classifications.

The Area was classified as marginal under subpart 2 for the 2015 ozone NAAQS. As such, the Area is subject to the subpart 1 requirements contained in section 172(c) and section 176. Similarly, the Area is subject to the subpart 2 requirements contained in section 182(a) (marginal nonattainment area requirements). A thorough discussion of the requirements contained in section 172(c) and 182 can be found in the General Preamble for Implementation of Title I (57 FR 13498).

[3] On October 27, 1992 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP call, Ohio developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers and turbines, and major cement kilns. EPA approved Ohio's rules as fulfilling Phase I of the NO_X SIP Call on August 5, 2003 (68 FR 46089) and June 27, 2005 (70 FR 36845), and as meeting Phase II of the NO_X SIP Call on February 4, 2008 (73 FR 6427).

i. Subpart 1 Section 172 Requirements

As provided in subpart 2, for marginal ozone nonattainment areas such as the Area, the specific requirements of section 182(a) apply in lieu of the attainment planning requirements that would otherwise apply under section 172(c), including the attainment demonstration and reasonably available control measures (RACM) under section 172(c)(1), reasonable further progress (RFP) under section 172(c)(2), and contingency measures under section 172(c)(9). 42 U.S.C. 7511a(a).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement is superseded by the inventory requirement in section 182(a)(1) discussed below.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA approved Ohio's NSR program on January 10, 2003 (68 FR 1366) and February 25, 2010 (75 FR 8496). Nonetheless, EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Ohio has demonstrated that the Area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Ohio's PSD program will become effective in the Area upon redesignation to attainment. EPA approved Ohio's PSD program on January 22, 2003 (68 FR 2909) and February 25, 2010 (75 FR 8496).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Ohio SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

ii. Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA interprets the conformity SIP requirements [4] as not applying for purposes of evaluating a redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state conformity rules have not been approved. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation); *see also* 60 FR 62748 (December 7, 1995) (redesignation of Tampa, Florida). Nonetheless, Ohio has an approved conformity SIP for the Area. *See* 80 FR 11133 (March 2, 2015).

iii. Section 182(a) Requirements

Section 182(a)(1) requires states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the ozone nonattainment area. OEPA submitted a 2014 base year emissions inventory for the Area on July 24, 2020. EPA approved this emissions inventory as a revision to the Ohio SIP on March 3, 2021 (86 FR 12270).

Under section 182(a)(2)(A), states with ozone nonattainment areas that were designated prior to the enactment of the 1990 CAA amendments were required to submit, within six months of classification, all rules and corrections to existing VOC reasonably available control technology (RACT) rules that were required under section 172(b)(3) prior to the 1990 CAA amendments. The Area is not subject to the section 182(a)(2) RACT ''fix up'' requirement for the 2015 ozone NAAQS because it was designated as nonattainment for this standard after the enactment of the 1990 CAA amendments and because Ohio complied with this requirement for the Area under the prior 1-hour ozone NAAQS. *See* 59 FR 23796 (May 9, 1994) and 60 FR 15235 (March 23, 1995).

Section 182(a)(2)(B) requires each state with a marginal ozone nonattainment area that implemented or was required to implement a vehicle inspection and maintenance (I/M) program prior to the 1990 CAA amendments to submit a SIP revision for an I/M program no less stringent than that required prior to the 1990 CAA amendments or already in the SIP at the time of the CAA amendments, whichever is more stringent. For the purposes of the 2015 ozone standard and the consideration of Ohio's redesignation request for this standard, the Area is not subject to the section 182(a)(2)(B) requirement because the Area was designated as nonattainment for the 2015 ozone standard after the enactment of the 1990 CAA amendments.

Regarding the source permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), Ohio currently has a fully approved part D NSR program in place. EPA approved Ohio's PSD program on January 22, 2003 (68 FR 2909) and February 25, 2010 (75 FR 8496). As discussed above, Ohio has demonstrated that the Area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the state need not have a fully approved part D NSR program prior to approval of the redesignation request. The state's PSD program will become effective in the Area upon redesignation to attainment.

Section 182(a)(3) requires states to submit periodic emission inventories and a revision to the SIP to require the owners or operators of stationary sources to annually submit emission statements documenting actual VOC and NO_X emissions. As discussed below in section IV.D.4. of this proposed rule,

[4] CAA section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain Federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from SIPs requiring the development of Motor Vehicle Emission Budgets (MVEBs), such as control strategy SIPs and maintenance plans.

Ohio will continue to update its emissions inventory at least once every three years. With regard to stationary source emission statements, EPA approved Ohio's emission statement rule on September 27, 2007 (72 FR 54844). On July 24, 2020, Ohio certified that this approved SIP regulation remains in place and remains enforceable for the 2015 ozone standard. EPA approved Ohio's certification on March 3, 2021 (81 FR 12270).

The Ohio portion of the Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Ohio Portion of the Area Has a Fully Approved SIP for Purposes of Redesignation Under Section 110(k) of the CAA

Ohio has adopted and submitted and EPA has approved at various times, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, EPA has fully approved the Ohio SIP for the Area under section 110(k) for all requirements applicable for purposes of redesignation under the 2015 ozone NAAQS. EPA may rely on prior SIP approvals in approving a redesignation request (*see* the Calcagni memorandum at page 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426), plus any additional measures it may approve in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Area due to permanent and enforceable emission reductions?

To redesignate an area from nonattainment to attainment, section 107(d)(3)(E)(iii) of the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from the implementation of the SIP and applicable Federal air pollution control regulations and other permanent and other permanent and enforceable emission reductions. EPA has determined that Ohio has demonstrated that that the observed ozone air quality improvement in the Area is due to permanent and enforceable reductions in VOC and NO_X emissions resulting from state measures adopted into the SIP and Federal measures.

In making this demonstration, the state has calculated the change in emissions between 2014 and 2019. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that the Area and upwind areas have implemented in recent years. In addition, OEPA provided an analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, Ohio has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

1. Permanent and Enforceable Emission Controls Implemented

a. Regional NO_X Controls

Clean Air Interstate Rule (CAIR)/Cross State Air Pollution Rule (CSAPR). CAIR created regional cap-and-trade programs to reduce sulfur dioxide (SO_2) and NO_X emissions in 27 eastern states, including Ohio, that contributed to downwind nonattainment and maintenance of the 1997 8-hour ozone NAAQS and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS. *See* 70 FR 25162 (May 12, 2005). EPA approved Ohio's CAIR regulations into the Ohio SIP on February 1, 2008 (73 FR 6034), and September 25, 2009 (74 FR 48857). In 2008, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA promulgated CSAPR to replace CAIR and thus to address the interstate transport of emissions contributing to nonattainment and interfering with maintenance of the two air quality standards covered by CAIR as well as the 2006 $PM_{2.5}$ NAAQS. CSAPR requires substantial reductions of SO_2 and NO_X emissions from electric generating units (EGUs) in 28 states in the Eastern United States.

The D.C. Circuit's initial vacatur of CSAPR [5] was reversed by the United States Supreme Court on April 29, 2014, and the case was remanded to the D.C. Circuit to resolve remaining issues in accordance with the high court's ruling. *EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014). On remand, the D.C. Circuit affirmed CSAPR in most respects, but invalidated without vacating some of the CSAPR budgets as to a number of states. *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015). The remanded budgets include the Phase 2 NO_X ozone season emissions budgets for Ohio. On September 7, 2016, in response to the remand, EPA finalized an update to CSAPR requiring further reductions in NO_X emissions from EGUs beginning in May 2017. This final rule was projected to result in a 20% reduction in ozone season NO_X emissions from EGUs in the eastern United States, a reduction of 800,000 tons in 2017 compared to 2015 levels.

The improvement in ozone air quality in the Area from 2014 (a year when the design value for the area was above the NAAQS) to 2019 is partially due to CSAPR emissions reductions.

b. Federal Emission Control Measures

A large portion of reductions in emissions in the Ohio portion of the Area from 2014–2019 were due to permanent and enforceable reductions in mobile source VOC and NO_X emissions.

From 2014 to 2019, onroad and nonroad mobile source emission reductions accounted for 63 percent of the total NO_X reductions and 69 percent of the total VOC reductions in the Ohio portion of the Area. As laid out in the State's maintenance demonstration, NO_X and VOC emissions in the Ohio portion of the area are projected to continue their downward trend throughout the maintenance period, driven primarily by point source emission reductions from source retirements for NO_X and onroad and nonroad mobile source reductions for VOC. From 2019 to 2035, Ohio projected that 67 percent of the NO_X emission reductions would be due to point source emission reductions and 95 percent of the VOC reductions in the Ohio portion of the area would be due to mobile source measures based on EPA-approved mobile source modeling.

Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. On February 10, 2000 (65 FR 6698), EPA promulgated Tier 2 motor vehicle emission standards and gasoline sulfur control requirements. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. With respect to fuels, this rule required refiners and importers of gasoline to meet lower standards for sulfur in gasoline, which were phased

[5] *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7, 38 (D.C. Cir. 2012).

in between 2004 and 2006. By 2006, refiners were required to meet a 30 ppm average sulfur level, with a maximum cap of 80 ppm. This reduction in fuel sulfur content ensures the effectiveness of low emission-control technologies. The Tier 2 tailpipe standards established in this rule were phased in for new vehicles between 2004 and 2009. EPA estimates that, when fully implemented, this rule will cut NO_X and VOC emissions from light-duty vehicles and light-duty trucks by approximately 76 and 28 percent, respectively. NO_X and VOC reductions from medium-duty passenger vehicles included as part of the Tier 2 vehicle program are estimated to be approximately 37,000 and 9,500 tons per year, respectively, when fully implemented. In addition, EPA estimates that beginning in 2007, a reduction of 30,000 tons per year of NO_X will result from the benefits of sulfur control on heavy-duty gasoline vehicles. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Tier 3 Emission Standards for Vehicles and Gasoline Sulfur Standards. On April 28, 2014 (79 FR 23414), EPA promulgated Tier 3 motor vehicle emission and fuel standards to reduces both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule will be phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for the sum of VOC and NO_X and for particulate matter. The VOC and NO_X tailpipe standards for light-duty vehicles represent approximately an 80% reduction from today's fleet average and a 70% reduction in per-vehicle particulate matter (PM) standards. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average VOC and NO_X and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50 percent reduction from current standards and apply to all light-duty and onroad gasoline-powered heavy-duty vehicles. Finally, the rule lowers the sulfur content of gasoline to an annual average of 10 ppm by January 2017. As projected by these estimates and demonstrated in the onroad emission modeling for the Area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Heavy-Duty Diesel Engine Rules. In July 2000, EPA issued a rule for on-highway heavy-duty diesel engines that includes standards limiting the sulfur content of diesel fuel. Emissions standards for NO_X, VOC and PM were phased in between model years 2007 and 2010. In addition, the rule reduced the highway diesel fuel sulfur content to 15 parts per million by 2007, leading to additional reductions in combustion NO_X and VOC emissions. EPA has estimated future year emission reductions due to implementation of this rule. Nationally, EPA estimated that 2015 NO_X and VOC emissions would decrease by 1,260,000 tons and 54,000 tons, respectively. Nationally, EPA estimated that 2030 NO_X and VOC emissions will decrease by 2,570,000 tons and 115,000 tons, respectively. As projected by these estimates and demonstrated in the on-road emission modeling for the Area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period, as older vehicles are replaced with newer, compliant model years.

Nonroad Diesel Rule. On June 29, 2004 (69 FR 38958), EPA issued a rule adopting emissions standards for nonroad diesel engines and sulfur reductions in nonroad diesel fuel. This rule applies to diesel engines used primarily in construction, agricultural, and industrial applications. Emission standards are phased in for 2008 through 2015 model years based on engine size. The SO_2 limits for nonroad diesel fuels were phased in from 2007 through 2012. EPA estimates that when fully implemented, compliance with this rule will cut NO_X emissions from these nonroad diesel engines by approximately 90 percent. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Nonroad Spark-Ignition Engines and Recreational Engine Standards. On November 8, 2002 (67 FR 68242), EPA adopted emission standards for large spark-ignition engines such as those used in forklifts and airport ground-service equipment; recreational vehicles such as off-highway motorcycles, all-terrain vehicles, and snowmobiles; and recreational marine diesel engines. These emission standards are phased in from model year 2004 through 2012. When fully implemented, EPA estimates an overall 72 percent reduction in VOC emissions from these engines and an 80 percent reduction in NO_X emissions. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

Category 3 Marine Diesel Engine Standards. On April 30, 2010 (75 FR 22896) EPA issued emission standards for marine compression-ignition engines at or above 30 liters per cylinder. Tier 2 emission standards apply beginning in 2011, and are expected to result in a 15 to 25 percent reduction in NO_X emissions from these engines. Final Tier 3 emission standards apply beginning in 2016 and are expected to result in approximately an 80 percent reduction in NO_X from these engines. Some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

c. Control Measures Specific to the Area

Changes at several EGUs have resulted in reductions in NO_X emissions. The Walter C. Beckjord facility in Clermont County, Ohio permanently shut down in October of 2014. NO_X emissions from EGUs in Clermont County dropped from 44.88 Tons per summer day (TPSD) in 2014 to 15.87 TPSD in 2019, partly attributable to closure of the Walter C. Beckjord facility. Further, the DTE St. Bernard facility converted to natural gas from coal-fired boilers in November of 2015. NO_X emissions from EGUs in Hamilton County dropped from 4.10 TPSD in 2014 to 2.40 TPSD in 2019, partially attributable to the DTE St. Bernard facility fuel conversion.

2. Emission Reductions

Ohio is using a 2014 emissions inventory as the nonattainment year. This is appropriate because it was one of the years used to designate the area as nonattainment. Ohio is using a 2019 inventory as the attainment year inventory for the purposes of comparison, which is appropriate because it is one of the years in the 2019–2021 period used to demonstrate attainment. Area (including airports and railyards), nonroad mobile, and point source emissions (EGUs and non-EGUs) were collected from data available on EPA's Air Emissions Modeling website.[6] Using Emissions Modeling platforms 2014v7.1 and 2016v2, OEPA collected data for the 2014 National Emissions Inventory (NEI) year and the 2016 NEI for the 2023, 2026 and 2032 projected emissions, versions 2014fd, 2016fj,

[6] *https://www.epa.gov/air-emissions-modeling/2014-2016-version-7-air-emissions-modeling-platforms.*

2023fj, 2026fj and 2032fd respectively. OEPA determined the 2016v2 inventory was the appropriate inventory for the projected emission data as it represents the best available emission data, updated with EGU impacts of the CSAPR Update and improvements in methodologies related to solvents. TPSD emissions were then derived by dividing July emissions by the number of days in July. 2014 emissions were derived from the 2014v7.1 platform without modification. 2019 emissions were derived by interpolating between the 2016 and projected 2026 emissions from the 2016v2 (versions 2016fd and 2023fd) platform.

OEPA compiled 2014 and 2019 actual point source emissions from state inventory databases. TPSD emissions were then derived by applying a conversion factor to the annual emissions. The conversion factor was derived from the emissions modeling platform 2016v2 as the ratio of the average July day to annual emissions for the non-EGU sector.

Onroad mobile source emissions were developed in conjunction with the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) and were calculated from emission factors produced by EPA's 2020 Motor Vehicle Emission Simulator (MOVES3) model and data extracted from the region's travel-demand model.

Using the inventories described above, Ohio's submittal documents changes in VOC and NO_X emissions from 2014 to 2019 for the Area. Emissions data are shown in Tables 2 through 7.

TABLE 2—AREA NO_X EMISSIONS FOR NONATTAINMENT YEAR 2014

[TPSD]

County	Point	Nonroad	Area	Onroad	Total
Ohio:					
Butler	11.06	4.21	2.46	12.40	30.13
Clermont	44.91	2.33	1.14	6.90	55.28
Hamilton	23.13	8.19	7.70	32.60	71.62
Warren	0.94	3.21	1.03	11.00	16.18
Kentucky:					
Boone	12.96	1.61	3.65	7.10	25.32
Campbell	0.28	0.60	1.65	2.50	5.03
Kenton	0.28	1.19	1.48	5.90	8.85
Ohio Totals	80.04	17.94	12.33	62.90	173.21
Area Totals	93.56	21.34	19.11	78.40	212.41

TABLE 3—AREA VOC EMISSIONS FOR NONATTAINMENT YEAR 2014

[TPSD]

County	Point	Nonroad	Area	Onroad	Total
Ohio:					
Butler	2.93	3.26	13.38	6.10	25.67
Clermont	0.67	2.51	6.26	3.50	12.94
Hamilton	2.76	8.39	31.81	13.70	56.66
Warren	0.51	2.89	8.91	3.70	16.01
Kentucky:					
Boone	1.95	2.70	9.28	1.60	15.53
Campbell	0.49	0.68	2.48	0.90	4.55
Kenton	0.46	0.98	4.03	1.60	7.07
Ohio Totals	6.87	17.05	60.36	27.00	111.28
Area Totals	9.77	21.41	76.15	31.10	138.43

TABLE 4—AREA NO_X EMISSIONS FOR ATTAINMENT YEAR 2019

[TPSD]

County	Point	Nonroad	Area	Onroad	Total
Ohio:					
Butler	8.63	2.01	2.26	7.00	19.90
Clermont	15.87	1.43	1.09	3.80	22.19
Hamilton	36.16	5.90	5.34	18.00	65.40
Warren	2.08	2.01	1.04	6.20	11.33
Kentucky:					
Boone	5.99	0.74	2.54	4.70	13.97
Campbell	0.29	0.38	0.92	2.20	3.79
Kenton	0.28	0.57	1.53	5.30	7.68
Ohio Totals	62.74	11.35	9.73	35.00	118.82
Area Totals	69.30	13.04	14.72	47.20	144.26

TABLE 5—AREA VOC EMISSIONS FOR ATTAINMENT YEAR 2019

[TPSD]

County	Point	Nonroad	Area	Onroad	Total
Ohio:					
Butler	2.41	2.52	12.28	3.90	21.11
Clermont	0.46	2.17	6.84	2.20	11.67
Hamilton	2.21	6.15	27.26	8.40	44.02
Warren	0.74	2.49	8.88	2.40	14.51
Kentucky:					
Boone	2.75	1.49	7.29	1.30	12.83
Campbell	0.40	0.52	2.23	0.80	3.95
Kenton	0.43	0.74	4.11	1.50	6.78
Ohio Totals	5.82	13.33	55.26	16.90	91.31
Area Totals	9.40	16.08	68.89	20.50	114.87

TABLE 6—CHANGE IN NO_X AND VOC EMISSIONS BETWEEN 2014 AND 2019 FOR THE OHIO PORTION OF THE AREA

[TPSD]

	NO_X			VOC		
	2014	2019	Net change (2014–2019)	2014	2019	Net change (2014–2019)
Point	80.04	62.74	−17.30	6.87	5.82	−1.05
Nonroad	17.94	11.35	−6.59	17.05	13.33	−3.72
Area	12.33	9.73	−2.60	60.36	55.26	−5.10
Onroad	62.90	35.00	−27.90	27.00	16.90	−10.10
Total	173.21	118.82	−54.39	111.28	91.31	−19.97

TABLE 7—CHANGE IN NO_X AND VOC EMISSIONS BETWEEN 2014 AND 2019 FOR THE ENTIRE AREA

[TPSD]

	NO_X			VOC		
	2014	2019	Net change (2014–2019)	2014	2019	Net change (2014–2019)
Point	93.56	69.30	−24.26	9.77	9.40	−0.37
Nonroad	21.34	13.04	−8.30	21.41	16.08	−5.33
Area	19.11	14.72	−4.39	76.15	68.89	−7.26
Onroad	78.40	47.20	−31.20	31.10	20.50	−10.60
Total	212.41	144.26	−68.15	138.43	114.87	−23.56

Table 7 shows that the Area reduced NO_X and VOC emissions by 68.15 TPSD and 23.56 TPSD, respectively, between 2014 and 2019. As shown in Table 6, the Ohio portion of the Area alone reduced NO_X and VOC emissions by 54.39 TPSD and 19.97 TPSD, respectively, between 2014 and 2019.

3. Meteorology

To further support OEPA's demonstration that the improvement in air quality between the year violations occurred and the year attainment was achieved, is due to permanent and enforceable emission reductions and not on favorable meteorology, an analysis was performed by the Lake Michigan Air Directors Consortium (LADCO). A classification and regression tree (CART) analysis was conducted with 2005 through 2020 data from Area ozone sites that had average ozone concentrations of greater than 50 parts per billion (ppb). The goal of the analysis was to determine the meteorological and air quality conditions associated with ozone episodes, and construct trends for the days identified as sharing similar meteorological conditions.

Regression trees were developed for the Area ozone data to classify each summer day by its ozone concentration and associated meteorological conditions. By grouping days with similar meteorology, the influence of meteorological variability on the underlying trend in ozone concentrations is partially removed and the remaining trend is presumed to be due to trends in precursor emissions or other non-meteorological influences. The CART analysis showed the resulting trends in ozone concentrations declining over the period examined, supporting the conclusion that the improvement in air quality was not due to unusually favorable meteorology.

D. Does Ohio have a fully approvable ozone maintenance plan for the Area?

As one of the criteria for redesignation to attainment section 107(d)(3)(E)(iv) of the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the maintenance plan must demonstrate

continued attainment of the NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment of the NAAQS will continue for an additional 10 years beyond the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, as EPA deems necessary, to assure prompt correction of the future NAAQS violation.

The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five elements: (1) An attainment emission inventory; (2) a maintenance demonstration; (3) a commitment for continued air quality monitoring; (4) a process for verification of continued attainment; and (5) a contingency plan. In conjunction with its request to redesignate the Ohio portion of the Area to attainment for the 2015 ozone standard, OEPA submitted a SIP revision to provide for maintenance of the 2015 ozone standard through 2035, more than 10 years after the expected effective date of the redesignation to attainment. As is discussed more fully below, EPA proposes to find that Ohio's ozone maintenance plan includes the necessary components and is proposing to approve the maintenance plan as a revision of the Ohio SIP.

1. Attainment Inventory

EPA is proposing to determine that the Area has attained the 2015 8-hour ozone NAAQS based on monitoring data for the period of 2019–2021. OEPA selected 2019 as the attainment emissions inventory year to establish attainment emission levels for VOC and NO_X. The attainment emissions inventory identifies the levels of emissions in the Area that are sufficient to attain the 2015 ozone NAAQS. The derivation of the attainment year emissions was discussed above in section IV.C.2. of this proposed rule. The attainment level emissions, by source category, are summarized in Tables 4 and 5 above.

2. Has the state documented maintenance of the ozone standard in the Area?

Ohio has demonstrated maintenance of the 2015 ozone standard through 2035 by assuring that current and future emissions of VOC and NO_X for the Area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. *See Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). *See also* 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio is using emissions inventories for the years 2026 and 2035 to demonstrate maintenance. 2035 is more than 10 years after the expected effective date of the redesignation to attainment and 2026 was selected to demonstrate that emissions are not expected to spike in the interim between the attainment year and the final maintenance year. The emissions inventories were developed as described below.

To develop the 2026 and 2035 inventories, the state collected data from the Ozone NAAQS Emissions Modeling platform (2016v2) inventories for the base year 2016 and the 2023, 2026 and 2032 projected inventories. 2026 emissions for area, nonroad mobile, AIR, and point source sectors were derived from 2026 EPA-projected emissions from the 2016v2 platform (version 2026fd) without modification. 2035 emissions for area, nonroad mobile, AIR, and point source sectors were derived by extrapolating from the 2032 EPA-projected emissions from the 2016v2 platform (version 2032fd) and using the TREND function in Excel. If the trend function resulted in a negative value, the emissions were assumed to be the same as in 2032. Summer day inventories were derived for these sectors using the methodology described in section IV.C.2. above. Finally, onroad mobile source emissions were developed in conjunction with OKI using the same methodology described in section IV.C.2. above for the 2016 inventory. Emissions data are shown in Tables 8 through 13 below.

TABLE 8—AREA NO_X EMISSIONS FOR INTERIM MAINTENANCE YEAR 2026

[TPSD]

County	Point	Nonroad	Area	Onroad	Total
Ohio:					
Butler	9.07	1.46	2.02	4.40	16.95
Clermont	10.43	1.07	0.93	2.30	14.73
Hamilton	13.72	4.12	5.03	11.30	34.17
Warren	2.23	1.44	1.00	4.00	8.67
Kentucky:					
Boone	2.13	0.58	3.22	2.60	8.53
Campbell	0.28	0.29	0.70	0.90	2.17
Kenton	0.29	0.41	1.22	2.40	4.32
Ohio Totals	35.45	8.09	8.98	22.00	74.52
Area Totals	38.15	9.37	14.12	27.90	89.54

TABLE 9—AREA VOC EMISSIONS FOR INTERIM MAINTENANCE YEAR 2026

[TPSD]

County	Point	Nonroad	Area	Onroad	Total
Ohio:					
Butler	1.75	2.24	12.47	2.90	19.36
Clermont	0.19	1.68	7.41	1.60	10.88
Hamilton	1.46	5.53	26.21	6.00	39.20
Warren	0.82	1.86	10.14	1.80	14.62
Kentucky:					

TABLE 9—AREA VOC EMISSIONS FOR INTERIM MAINTENANCE YEAR 2026—Continued
[TPSD]

County	Point	Nonroad	Area	Onroad	Total
Boone	1.68	1.28	8.21	1.00	12.17
Campbell	0.42	0.40	2.22	0.50	3.54
Kenton	0.64	0.71	4.21	1.00	6.56
Ohio Totals	4.22	11.31	56.23	12.30	84.06
Area Totals	6.96	13.70	70.87	14.80	106.33

TABLE 10—AREA NO_X EMISSIONS FOR MAINTENANCE YEAR 2035
[TPSD]

County	Point	Nonroad	Area	Onroad	Total
Ohio:					
Butler	8.31	1.26	1.90	3.30	15.19
Clermont	0.01	0.90	0.81	1.60	3.32
Hamilton	2.66	3.60	4.69	8.60	19.66
Warren	2.05	1.20	0.95	3.00	7.20
Kentucky:					
Boone	2.35	0.54	3.85	2.00	8.74
Campbell	0.28	0.26	0.58	0.60	1.72
Kenton	0.30	0.37	1.06	1.60	3.33
Ohio Totals	13.03	6.96	8.35	16.50	45.37
Area Totals	15.96	8.13	13.84	20.70	59.16

TABLE 11—AREA VOC EMISSIONS FOR MAINTENANCE YEAR 2035
[TPSD]

County	Point	Nonroad	Area	Onroad	Total
Ohio:					
Butler	1.67	2.18	12.65	2.10	18.65
Clermont	0.06	1.54	7.87	1.20	10.67
Hamilton	1.28	5.46	25.54	4.50	36.79
Warren	0.82	1.67	11.18	1.40	15.07
Kentucky:					
Boone	1.68	1.25	8.99	0.80	12.72
Campbell	0.42	0.37	2.22	0.30	3.31
Kenton	0.64	0.72	4.28	0.70	6.34
Ohio Totals	3.83	10.85	57.24	9.20	81.18
Area Totals	6.57	13.19	72.73	11.00	103.55

TABLE 12—CHANGE IN NO_X AND VOC EMISSIONS BETWEEN 2019 AND 2035 FOR THE OHIO PORTION OF THE AREA
[TPSD]

	NO_X				VOC			
	2019	2026	2035	Net change (2019–2035)	2019	2026	2035	Net change (2019–2035)
Point	62.74	35.45	13.03	−49.71	5.82	4.22	3.83	−1.99
Nonroad	11.35	8.09	6.96	−4.39	13.33	11.31	10.85	−2.48
Area	9.73	8.98	8.35	−1.38	55.26	56.23	57.24	1.98
Onroad	35.00	22.00	16.50	−18.50	16.90	12.30	9.20	−7.70
Total	118.82	74.52	44.84	−73.98	91.31	84.06	81.12	−10.19

TABLE 13—CHANGE IN NO_X AND VOC EMISSIONS BETWEEN 2019 AND 2035 FOR THE ENTIRE AREA
[TPSD]

	NO_X				VOC			
	2019	2026	2035	Net change (2019–2035)	2019	2026	2035	Net change (2019–2035)
Point	69.30	38.15	15.96	−53.34	9.40	6.96	6.57	−2.83
Nonroad	13.04	9.37	8.13	−4.91	16.08	13.70	13.19	−2.89
Area	14.72	14.12	13.84	−0.88	68.89	70.87	72.73	3.84
Onroad	47.20	27.90	20.70	−26.50	20.50	14.80	11.00	−9.50
Total	144.26	89.54	59.16	−55.10	114.87	106.33	103.55	−11.32

In summary, the maintenance demonstration for the Area shows maintenance of the 2015 ozone standard by providing emissions information to support the demonstration that future emissions of NO_X and VOC will remain at or below 2019 emission levels when taking into account both future source growth and implementation of future controls. Table 13 shows NO_X and VOC emissions in the Area are projected to decrease by 55.10 TPSD and 11.32 TPSD, respectively, between 2019 and 2035. As shown in Table 12, NO_X and VOC emissions in the Ohio portion of the Area alone are projected to decrease by 73.98 TPSD and 10.19 TPSD, respectively, between 2019 and 2035.

3. Continued Air Quality Monitoring

OEPA has committed to continue to operate the ozone monitors listed in Table 1 above. OEPA has committed to consult with EPA prior to making changes to the existing monitoring network should changes become necessary in the future. Ohio remains obligated to meet monitoring requirements and continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the Air Quality System (AQS) in accordance with Federal guidelines.

4. Verification of Continued Attainment

The State of Ohio has the legal authority to enforce and implement the requirements of the maintenance plan for the Ohio portion of the Area. This includes the authority to adopt, implement, and enforce any subsequent emission control measures determined to be necessary to correct future ozone attainment problems.

Verification of continued attainment is accomplished through operation of the ambient ozone monitoring network and the periodic update of the area's emissions inventory. OEPA will continue to operate the current ozone monitors located in the Ohio portion of the Area. There are no plans to discontinue operation, relocate, or otherwise change the existing ozone monitoring network other than through revisions in the network approved by the EPA.

In addition, to track future levels of emissions, OEPA will continue to develop and submit to EPA updated emission inventories for all source categories at least once every three years, consistent with the requirements of 40 CFR part 51, subpart A, and in 40 CFR 51.122. The Consolidated Emissions Reporting Rule (CERR) was promulgated by EPA on June 10, 2002 (67 FR 39602). The CERR was replaced by the Annual Emissions Reporting Requirements (AERR) on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Ohio was compiled for 2017. Point source facilities covered by Ohio's emission statement rule, Ohio Administrative Code Chapter 3745–24, will continue to submit VOC and NO_X emissions on an annual basis.

5. What is the contingency plan for the Area?

Section 175A of the CAA requires that the state must adopt a maintenance plan, as a SIP revision, that includes such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation of the area to attainment of the NAAQS. The maintenance plan must identify: The contingency measures to be considered and, if needed for maintenance, adopted and implemented; a schedule and procedure for adoption and implementation; and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be considered, adopted, and implemented. The maintenance plan must include a commitment that the state will implement all measures with respect to the control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted a contingency plan for the Area to address possible future ozone air quality problems. The contingency plan adopted by Ohio has two levels of response, a warning level response and an action level response.

In Ohio's plan, a warning level response will be triggered when an annual fourth high monitored value of 0.074 ppm or higher is monitored within the maintenance area. A warning level response will consist of OEPA conducting a study to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

In Ohio's plan, an action level response is triggered when a two-year average fourth high value of 0.071 ppm or greater is monitored within the maintenance area. A violation of the 2015 ozone NAAQS within the maintenance area also triggers an action level response. When an action level response is triggered, OEPA, in conjunction with the metropolitan planning organization or regional council of governments, will determine what additional control measures are needed to assure future attainment of the 2015 ozone NAAQS. Control measures selected will be adopted and implemented within 18 months from the close of the ozone season that prompted the action level. OEPA may also consider if significant new regulations not currently included as part of the maintenance provisions will

be implemented in a timely manner and would thus constitute an adequate contingency measure response.

OEPA included the following list of potential contingency measures in its maintenance plan:

1. Adopt VOC RACT on existing sources covered by EPA Control Technique Guidelines issued after the 1990 CAA.

2. Apply VOC RACT to smaller existing sources.

3. One or more transportation control measures sufficient to achieve at least half a percent reduction in actual area wide VOC emissions. Transportation measures will be selected from the following, based upon the factors listed above after consultation with affected local governments:

a. Trip reduction programs, including, but not limited to, employer-based transportation management plans, area wide rideshare programs, work schedule changes, and telecommuting;

b. traffic flow and transit improvements; and

c. other new or innovative transportation measures not yet in widespread use that affected local governments deem appropriate.

4. Alternative fuel and diesel retrofit programs for fleet vehicle operations.

5. Require VOC or NO_X emission offsets for new and modified major sources.

6. Increase the ratio of emission offsets required for new sources.

7. Require VOC or NO_X controls on new minor sources (less than 100 tons).

8. Adopt NO_X RACT for existing combustion sources.

9. High volume, low pressure coating application requirements for autobody facilities.

10. Requirements for cold cleaner degreaser operations (low vapor pressure solvents).

To qualify as contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. In addition, as required by section 175A(b) of the CAA, OEPA has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Ohio portion of the Area to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA proposes to find that the maintenance plan SIP revision submitted by OEPA for the Ohio portion of the Area meets the requirements of section 175A of the CAA and EPA proposes to approve it as a revision to the Ohio SIP.

V. Has the state adopted approvable motor vehicle emission budgets?

A. Motor Vehicle Emission Budgets

Under section 176(c) of the CAA, new transportation plans, programs, or projects that receive Federal funding or support, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the SIP. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality problems, or delay timely attainment of the NAAQS or interim air quality milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of transportation activities to a SIP. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS, but that have been redesignated to attainment with an approved maintenance plan for the NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs for nonattainment areas and maintenance plans for areas seeking redesignations to attainment of the ozone standard and maintenance areas. *See* the SIP requirements for the 2015 ozone standard in EPA's December 6, 2018 implementation rule (83 FR 62998). These control strategy SIPs (including reasonable further progress plans and attainment plans) and maintenance plans must include MVEBs for criteria pollutants, including ozone, and their precursor pollutants (VOC and NO_X for ozone) to address pollution from onroad transportation sources. The MVEBs are the portion of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. *See* 40 CFR 93.101.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment must be established, at minimum, for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, Transportation Conformity Rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB, if needed, subsequent to initially establishing a MVEB in the SIP.

As discussed earlier, Ohio's maintenance plan includes NO_X and VOC MVEBs for the Area for 2035 and 2026, the last year of the maintenance period and an interim year. The MVEBS were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The MVEBS were clearly identified and precisely quantified. These MVEBs, when considered together with all other emissions sources, are consistent with maintenance of the 2015 8-hour ozone standard.

TABLE 14—MVEBS FOR THE OHIO PORTION OF THE AREA

[TPSD]

	Attainment year 2019 onroad emissions	2026 estimated onroad emissions	2026 mobile safety margin allocation	2026 MVEBs	2035 estimated onroad emissions	2035 mobile safety margin allocation	2035 MVEBs
VOC	15.58	12.30	1.85	14.15	9.20	1.38	10.58
NO_X	31.90	22.00	3.30	25.30	16.50	2.48	18.98

As shown in Table 14, the 2026 and 2035 MVEBs exceed the estimated 2026 and 2035 onroad sector emissions. In an effort to accommodate future variations in travel demand models and vehicle miles traveled forecast, OEPA allocated a portion of the safety margin (described further below) to the mobile sector. Ohio has demonstrated that the Area

can maintain the 2015 ozone NAAQS with mobile source emissions in the Ohio portion of the area of 14.15 TPSD and 10.58 TPSD of VOC and 25.3 TPSD and 18.98 TPSD of NO_X in 2026 and 2035, respectively, since despite partial allocation of the safety margin, emissions will remain under attainment year emission levels. EPA is proposing to approve the MVEBs for use to determine transportation conformity in the Ohio portion of the Area, because EPA has determined that the area can maintain attainment of the 2015 ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs.

B. What is a safety margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 12, the emissions in the Ohio portion of the Area are projected to have safety margins of 55.10 TPSD for NO_X and 11.32 TPSD for VOC in 2035 (the difference between the attainment year, 2019, emissions and the projected 2035 emissions for all sources in the Ohio portion of the Area). Similarly, there is a safety margin of 30.38 TPSD for NO_X and 2.78 TPSD for VOC in 2026. Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

As shown in Table 14 above, Ohio is allocating a portion of that safety margin to the mobile source sector. Specifically, in 2026, Ohio is allocating 1.85 TPSD and 3.30 TPSD of the VOC and NO_X safety margins, respectively. In 2035, Ohio is allocating 1.38 TPSD and 2.48 TPSD of the VOC and NO_X safety margins, respectively. OEPA is not requesting allocation to the MVEBs of the entire available safety margins reflected in the demonstration of maintenance. In fact, the amount allocated to the MVEBs represents only a small portion of the 2026 and 2035 safety margins. Therefore, even though the state is requesting MVEBs that exceed the projected onroad mobile source emissions for 2026 and 2035 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

VI. Proposed Actions

EPA is proposing to determine that the Area is attaining the 2015 ozone standard, based on quality-assured and certified monitoring data for 2019–2021 and that the Ohio portion of this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve OEPA's request to change the legal designation of the Ohio portion of the Area from nonattainment to attainment for the 2015 ozone standard. EPA is also proposing to approve, as a revision to the Ohio SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Area in attainment of the 2015 ozone NAAQS through 2035. Finally, EPA is proposing to approve the newly established 2026 and 2035 MVEBs for the Ohio portion of the Area.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) 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 that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 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, 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, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Volatile organic compounds.

Dated: February 4, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022–02945 Filed 2–10–22; 8:45 am]

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Notices

Federal Register
Vol. 87, No. 29
Friday, February 11, 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

Submission for OMB Review; Comment Request

February 8, 2022.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are required regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 14, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Pandemic Livestock Indemnity Program.

OMB Control Number: 0560–0301.

Summary of Collection: The Farm Service Agency (FSA) implemented the Pandemic Livestock Indemnity Program (PLIP) provide payments to the eligible livestock and poultry producers. FSA provides relief to livestock and poultry producers based on 80 percent of the market value of livestock or poultry depopulated, and for the cost of such depopulation, other than the costs for which a producer has been compensated under the Environmental Quality Incentives Program. Furthermore, FSA may take into consideration whether a producer has been compensated for the costs of such depopulation by any State program.

Need and Use of the Information: In order to determine whether a producer is eligible for PLIP and to calculate a payment, a producer is required to submit the form FSA–620, PLIP application with the supplement CFAP 1 (Part 2) and CFAP 2 swine payment reduction worksheet, if applicable; the form AD–2047, Customer Data Worksheet, if applicable; the form CCC–902 for Individual or Entity, Farm Operating Plan for Payment Eligibility, Parts A & B; the form CCC–901,Member Information for Legal Entities, if applicable; the form CCC–941, Average Adjusted Gross Income (AGI) Certification and Consent to Disclosure of Tax Information; and the form AD–1026—Highly Erodible Land Conservation (HELC) and Wetland Conservation Certification. Failure to solicit applications will result in failure to provide payments to eligible producers as intended by the Consolidated Appropriations Act.

Description of Respondents: Farms.

Number of Respondents: 2,546.

Frequency of Responses: Reporting; Other (one-time).

Total Burden Hours: 1,408.

Farm Service Agency

Title: Pandemic Assistance for Timber Harvesters and Haulers Program.

OMB Control Number: 0560–0302.

Summary of Collection: FSA implemented the Pandemic Assistance for Timber and Haulers and Harvesters (PATHH) Program to help timber harvesting businesses and timber hauling business impacted by the effects of the COVID–19 Outbreak. FSA is using not more than $200 million as authorized by the Section Subtitle B of Title VII of Division N of the Consolidated Appropriations Act, 2021 (CAA; Pub. L. 116–260) to provide relief to timber harvesting and timber hauling businesses that experienced a gross revenue loss of not less than 10 percent between January 1, 2020 and December 1, 2020, as compared to the gross revenue of that business in the same period in 2019.

Need and Use of the Information: In order to determine whether a producer is eligible for PATHH and to calculate a payment, a producer is required to submit the form FSA–1118, PATHH application, the form AD–2047; Customer Data Worksheet, if applicable; the form CCC–901, Member Information for Legal Entities, if applicable; the form AD–1026, Highly Erodible Land Conservation (HELC) and Wetland Conservation (WC) Certification, and the IRS Form 2290, Heavy Highway Vehicle Use Tax Return (Timber haulers only). The information submitted by respondents will be used by FSA to determine eligibility and distribute payments to eligible businesses under PATHH. Failure to solicit applications will result in failure to provide payments to eligible producers as intended by the Consolidated Appropriations Act.

Description of Respondents: Businesses or other for-profit.

Number of Respondents: 2,396.

Frequency of Responses: Reporting; Other (one-time).

Total Burden Hours: 815.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–02982 Filed 2–10–22; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 8, 2022.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995,

Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by March 14, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Forest Industries Data Collection System.

OMB Control Number: 0596–0010.

Summary of Collection: The Forest and Range Renewable Resources Planning Act of 1974 and the Forest and Rangeland Renewable Resources Research Act of 1978 require the Forest Service to evaluate trends in the use of roundwood (logs in whole or chipped form), to forecast anticipated levels of roundwood use and availability, and to analyze changes in the harvest of these resources from the United States' forests. This data collection effort has been conducted since the mid-1970s, with various adjustments through time to accommodate new questions, sampling approaches, and/or data collection needs. Data collection is performed by Forest Service personnel and cooperators from State natural resource agencies and universities. Currently, the data collection gathers information from two groups: Primary wood industry and logging operations.

Need and Use of the Information: This information collection will generate scientifically based, statistically reliable, up-to-date information about utilization of timber resources of the United States. Our testing efforts will allow us to improve the quality of data obtained. The results of these efforts contribute to the availability of reliable information on timber resource use, facilitating more complete and accurate assessments of forest resources at state, regional, and national levels.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 5,768.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 2,062.

Forest Service

Title: Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record, Airplane Data Record, and Helicopter Data Record.

OMB Control Number: 0596–0015.

Summary of Collection: The Forest Service contracts with approximately 400 vendors a year for commercial aviation services utilized in resource protection and project management. In recent years, the total annual use of contract aircraft and pilots has exceeded 80,000 hours. In order to maintain an acceptable level of safety, preparedness, and cost-effectiveness in aviation operations, Forest Service contracts include rigorous qualifications for pilots and specific condition, equipment, and performance requirements for aircraft as aviation operations are conducted under extremely adverse conditions of weather, terrain, turbulence, smoke reduced visibility, minimally improved landing areas, and congested airspace around wildfires.

Need and Use of the Information: Without the collected information, Forest Service Pilot and Aircraft Inspectors and Forest Service Contracting Officers cannot determine whether contracted pilots and aircraft meet detailed qualification, equipment, and condition requirements essential to safe and effective accomplishment of Forest Service-specified flying missions. Without a reasonable basis to determine pilot qualifications and aircraft capability, Forest Service employees would be exposed to hazardous conditions. Data collected documents approval of contract pilots and aircraft for specific Forest Service aviation special missions. Information will be collected and reviewed by Pilot and Aircraft Inspectors to determine whether aircraft and/or pilot(s) meet all agency requirements in accordance with Forest Service Handbook (FSH) 5709.16, chapter 10, sections 15 and 16. Forest Service pilot and aircraft inspectors maintain collected information in Forest Service regional and national offices. The Forest Service, at times, shares the information with the Department of the Interior, Office of Aviation Services, as each organization accepts contract inspections conducted by the other.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 2,135.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 3,866.

Forest Service

Title: Understanding Value Trade-Offs Regarding Fire Hazard Reduction Programs in the Wildland-Urban Interface.

OMB Control Number: 0596–0189.

Summary of Collection: The Healthy Forests Restoration Act (Pub. L. 108–148), improves the ability of the Secretary of Agriculture and the Secretary of the Interior to plan and conduct hazardous fuels reduction projects on National Forest System and Bureau of Land Management Lands. The Forest Service, Bureau of Land Management, Bureau of Indian Affairs, National Park Service, Fish and Wildlife Service, and many State agencies with fire protection responsibilities have undertaken a very ambitious and expensive forest fuels reduction program. The Forest Service (FS) and university researchers will contact recipients of a phone/mail questionnaire to help forest and fire managers understand value trade-offs regarding fire hazard reduction programs in the wildland-urban interface.

Need and Use of the Information: Forest Service and university researchers will collect information from members of the public via a brief phone questionnaire followed by the respondent's choice of a mail questionnaire or an online questionnaire to help forest and fire managers understand value trade-offs regarding fire hazard reduction programs in the wildland-urban interface. Researchers will evaluate the responses of Florida, New Mexico, Oregon, and Texas residents to different scenarios related to fire-hazard reduction programs, determine how effective residents think the programs are, and calculate how much residents would be willing to pay to implement the alternatives presented

to them. This information will help researchers provide better information to natural resource, forest, and fire managers when they are contemplating the type of fire-hazard reduction program to implement to achieve forestland management planning objectives.

Description of Respondents: Individuals or households.

Number of Respondents: 1,675.

Frequency of Responses: Reporting: Once.

Total Burden Hours: 271.

Forest Service

Title: Environmental Justice and the Urban Forest in Atlanta, GA.

OMB Control Number: 0596–0237.

Summary of Collection: Environmental justice is defined by the Environmental Protection Agency as the ''fair treatment and meaningful involvement of *all* people. . .with respect to the development, implementation, and enforcement of environmental laws, regulations and policies.'' This information collection addresses environmental justice in urban settings. Cities are often (though not always) places of particular concern for environmental justice inquires due to the greater concentration of environmental pollutants and human populations. The following statutes and regulations are relevant to this request for information collection: Executive Order 12898, Memorandum of Understanding on Environmental Justice and Executive Order 12898, National Environmental Policy Act of 1969 (Pub. L. 91–190), the Civil Rights Act of 1964 (Pub. L. 88–352).

Need and Use of the Information: The study provides an integrated approach to assessing residents' relationship to the urban forest. The collection addresses environmental justice from the perspective of urban trees; and how this resource may contribute to environmental justice in a given community or neighborhood. The agency will use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. If the information is not collected, efforts at the federal level to evaluate environmental justice will remain limited to methodologies that reproduce incomplete assessments of environmental justice.

Description of Respondents: Individuals or households.

Number of Respondents: 232.

Frequency of Responses: Reporting: Other (one time).

Total Burden Hours:

Forest Service

Title: Pesticide-Use Proposal (PUP) Form.

OMB Control Number: 0596–0241.

Summary of Collection: The Forest Service (FS) is authorized under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136, and 40 CFR 171; the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2101) as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421), and 36 CFR 219; and the National Environmental Policy Act 42 CFR 4321), and 36 CFR 220 to collect information on proposed use of pesticides on lands administered by FS to safe guard natural resources and human health.

Need and Use of the Information: FS will use form FS–2100–2 to collect pesticide project information from entities for application of pesticides upon FS administered lands within rights-of-way easements, permitted lands, and under similar circumstances. Categories of information requested are descriptive of type, amount, and location of applications, as well as identification of qualifying credentials of those performing the work. Proposals will be evaluated by FS pesticide use coordinators and other administrative personnel to safeguard human health and ecological protection consistent with FS land use management programs. Without the ability to collect the details of proposed projects from outside parties, the FS would not be able to make appropriately informed decisions concerning land stewardship and necessary ecological and human health safeguards.

Description of Respondents: Individuals and households, Businesses and Organizations, and State, Local and Tribal Governments.

Number of Respondents: 200.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 400.

Forest Service

Title: Post-Hurricane Research and Assessment of Agriculture, Forestry, and Rural Communities in the U.S. Caribbean.

OMB Control Number: 0596–0246.

Summary of Collection: The Public Lands Corps (PLC) is a work and education program involving the nation's land management agencies, conservation and service corps, and environmental organizations that contribute to the rehabilitation, restoration, and repair of public lands resources and infrastructure. PLC provides opportunities for community and national service, work experience, and training to young people who are unemployed or underemployed. The law authorizing this program is 16 U.S.C. 1721–1726, Chapter 37—Public Lands Corps and Resources Assistants Program (Public Lands Corps Healthy Forest Restoration Act of 2005 [Pub. L. 109–154]) as amended in 1993, hereafter referred to as ''the Act.''

Need and Use of the Information: This information collection request establishes policies and procedures for the implementation of the Public Lands Corps Participant Tracking Sheet to ensure uniform collection of information regarding tracking and monitoring participant engagement to determine the completion of requirements for non-competitive hiring eligibility as defined in the Act. Data collected through the Public Lands Corps Participant Tracking Sheet will allow the Forest Service (FS) and other Federal Land Management Agencies who sponsor PLC programs to support collaborating partners who manage eligible participants and their participation in PLC projects. If the FS is unable to collect data regarding PLC participants, it and other Federal Land Management Agencies would be unable to participate in a legally mandated program as outlined in the Act.

Description of Respondents: Non-profit Organizations and Non-Federal Government entities.

Number of Respondents: 400.

Frequency of Responses: Reporting; Quarterly.

Total Burden Hours: 131.

Forest Service

Title: Public Lands Corps Participant Tracking Sheet.

OMB Control Number: 0596–0247.

Summary of Collection: The Public Lands Corps (PLC) is a work and education program involving the nation's land management agencies, conservation and service corps, and environmental organizations that contribute to the rehabilitation, restoration, and repair of public lands resources and infrastructure. PLC provides opportunities for community and national service, work experience, and training to young people who are unemployed or underemployed. The law authorizing this program is 16 U.S.C. 1721–1726, Chapter 37—Public Lands Corps and Resources Assistants Program (Public Lands Corps Healthy Forest Restoration Act of 2005 [Pub. L. 109–154]) as amended in 1993, hereafter referred to as ''the Act.''

Need and Use of the Information: This information collection request

establishes policies and procedures for the implementation of the Public Lands Corps Participant Tracking Sheet to ensure uniform collection of information regarding tracking and monitoring participant engagement to determine the completion of requirements for non-competitive hiring eligibility as defined in the Act. Data collected through the Public Lands Corps Participant Tracking Sheet will allow the Forest Service (FS) and other Federal Land Management Agencies who sponsor PLC programs to support collaborating partners who manage eligible participants and their participation in PLC projects. If the FS is unable to collect data regarding PLC participants, it and other Federal Land Management Agencies would be unable to participate in a legally mandated program as outlined in the Act.

Description of Respondents: Non-profit Organizations and Non-Federal Government entities.

Number of Respondents: 500.

Frequency of Responses: Reporting; Semi-annually.

Total Burden Hours: 290.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–02984 Filed 2–10–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 7, 2022.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding: Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques and other forms of information technology.

Comments regarding this information collection received by March 14, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Clauses and Forms for Operating Plans and Agreements for Powerline Facility Operation and Maintenance, Inspections, and Vegetation Management and Clause for Vegetation Management Pilot Program Projects.

OMB Control Number: 0596–NEW.

Summary of Collection: The Consolidated Appropriations Act of 2018 amended the Federal Land Policy and Management Act (FLPMA) to add section 512, which requires the Forest Service to collect information from owners and operators of powerline facilities for development of operating plans and agreements governing vegetation management, operation and maintenance, and inspection of powerline facilities on National Forest System (NFS) lands. The collected information will be evaluated by line officers and realty specialists at Forest Service field units where powerline facilities are located to implement the requirements of section 512 of FLPMA regarding operating plans and agreements governing vegetation management, operation and maintenance, and inspections of powerline facilities.

Need and Use of the Information: Section 8630 of the Agriculture Improvement Act of 2018 (Farm Bill) gives the Forest Service discretion to authorize vegetation management pilot program projects under lower liability standards to holders of an authorization for a powerline facility or natural gas pipeline. These pilot projects may be conducted only on NFS lands that are not covered by the special use authorization for the powerline facility Start Printed Page 26206 or natural gas pipeline. The pilot projects must be conducted outside the linear right-of-way for the associated powerline facility or natural gas pipeline; may not extend more than 150 feet from either side of the powerline facility or natural gas pipeline; and may not have a total width of more than 200 feet including both sides of the powerline facility or natural gas pipeline.

In addition, the pilot projects may not overlap with vegetation management conducted under the special use authorization for the powerline facility or natural gas pipeline, including removal and pruning of hazard trees outside the linear right-of-way for a powerline facility. The liability provisions in a special use permit for a pilot project have no effect on the liability provisions in the special use authorization for the powerline facility or natural gas pipeline, including the liability provisions that apply to removal and pruning of hazard trees inside and outside the linear right-of-way. Proposed new clause B–39 in Forest Service Handbook 2709.11, Chapter 50, section 52.2, would provide for authorizing vegetation management pilot projects consistent with section 8630 of the Farm Bill and Title V of the Federal Land Policy and Management Act, section 28 of the Mineral Leasing Act, and their implementing regulations.

Description of Respondents: Individuals, private sector, business and nonprofit entities and state, local, and tribal governmental.

Number of Respondents: 54.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 5,400.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–02926 Filed 2–10–22; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Iowa Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement 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 Iowa Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Friday, February 11, 2022, at 3:00 p.m.–

4:30 p.m. Central Time. The Committee will review their project proposal focused on employment discrimination and administrative closures by the Iowa Civil Rights Commission.

DATES: The meeting will take place on Friday, February 11, 2022, at 3:00 p.m. CT.

Online Regisration (Audio/Visual): https://tinyurl.com/2112022.

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 2764 793 0873.

FOR FURTHER INFORMATION CONTACT: Ana Fortes, DFO, at *afortes@usccr.gov* or (202) 519–2938.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference 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 *afortes@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 Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Iowa 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. Welcome
II. Review Project Proposal
III. Public Comment
IV. Vote on Project Proposal
V. Planning Discussion for Web Hearings
VI. Adjournment

Dated: Thursday, February 8, 2022.

Exceptional Circumstance: The Iowa Advisory Committee will need to meet in order to plan for their upcoming web hearing scheduled for April 1, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–02933 Filed 2–10–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Iowa Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement 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 Iowa Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a meeting on Friday, March 4, 2022, at 3:00 p.m.–4:30 p.m. Central Time. The Committee will begin planning for upcoming web hearings examing employment discrimination and the efficiency in resolving employment administrative cases.

DATES: The meeting will take place on Friday, March 4, 2022, at 3:00 p.m. CT.

Online Regisration (Audio/Visual): https://tinyurl.com/03042022.

Telephone (Audio Only): Dial 800–360–9505 USA Toll Free; Access code: 2762 228 5608.

FOR FURTHER INFORMATION CONTACT: Ana Fortes, DFO, at *afortes@usccr.gov* or (202) 519–2938.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference 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 *afortes@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 Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Iowa 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. Welcome
II. Planning for Upcoming Web Hearings
III. Public Comment
IV. Adjournment

Dated: February 8, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–02931 Filed 2–10–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement 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 Washington Advisory Committee (Committee) will hold a meeting via web teleconference on Tuesday, March 15, 2022, from 2:00 p.m. to 3:00 p.m. Pacific, for the purpose of discussing their recently published report on Barriers to Accountability for Law Enforcement Officers' Use of Excessive Use of Force.

DATES: The meeting will be held on:

- Tuesday, March 15, 2022, from 2:00 p.m.–3:00 p.m. PT

Public Webex Registration Link: https://tinyurl.com/55knr8ku.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. 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.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

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: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee discussion
IV. Public Comment
V. Adjournment

Dated: February 8, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–02930 Filed 2–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Health and Safety Guidelines for Official ITA Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The United States Department of Commerce, International Trade Administration, intends to resume in-person trade missions, where possible, beginning March 2022. These trade missions will be organized and carried out with basic health and safety precautions in place for attendees in response to COVID–19.

Background

The International Trade Administration (ITA) intends to resume in-person trade missions, where possible, beginning March 2022. Since the beginning of the global pandemic, ITA has been closely monitoring COVID–19 developments and continues to plan in-person trade missions for future dates. As those mission dates approach, ITA will decide on each mission on a case-by-case basis to allow mission teams to evaluate the health and safety circumstances of the event and determine whether to move forward as-is, postpone, convert to virtual or hybrid, or cancel the mission. In the event that the mission is able to move forward in-person, the health and safety of all attendees remains ITA's top priority, and with any resumption of in-person events, ITA is announcing basic health and safety precautions that will highlight existing guidelines applicable to all trade mission attendees.

In addition to the guidelines set forth herein, ITA is closely monitoring government mandates and policy changes, CDC guidelines, and public health announcements. As information pertaining to COVID–19 continues to develop, we will adjust our approach as needed.

In-person trade missions will be organized and carried out with precautions in place for the health and safety of all attendees in response to COVID–19, and with due regard to and, as appropriate, in alignment with then-current:

Guidance from the Centers for Disease Control and Prevention (CDC) *https://www.cdc.gov/coronavirus/2019-ncov/your-health/index.html*

Guidance issued by the Safer Federal Workforce Task Force *https://www.saferfederalworkforce.gov/*

For Commerce employees, the workplace safety plan found at *https://www.commerce.gov/covid-19-information-hub*

Recommendations from the World Health Organization (WHO) *https://www.who.int/emergencies/diseases/novel-coronavirus-2019/advice-for-public*

At a minimum, ITA will continue to follow CDC Guidelines, as updated, including mask requirements and travel rules.

Requirements for Mission Participants

Before departure and/or upon arrival, including at each mission stop, ITA will brief trade mission participants (*i.e.,* private sector participants) on its current COVID–19 policies, as well as the relevant policies of local authorities.

Mission participants are responsible for compliance with all COVID–19-related requirements pertaining to travel to, within, and from trade mission destination(s), including vaccinations, and, when appropriate, testing, masking, and physical distancing. All mission participants will be expected to comply with regulations and guidelines in effect at the time of the event in the country, market, and facilities where mission events are being held. Note that federal regulations and guidelines may be applicable for events held in federally owned or federally leased facilities outside the United States.

Mission participants must present a photo ID and proof that they meet the then-current CDC definition of being fully vaccinated at the time of entry to a mission event. Individuals who are not able to be fully vaccinated due to certain medical conditions, age, or closely held religious beliefs, or who elect not to provide this information, will be expected to follow all relevant protocols for individuals who are not fully vaccinated and must provide proof of a negative COVID–19 test at the time of entry to a mission event, administered by an authorized health or medical provider, taken within the past three days prior to entry.[1]

Physical distancing practices will be implemented according to all venue and

[1] ITA may require attestation of negative test at other times throughout the course of a trade mission, as appropriate.

local requirements. Where possible, there will be hand sanitizer stations.

To create a safe environment for all attendees, participants who test positive for COVID–19 in transit to or during a trade mission are responsible for following the relevant regulations and guidelines, including any quarantine protocols, and are expected to cease participation in in-person events until a negative test is received or quarantine protocols are fulfilled. If a participant who has tested positive is deemed by ITA to pose a health risk to other participants, ITA may terminate their participation without refund.

Any unused financial contributions made to the Department of Commerce for a trade mission that is cancelled will be refunded promptly. Financial contributions that have already been expended in anticipation of the mission and cannot be recouped by the Department of Commerce may not be refunded to the participants when a trade mission is cancelled. Given the unique circumstances presented by COVID–19, the same considerations apply in the event a participant must withdraw from a trade mission after testing positive for COVID–19. No personal expenses paid by the participants in anticipation of the trade mission will be reimbursed. Participants are responsible for all costs related to COVID–19 if contracted during or in transit to or from a trade mission.

Note on Federal Employees and Contractors

On-site federal employees and contractors will be expected to comply with current local regulations and guidelines in the country, market, or facilities, publicly- or privately-owned or operated, where mission events are being held.

All on-site federal employees and contractors will be expected to comply with applicable federal and departmental rules, requirements, and guidance relating to COVID–19 safety as issued by the Safer Federal Workforce Task Force (*https://www.saferfederalworkforce.gov/*) and in effect at the time of the event, including any quarantining or other protocols in the event that they test positive for COVID–19. ITA and other Department of Commerce employees will additionally be expected to adhere to the Department of Commerce Workplace Safety Plan as appropriate, including indoor mask requirements in areas of high or substantial COVID–19 transmission (*https://www.commerce.gov/covid-19-information-hub).*

Federal employees and contractors participating in on-site events will be required to complete and maintain on their persons at all times a Certification of Vaccination. (Certification available at: *https://www.saferfederalworkforce.gov/downloads/CertificationVaccinationPRAv7.pdf.*) Federal employees and contractors who are not fully vaccinated or decline to provide information about their vaccination status must follow all relevant protocols for individuals who are not fully vaccinated and must provide proof of a negative COVID–19 test administered by an authorized health or medical provider taken within the past three days.

Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2022–02936 Filed 2–10–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–602, A–588–602, A–583–605, A–549–807, A–570–814]

Certain Carbon Steel Butt-Weld Pipe Fittings From Brazil, Japan, Taiwan, Thailand, and the People's Republic of China: Continuation of the Antidumping Duty Orders

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) orders on certain carbon steel butt-weld pipe fittings (CSBW pipe fittings) from Brazil, Japan, Taiwan, Thailand, and the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping, and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD orders.

DATES: Applicable February 11, 2022.

FOR FURTHER INFORMATION CONTACT: Claudia Cott or Minoo Hatten, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4270 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 1986, Commerce published in the **Federal Register** the AD orders on CSBW pipe fittings from Brazil and Taiwan. On February 10, 1987, Commerce published the AD order on CSBW pipe fittings from Japan and on July 6, 1992, the AD orders on CSBW from Thailand and China.[1] On July 1, 2021, Commerce initiated,[2] and the ITC instituted,[3] the sunset reviews of the *Orders,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).

As a result of its reviews, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the *Orders* on CSBW pipe fittings from Brazil, Japan, Taiwan, Thailand, and China would likely lead to continuation or recurrence of dumping. Commerce, therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Orders* be revoked.[4]

On February 7, 2022, the ITC published its determination that revocation of the *Orders* would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to sections 751(c) and 752(a) of the Act.[5]

Scope of the Orders

Brazil: The merchandise covered by the *Brazil Order* consists of certain carbon steel butt-weld type fittings, other than couplings, under 14 inches in diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, *etc.,* and, if forged, have been advanced after forging. These advancements may include any one or

[1] *See Antidumping Duty Order; Certain Carbon Steel Butt-Weld Pipe Fittings from Brazil,* 51 FR 45152 (December 17, 1986) (*Brazil Order*); *Antidumping Duty Order; Certain Carbon Steel Butt-Weld Pipe Fittings from Taiwan,* 51 FR 45152 (December 17, 1986) (*Taiwan Order*); *Antidumping Duty Order: Certain Carbon Steel Butt-Weld Pipe Fittings from Japan,* 52 FR 4167 (February 10, 1987) (*Japan Order*); *Antidumping Duty Order; Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand,* 57 FR 29702 (July 6, 1992) (*Thailand Order*); *Antidumping Duty Order and Amendment to the Final Determination of Sales at Less Than Fair Value; Certain Carbon Steel Butt-Weld Pipe Fittings from the People's Republic of China,* 57 FR 29702 (July 6, 1992) (*China Order*) (collectively, *Orders*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 35071 (July 1, 2021).

[3] *See Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, Thailand; Institution of Five-Year Reviews,* 86 FR 35133 (July 1, 2021).

[4] *See Certain Carbon Steel Butt-Weld Pipe Fittings from Brazil, Japan, Taiwan, Thailand, and the People's Republic of China: Final Results of the Expedited Sunset Reviews of the Antidumping Duty Orders,* 86 FR 51869 (September 17, 2021), and accompanying Issues and Decision Memorandum.

[5] *See Carbon Steel Butt-Weld Pipe Fittings from Brazil, China, Japan, Taiwan, Thailand; Determination, Inv. Nos. 731–TA–308–310 and 520–521 (Fifth Review),* 87 FR 6893 (February 7, 2022), *see also* USITC Pub. 5276 (February 2022).

more of the following: Coining, heat treatment, shot blasting, grinding, die stamping or painting. Such merchandise was classifiable under Tariff Schedules of the United States Annotated (TSUSA) item number 610.8800. These imports are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.

Japan: The merchandise covered by the *Japan Order* consists of certain carbon steel butt-weld type fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, caps, *etc.,* and if forged, have been advanced after forging. These advancements may include any one or more of the following: Coining, heat treatment, shot blasting, grinding, die stamping or painting. Such merchandise was classifiable under TSUSA item number 610.8800. These imports are currently classifiable under the HTSUS item number 7307.93.30. Induction pipe bends classifiable under item 7307.93.30 which have at one or both ends tangents that equal or exceed 12 inches in length are excluded from the scope. The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.

Taiwan: The merchandise covered by the *Taiwan Order* consists of certain carbon steel butt-weld type fittings, other than couplings, under 14 inches in inside diameter, whether finished or unfinished, that have been formed in the shape of elbows, tees, reducers, and caps, and if forged, have been advanced after forging. These advancements may include one or more of the following: Coining, heat treatment, shot blasting, grinding, die stamping or painting. Commerce clarified that the so-called sprink-let is within the scope of the order (57 FR 19602). Such merchandise was classifiable under TSUSA item number 610.8800. These imports are currently classifiable under the HTSUS item number 7307.93.3000. The HTSUS subheading is provided for convenience and for customs purposes. The written product description remains dispositive.

China and Thailand: The merchandise covered by the *China Order* and the *Thailand Order* consists of certain carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (*e.g.,* threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the HTSUS. The HTSUS subheading is provided for convenience and customs purposes. The written product description remains dispositive.[6]

Continuation of the Orders

As a result of the determinations by Commerce and the ITC that revocation of the *Orders* would likely lead to a continuation or recurrence of dumping, and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Orders.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of these *Orders* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year (sunset) reviews of these *Orders* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

These five-year sunset reviews and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: February 7, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–02923 Filed 2–10–22; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Orders.*

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) announces that the Manufacturing Extension Partnership (MEP) Advisory Board will hold an open meeting on Wednesday, March 9, 2022.

DATES: The meeting will be held Wednesday, March 9, 2022 from 1 p.m. to 5:30 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be a virtual meeting via webinar.

FOR FURTHER INFORMATION CONTACT: Cheryl L. Gendron, Manufacturing Extension Partnership, National Institute of Standards and Technology, telephone number 301–975–2785; email: *cheryl.gendron@nist.gov.*

SUPPLEMENTARY INFORMATION: The MEP Advisory Board is authorized under Section 3003(d) of the America COMPETES Act (Pub. L. 110–69), as amended by the American Innovation and Competitiveness Act, Public Law 114–329 sec. 501 (2017), and codified at 15 U.S.C. 278k(m), in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. The Hollings Manufacturing Extension Partnership Program (Program) is a unique program consisting of Centers in all 50 states and Puerto Rico with partnerships at the federal, state and local levels. By statute, the MEP Advisory Board provides the NIST Director with: (1) Advice on the activities, plans and policies of the Program; (2) assessments of the soundness of the plans and strategies of the Program; and (3) assessments of current performance against the plans of the Program.

Background information on the MEP Advisory Board is available at *http://www.nist.gov/mep/about/advisory-board.cfm.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the MEP Advisory Board will hold an open meeting on Wednesday, March 9, 2022, from 1 p.m. to 5:30 p.m. Eastern Standard Time. The meeting agenda will include an update on the MEP programmatic operations, as well as provide guidance and advice on current activities related to the MEP National Network™ 2017–2022 Strategic Plan.

The agenda may change to accommodate Committee business. The final agenda will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.cfm.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to the MEP Advisory Board's business are invited to request a place on the agenda. Approximately 15 minutes will be reserved for public comments at the end of the meeting. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be no more than three to five minutes each. Requests must be submitted by email to *cheryl.gendron@nist.gov* and must be received by March 2, 2022 to be considered. The exact time for public comments will be included in the final agenda that will be posted on the MEP Advisory Board website at *http://www.nist.gov/mep/about/advisory-board.cfm.* Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who wished to speak but could not be accommodated on the agenda or those who are/were unable to attend the meeting are invited to submit written statements electronically by email to *cheryl.gendron@nist.gov.*

Admittance Instructions: All participants will be attending via webinar. Please contact Ms. Gendron at 301–975–2785 or *cheryl.gendron@nist.gov* for detailed instructions on how to join the webinar. All requests must be received by 5 p.m. Eastern Standard Time, Friday, March 4, 2022.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–02988 Filed 2–10–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; West Coast Region Trawl Logbook

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before April 12, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0782 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Monica Falcon, National Marine Fisheries Service, 7600 Sand Point Way NE, Bldg. 1, Seattle, WA 98115–6349, (206) 526–6115 or *Monica.falcon@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

The success of fisheries management programs depends significantly on the availability of fishery data. Currently, the states of Washington, Oregon, and California administer a trawl logbook on behalf of the Pacific Fishery Management Council (Council) and NOAA's National Marine Fisheries Service (NMFS). The log used is a standard format developed by the Council to collect information necessary to effectively manage the fishery on a coast-wide basis. The trawl logbook collects haul-level effort data including tow time, tow location, depth of catch, net type, target strategy, and estimated pounds of fish retained per tow. Each trawl log represents a single fishing trip. The state of California repealed their requirement, effective April 1, 2019, therefore, NMFS created a federal requirement in order to not lose logbook coverage from trawl vessels in California.

This federal requirement duplicates the logbook structure and process that the state of California was using in order to minimize disruption or confusion for fishery participants. Under this rule, NMFS contracts with the Pacific States Marine Fisheries Commission (PSMFC) to distribute and collect the same logbook these fishermen were using previously. These data are used regularly by NMFS, the Pacific Fishery Management Council, the West Coast Groundfish Observer Program, NMFS Office of Law Enforcement, and the Coast Guard for fisheries management and enforcement.

II. Method of Collection

Vessels using trawl gear in a state without a state requirement for the completion and submission of the logbook are required to complete and submit a logbook on their haul-level effort to the PSMFC. This logbook is provided to these vessels by the PSMFC along with pre-addressed stamped envelopes to return the completed logbooks every month.

III. Data

OMB Control Number: 0648–0782.

Form Number(s): None.

Type of Review: Regular Submission (extension of a currently approved collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 21.

Estimated Time per Response: 6 hours.

Estimated Total Annual Burden Hours: 4,536 hours.

Estimated Total Annual Cost to Public: $63 for materials.

Respondent's Obligation: Mandatory.

Legal Authority: The regulations at § 660.13(a)(1) specify reporting requirements for vessels using trawl gear in a state without a state requirement for the completion and submission of a trawl logbook.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of

public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–02993 Filed 2–10–22; 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 the Procurement List.

SUMMARY: This action adds product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* March 13, 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) 603–2117, Fax: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 11/12/2021, 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 impact of the additions on the current or most recent contractors, the Committee has determined that the product(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) are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s):
7930–00–NIB–0737—Scrubbing Towels, Dual Textured
7920–00–NIB–0738—Disinfectant Wipes, Surface, 110 count canister
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS GREATER SOUTHWEST ACQUISITI
Distribution: A-List
Mandatory for: Total Government Requirement

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2022–02987 Filed 2–10–22; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA BoV)

AGENCY: Department of the Army, DoD.

ACTION: Notice of open Federal Advisory Committee meeting: In person.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976, the Department of Defense announces that the following Federal advisory committee meeting will take place.

DATES: The meeting will be held on Wednesday, 2 March 2022, Time 10:00 a.m.–1:00 p.m. Members of the public wishing to attend the meeting will be required to show a government photo ID upon entering in order to gain access to the meeting location. All members of the public are subject to security screening.

ADDRESSES: The meeting will be held in the Rayburn House Office Building, Room 2044, 45 Independence Avenue SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Deadra K. Ghostlaw, the Designated Federal Officer for the committee, in writing at: Secretary of the General Staff, ATTN: Deadra K. Ghostlaw, 646 Swift Road, West Point, NY 10996; by email at: *deadra.ghostlaw@westpoint.edu* or *BoV@westpoint.edu;* or by telephone at (845) 938–4200.

SUPPLEMENTARY INFORMATION: The committee meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150. The USMA BoV provides independent advice and recommendations to the President of the United States on matters related to morale, discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and any other matters relating to the Academy that the Board decides to consider.

Purpose of the Meeting: This is the 2022 Organizational Meeting of the USMA BoV. Members of the Board will be provided updates on Academy issues. Agenda: Introduction; Board Business: Elect Chair and Vice Chair for 2022, Swearing in of Presidential Appointees (if required), Vote to approve the ''2022 Rules of the US Military Academy Board of Visitors,'' Approve the Minutes from December's Meeting, select summer meeting date; Superintendent's Remarks; Open Discussion; Strategy Update: Develop Leaders of Character; Cultivate a Culture of Character Growth; Build Diverse and Effective Teams; Modernize, Sustain, and Secure; and Strengthen Partnerships.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and subject to the availability of space, this meeting is open to the public. Seating is on a first to arrive basis. Attendees are requested to submit their name, affiliation, and daytime phone number

seven business days prior to the meeting to Mrs. Ghostlaw, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting, and members of the public attending the committee meeting will not be permitted to present questions from the floor or speak to any issue under consideration by the committee. Because the committee meeting will be held in a Federal Government facility security screening is required. A government photo ID is required to enter the building. The Rayburn House Office Building is fully handicapped accessible. Wheelchair access is available at the Horseshoe drive off South Capitol Street or the entrance on Independence Avenue, Washington, DC.

For additional information about public access procedures, contact Mrs. Ghostlaw, the committee's Designated Federal Officer, at the email address or telephone number listed in the **FOR FURTHER INFORMATION CONTACT** section.

Written Comments or Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act, the public or interested organizations may submit written comments or statements to the committee, in response to the stated agenda of the open meeting or in regard to the committee's mission in general. Written comments or statements should be submitted to Mrs. Ghostlaw, the committee Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Each page of the comment or statement must include the author's name, title or affiliation, address, and daytime phone number. Written comments or statements should be submitted to Mrs. Ghostlaw, the committee Designated Federal Officer, via electronic mail, the preferred mode of submission, at the address listed in the **FOR FURTHER INFORMATION CONTACT** section. Written comments or statements being submitted in response to the agenda set forth in this notice must be received by the Designated Federal Official at least seven business days prior to the meeting to be considered by the committee. The Designated Federal Official will review all timely submitted written comments or statements with the committee Chairperson and ensure the comments are provided to all members of the committee before the meeting. Written comments or statements received after this date may not be provided to the committee until its next meeting.

Pursuant to 41 CFR 102–3.140d, the committee is not obligated to allow a member of the public to speak or otherwise address the committee during the meeting. However, the committee Designated Federal Official and Chairperson may choose to invite certain submitters to present their comments verbally during the open portion of this meeting or at a future meeting. The Designated Federal Officer, in consultation with the committee Chairperson, may allot a specific amount of time for submitters to present their comments verbally.

James W. Satterwhite Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2022–02968 Filed 2–10–22; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2022–HQ–0002]

Proposed Collection; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 12, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://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, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Deputy Chief of Staff for Personnel, 300 Army Pentagon, ATTN: Mr. Steve Shappell, or call 703–693–2124.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Army Junior/Senior Reserve Officers' Training Corps and National Defense Cadet Corps Application and Amendment Forms; DA Form 3126, DA Form 3126–1, DA Form 918B; OMB Control Number 0702–0021.

Needs and Uses: The Junior Reserve Officer's Training Corps (JROTC) and the National Defense Cadet Corps (NDCC) are citizenship programs designed to motivate young people to be better citizens. Educational institutions that desire to host a JROTC or NDCC unit may apply using DA Form 3126 and 3126–1, respectively. The program provides unique education opportunities for young citizens through their participation in a Federally sponsored curriculum while pursuing their civilian education. Students develop citizenship, leadership, communication skills, an understanding of the role of the U.S. army in support of national objectives, and an appreciation for the importance of physical fitness. Title 10, United States Code, Section 2031 and 32 CFR part 542 provide for the establishment of units by the Department of the Army at public and private secondary schools. The Senior Reserve Officer's Training Corps (SROTC) program is hosted by colleges and universities with the intent to identify, recruit, and acquire selected students to serve as commissioned officers in the Regular Army, United States Army Reserve, and the Army National Guard, as well as to provide SROTC Cadets with the basic concepts and principles of military art and science, and a basic understanding of joint and combined operations. DA Form 918B is used by institutions with

active SROTC, JROTC, or NDCC units to request and make amendments to their contracts. The forms are prescribed by Army Regulations (AR) 145–1 and 145–2.

Affected Public: Not-for-profit Institutions; State, Local, or, Tribal Government.

Annual Burden Hours: 149.

Number of Respondents: 158.

Responses per Respondent: 1.

Annual Responses: 158.

Average Burden per Response: 56.6 minutes.

Frequency: On occasion.

Dated: February 7, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–03006 Filed 2–10–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2022–HQ–0003]

Proposed Collection; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Army & Air Force Exchange Service (Exchange) announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 12, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://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, docket number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Army and Air Force Exchange Service, Office of the General Counsel, Compliance Division, ATTN: Teresa Schreurs, 3911 South Walton Walker Blvd., Dallas, TX 75236–1598 through email to *PrivacyManager@aafes.com,* or call the Exchange Compliance Division at 800–967–6067, Option 5.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Exchange Application for Employment; Exchange Form 1200–718 and Exchange Form 1200–026; OMB Control Number 0702–0133.

Needs and Uses: The information collection requirement is necessary to consider applicants for open Army and Air Force Exchange Service job opportunities. Data captured is essential in evaluating, ranking, and hiring the best, qualified individuals for enhancing the Exchange mission of providing services to United States Military Service Members. Respondents are individuals interested in applying for employment opportunities with the Army and Air Force Exchange Service.

Affected Public: Individuals or Households.

Annual Burden Hours: 67,000.

Number of Respondents: 134,000.

Responses per Respondent: 1.

Annual Responses: 134,000.

Average Burden per Response: 30 minutes.

Frequency: On occasion.

Dated: February 7, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–03002 Filed 2–10–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2021–HQ–0023]

Submission for OMB Review; Comment Request

AGENCY: Department of the Army, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 14, 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: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Project Manager Army Data Analytics Platforms Climate Survey; OMB Control Number 0702–RDAP.

Type of Request: New.

Number of Respondents: 184.

Responses per Respondent: 1.

Annual Responses: 184.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 92.

Needs and Uses: The Project Manager Army Data Analytics Platforms (PM ARDAP) Climate Survey is seeking feedback from its civilian, military, and contractor personnel to assess how they feel about the organization and their work environment. The responses will enable PM ARDAP leadership to assess and determine where changes are required. Though the survey is intended to reach all personnel, this proposed collection request only covers public respondents (contractor personnel) as required by the Paperwork Reduction Act. PM ARDAP will distribute this Climate Survey using the MilSuite survey feature, which enables PM ARDAP to create a custom survey for organization-wide distribution with advanced survey statistics to capture, review, and share the responses. Respondents will access and provide

their responses to the collection instrument online. They will receive a link that takes them directly to the PM ARDAP Climate Survey in MilSuite. The PM ARDAP Operations Team will review the survey responses and provide data and subsequent analysis to PM ARDAP leadership. The results will enable PM ARDAP leadership to communicate areas for improvement, actions they plan to take or have taken, and if the changes address the areas in need of improvement with its personnel. Additionally, since the survey is annual, PM ARDAP will be able to review and analyze data year to year to identify trends.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Annually.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

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.*

Dated: February 7, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–02990 Filed 2–10–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2021–HQ–0007]

Submission for OMB Review; Comment Request

AGENCY: U.S. Army Corps of Engineers, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 14, 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: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Benefits of Puerto Rico Beaches; OMB Control Number 0710–CBRS.

Type of Request: New.

Number of Respondents: 2050.

Responses per Respondent: 1.

Annual Responses: 2050.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 512.5.

Needs and Uses: The purpose of this study is to employ necessary methods of welfare economics for analyzing the net economic value of beach re-nourishment. The U.S. Army Corps of Engineers Principles and Guidelines stipulates that when beach visitation exceeds the 750,000 annual visitation threshold, contingent valuation or travel cost method are the required metrics for measuring benefits accruing from recreation. This study will produce empirical estimates of economic value of beach replenishment, focusing on recreation value, how recreation value varies with programmatic attributes, and economic impacts stemming from changes in recreation and recreation value. This study will employ utility-theoretic micro-econometric models, with revealed and stated preference data, and will focus on San Juan, Puerto Rico. This project is being conducted as part of the Puerto Rico Coastal Study and the San Juan Metro Area, Puerto Rico Study. Section 204 of the River and Harbor Act of 1970 (Pub. L. 91–611) authorizes the Secretary of the Army, acting though the Chief of Engineers, to prepare plans for the development, utilization and conservation of water and related land resources of drainage basins and coastal areas in the Commonwealth of Puerto Rico. The project consists of two distinct survey collections. The ''Puerto Rico Beaches'' survey will measure beach visitation and erosion management preferences for Puerto Rico residents, and the ''Caribbean Visitor Survey'' will measure beach visitation and erosion management preferences for U.S. visitors to Puerto Rico.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Vlad Dorjets.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

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.*

Dated: February 7, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–02991 Filed 2–10–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0018]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of Local Defense Community Cooperation announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of

information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 12, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://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, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Office of Local Defense Community Cooperation, 2231 Crystal Drive, Arlington, VA 22202, ATTN: Ms. Michelle Volkema, or call 703–697–2176.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Office of Local Defense Community Cooperation Economic Adjustment Data System; OMB Control Number 0704–0625.

Needs and Uses: The Office of Local Defense Community Cooperation (OLDCC), in coordination with other Federal Agencies, delivers a program of technical and financial assistance to enable states and communities to plan and carry out civilian responses to workforce, business, and community needs arising from Defense actions; cooperate with military installations and leverage public and private capabilities to deliver public infrastructure and services to enhance the military mission and achieve facility and infrastructure savings; and increase military, civilian, and industrial readiness and resiliency, and support military families. The Economic Adjustment Data System supports this mission by providing a platform for authorized grant applicants to submit their application packages, and for grant awardees to submit quarterly or semi-annual performance reports. Respondents will be States, United States Territories, counties, municipalities, other political subdivisions of a state, special purpose units of a state or local government, other instrumentalities of a state or local government, and tribal nations supporting a military installation or the defense industrial base.

Affected Public: State, Local, or Tribal Government; Business or other for-profit; Not-for-profit Institutions.

Annual Burden Hours: 620.

Number of Respondents: 62.

Responses per Respondent: 6.

Annual Responses: 372.

Average Burden per Response: 100 minutes.

Frequency: As required.

Dated: February 7, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–03005 Filed 2–10–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–HA–0020]

Proposed Collection; Comment Request

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 12, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://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, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Health Agency, 7700 Arlington Blvd., Falls Church, VA 22042, Terry McDavid, 703–681–3645.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Professional Qualifications Medical/Peer Reviewers; CHAMPUS Form 780; OMB Control Number 0720–0005.

Needs and Uses: The information collection requirement is necessary to obtain and record the professional qualifications of medical and peer reviewers utilized within TRICARE®. The form is included as an exhibit in an appeal or hearing case file as evidence of the reviewer's professional qualifications to review the medical documentation contained in the case file.

Affected Public: Businesses or other for profit.

Annual Burden Hours: 20.

Number of Respondents: 60.

Responses per Respondent: 1.

Annual Responses: 60.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

Dated: February 7, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–03004 Filed 2–10–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–HA–0019]

Proposed Collection; Comment Request

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Defense Health Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 12, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://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, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Health Agency, 7700 Arlington Blvd., Falls Church, VA 22042, Terry McDavid, 703–681–3645.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Statement of Personal Injury: Possible Third Party Liability; DD Form 2527; OMB Control Number 0720–0003.

Needs and Uses: When a claim for TRICARE benefits is identified as involving possible third party liability and the information is not submitted with the claim, the TRICARE contractors request that the injured party (or a designee) complete DD Form 2527. To protect the interests of the U.S. Government, the contractor suspends claims processing until the requested third party liability information is received. The contractor conducts a preliminary evaluation based upon the collection of information and refers the case to a designated appropriate legal officer of the Uniformed Services. The responsible Uniformed Services legal officer uses the information as a basis for asserting and settling the U.S. Government's claim. When appropriate, the information is forwarded to the Department of Justice as the basis for litigation.

Affected Public: Individuals or households.

Annual Burden Hours: 47,022.5.

Number of Respondents: 188,090.

Responses per Respondent: 1.

Annual Responses: 188,090.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

Dated: February 7, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–03003 Filed 2–10–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2021–OS–0126]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by March 14, 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: Angela Duncan, 571–372–7574, *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: COVID–19 Vaccination Attestation Form; DD Form 3150; OMB Control Number 0704–0613.

Type of Request: Revision.

Number of Respondents: 1,200,000.

Responses per Respondent: 1.

Annual Responses: 1,200,000.

Average Burden per Response: 2 minutes.

Annual Burden Hours: 40,000 hours.

Needs and Uses: DoD is seeking approval of the collection of information addressed by DD Form 3150 ''Certification of Vaccination''. This information is being requested in order to promote the safety of individuals in Federal buildings and on DoD installations, consistent with the COVID–19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force and guidance from the CDC and the Occupational Safety and Health Administration and all applicable government FAQs pertaining to the government's response to COVID–19. This information will be used by DoD staff charged with implementing and enforcing workplace safety protocols and is required for ensuring compliance with the requirement for attestation by all civilian employees, on-site contractors, and official visitors. Individuals who refuse to comply with any associated requirements based on the responses to DD Form 3150 may be denied access to the Federal or DoD installation or facility to which access is sought.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

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.*

Dated: February 7, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–02989 Filed 2–10–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; 2022–23 Award Year Deadline Dates

In notice document 2022–01897 beginning on page 4871 in the issue of Monday, January 31, 2022, make the following correction:

On page 4872, in the table, under the heading ''What is the deadline for submission?'', entry five should read ''Tuesday, November 1, 2022.''.

[FR Doc. C1–2022–01897 Filed 2–10–22; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0011]

Supplemental Support Under the American Rescue Plan (SSARP) Application; Correction

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Correction notice.

On February 8, 2022, the U.S. Department of Education published a correction notice in the **Federal Register** (Vol. 87, No 26, Page 7163, Column 2) seeking to correct the public comment period closing date for an information collection entitled, ''Supplemental Support under the American Rescue Plan (SSARP) Application.'' The Docket Number for the correction (ED–2020–SCC–0011), is incorrect, and the correct Docket Number is ED–2022–SCC–0011.

The PRA Coordinator, Strategic Collections and Clearance, Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: February 8, 2022.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Office of the Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–02997 Filed 2–10–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–431–A]

Application To Export Electric Energy; Tenaska Power Services Co.

AGENCY: Office of Electricity, Department of Energy.

ACTION: Notice of application.

SUMMARY: Tenaska Power Services Co. (Applicant or TPS) has applied for authorization to transmit electric energy from the United States to Mexico pursuant to the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before February 28, 2022.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to (202) 586–8008.

FOR FURTHER INFORMATION CONTACT: Matt Aronoff, 202–586–5863, *matthew.aronoff@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) regulates exports of electricity from the United States to a foreign country, pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b) and 42 U.S.C. 7172(f)). Such exports require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On November 3, 2021, TPS filed an application with DOE (Application or App.) ''for renewal of its blanket authorization to transmit electric energy from the United States to Mexico for a period of five years.'' App. at 1. TPS states that it ''is authorized to do business in the State of Nebraska and such other states as required by the current nature of its business,'' adding that it ''is a power marketer authorized by the Federal Energy Regulatory Commission (FERC) to make sales of electric power at wholesale in interstate commerce at market-based rates.'' *Id.* TPS represents that it ''does not own or control any transmission facilities and does not have a franchised service area.'' *Id.*

TPS further claims that it would ''purchase the electricity that it may export, on either a firm or an interruptible basis, from wholesale generators, electric utilities, federal power marketing agencies and affiliates through negotiated agreements that have been voluntarily executed by the selling parties after considering their own need for any such electricity.'' App. at 3. TPS contends that its ''proposed electricity exports will not impair or tend to impede the sufficiency of electric power supplies in the United States or the regional coordination of electric utility planning or operations.'' App. at 3–4.

TPS applied to renew the authorization granted in DOE Order No. EA–431, which expired on January 26, 2022. Due to an unexpected delay in processing the renewal application, DOE has not yet evaluated whether the application satisfies the requirements of FPA section 202(e). TPS has requested expedited treatment of its application, to avoid any continued lapse in its export authority and to minimize the disruption to its electricity trade. TPS has also indicated that it has not engaged in the export of electricity since its authorization expired and will not do so unless and until it receives an Order granting renewal of its export authority in this proceeding. In response to TPS's request for expedited treatment, DOE has shortened the public comment period to 15 days.

The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the Application at the address provided above. Protests should be filed in accordance with Rule 211 of the FERC Rules of Practice and Procedure (18 CFR 385.211). Any person desiring to

become a party to this proceeding should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214).

Comments and other filings concerning TPS's application to export electric energy to Canada should be clearly marked with OE Docket No. EA–431–A. Additional copies are to be provided directly to Norma Rosner Iacovo, 300 East John Carpenter Freeway, Suite 100, Irving, TX 75062, *niacovo@tnsk.com;* and Neil L. Levy, 500 North Capitol Street NW, Washington, DC 20001, *nlevy@mwe.com.*

A final decision will be made on the requested authorization after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after DOE evaluates whether the proposed action will have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of the Application will be made available, upon request, by accessing the program website at *https://energy.gov/node/11845,* or by emailing Matt Aronoff at *matthew.aronoff@hq.doe.gov.*

Signed in Washington, DC, on February 8, 2022.

Christopher Lawrence,

Management and Program Analyst, Electricity Delivery Division, Office of Electricity.

[FR Doc. 2022–02970 Filed 2–10–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2879–012]

Green Mountain Power; Notice of Meeting

a. *Project Name and Number:* Bolton Falls Hydroelectric Project No. 2879–012.

b. *Applicant:* Green Mountain Power (GMP).

c. *Date and Time of Meeting:* February 23, 2022 at 10:00 a.m. EST.

d. *FERC Contact:* Michael Tust, (202) 502–6522, *michael.tust@ferc.gov.*

e. *Purpose of Meeting:* Commission staff will hold a teleconference with staff from GMP and the Vermont State Historic Preservation Office to discuss the status of pending revisions to GMP's Historic Properties Management Plan and a projected schedule for finalizing and signing a Programmatic Agreement.

f. All local, state, and federal agencies, Indian tribes, and other interested parties are invited to attend the meeting. Please call or email Michael Tust at (202) 502–6522 or *michael.tust@ferc.gov* by February 18, 2022 at 4:30 p.m. EST, to RSVP and to receive specific instructions on how to participate.

Dated: February 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–02954 Filed 2–10–22; 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: RP22–539–000.

Applicants: Texas Eastern Transmission, LP.

Description: Compliance filing: TETLP Ministerial Compliance Filing RP21–1001–000 to be effective 9/1/2021.

Filed Date: 2/4/22.

Accession Number: 20220204–5199.

Comment Date: 5 p.m. ET 2/16/22.

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: February 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–02958 Filed 2–10–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–43–000]

Texas Eastern Transmission, LP; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on January 27, 2022, Texas Eastern Transmission, LP (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77056, filed in the above referenced docket a prior notice pursuant to Section 157.205 and 157.208 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act and the blanket certificate issued by the Commission in Docket No. CP82–535–000,[1] seeking authorization to construct and operate interconnection facilities between Texas Eastern and Venture Global Gator Express, LLC (Gator Express) in Plaquemines Parish, Louisiana. Specifically, Texas Eastern proposes to construct a new metering and regulating facilities (M&R Facilities) which will be installed on a platform owned by Gator Express with approximately 0.2 mile of 30-inch-diameter interconnecting piping and a riser to connect Texas Eastern's Line to M&R Facilities on the Gator Express platform. The proposed construction will have a delivery capacity of 240,000 dekatherms per day and is estimated to cost approximately $30,600,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

[1] *Texas Eastern Transmission Corp.,* 21 FERC ¶ 62,199 (1982).

Any questions concerning this application should be directed to Arthur Diestel, Director, Regulatory, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251, by telephone at (713) 627–5116, by fax at (713) 627–5947, or by email at *Arthur.diestel@enbridge.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 April 8, 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,[2] any person[3] 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,[4] and must be submitted by the protest deadline, which is April 8, 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[5] and the regulations under the NGA[6] by the intervention deadline for the project, which is April 8, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before April 8, 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 CP22–43–000 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.'' The Commission's eFiling staff are available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

(2) You can file a paper copy of your submission. Your submission must reference the Project docket number CP22–43–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Arthur Diestel, Director, Regulatory, Texas Eastern Transmission, LP, P.O. Box 1642, Houston, Texas 77251, by telephone at (713) 627–5116, by fax at (713) 627–5947, or by email at *Arthur.diestel@enbridge.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: February 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–02956 Filed 2–10–22; 8:45 am]

BILLING CODE 6717–01–P

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1 Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–1215–003.
Applicants: Assembly Solar I, LLC.
Description: Compliance filing: Compliance Filing Under Docket ER21–1215 to be effective 5/1/2021.
Filed Date: 2/7/22.
Accession Number: 20220207–5067.
Comment Date: 5 p.m. ET 2/28/22.

Docket Numbers: ER21–1794–002.
Applicants: White Oak Energy LLC.
Description: Compliance filing: Compliance Filing Under Docket ER21–1794 to be effective 7/1/2021.
Filed Date: 2/7/22.
Accession Number: 20220207–5069.
Comment Date: 5 p.m. ET 2/28/22.

Docket Numbers: ER22–998–000.
Applicants: New York State Electric & Gas Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: New York State Electric & Gas Corporation submits tariff filing per 35.13(a)(2)(iii: 205: E&P Agreement between NYSEG and Watkins Glen Solar (SA 2685) to be effective 1/10/2022.
Filed Date: 2/7/22.
Accession Number: 20220207–5068.
Comment Date: 5 p.m. ET 2/28/22.

Docket Numbers: ER22–999–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) Rate Filing: 2022–02–07_SA 2332 Termination of MidAmerican-Cornbelt-Hudson WDS to be effective 1/21/2022.
Filed Date: 2/7/22.
Accession Number: 20220207–5114.
Comment Date: 5 p.m. ET 2/28/22.

Docket Numbers: ER22–1000–000.
Applicants: Midcontinent Independent System Operator, Inc., Union Electric Company.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–02–07_SA 2022 Ameren-Kirkwood 2nd Rev WDS to be effective 4/1/2022.
Filed Date: 2/7/22.
Accession Number: 20220207–5131.
Comment Date: 5 p.m. ET 2/28/22.

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: February 7, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–02962 Filed 2–10–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–45–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on January 28, 2022, Columbia Gas Transmission, LLC (Columbia), 700 Louisiana Street, Suite 1300, Houston, Texas 77002, filed in the above referenced docket a prior notice pursuant to Section 157.205 and 157.216(b) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act and the blanket certificate issued by the Commission in Docket No. CP83–76–000,[1] seeking authorization to abandon two injection/withdrawal wells and its associated pipelines and appurtenances located in its Wellington Storage Fields in Lorain County, Ohio. Specifically, Columbia states that the wells and storage line sections, to be abandon, provide little value and contribute only a *de minimis* amount to the total deliverability of the storage field. Columbia estimates the cost of the project to be $1,200,000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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.

Any questions concerning this application should be directed to David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas 77002, by telephone at (832) 320–5477, or by email at *David_alonzo@tcenergy.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 April 8, 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,[2] any person [3] 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, [4] and must be submitted by the protest deadline, which is April 8,

[1] *Columbia Gas Transmission Corporation* (predecessor to Columbia Gas Transmission, LLC), 22 FERC ¶ 62,029 (1983).

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

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 [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is April 8, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before April 8, 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 CP22–45–000 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.'' The Commission's eFiling staff are available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

(2) You can file a paper copy of your submission. Your submission must reference the Project docket number CP22–45–000.

To mail via USPS, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To mail via any other courier, use the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: David A. Alonzo, Manager, Project Authorizations, Columbia Gas Transmission, LLC, 700 Louisiana Street, Suite 1300, Houston, Texas, 77002, by telephone at (832) 320–5477, or by email at *David_alonzo@tcenergy.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: February 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–02955 Filed 2–10–22; 8:45 am]

BILLING CODE 6717–01–P

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15247–000]

PacifiCorp; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 13, 2021, PacifiCorp filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the South Fork Pumped Storage Project (South Fork Project or project) to be located near Lake Viva Naughton, Lincoln County, Wyoming. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Two alternatives are being considered for the South Fork Project. Alternative 1 would consist of the following: (1) An upper reservoir approximately 3.5 miles east of Lake Viva Naughton with a surface area of 210 acres and a storage volume of approximately 3,348 acre-feet created by a 1,870-foot-long, 340-foot-high embankment dam; (2) a new intake/outlet on Lake Viva Naughton, which will serve as the lower reservoir; (3) a 4.2-mile-long steel penstock with a diameter of 23-feet connecting the upper reservoir with the powerhouse/pump station; (4) a 50-foot-long, 150-foot-wide concrete powerhouse/pump station located on the eastern shoreline of Lake Viva Naughton containing three 167-megawatt generating/pumping units; (5) a 4.4-mile, 345-kilovolt transmission line and new substation interconnecting

to PacifiCorp's Jim Bridger-Populus #2 transmission line; and (6) appurtenant facilities.

Alternative 2 would consist of the same facilities described in alternative 1 except: (1) The upper reservoir would have a surface area of 85 acres and a storage volume of approximately 3,604 acre-feet created by a 1,035-foot-long, 310-foot-high embankment dam; (2) the upper reservoir would connect to the powerhouse/pump station by a 3.8-mile-long, 23-foot-diameter steel penstock; (3) the transmission line would be 2.2 miles in length connecting to a new substation at same transmission line.

The estimated annual generation of the South Fork Project would be 1,460 gigawatt-hours.

Applicant Contact: Tim Hemstreet, Managing Director, Renewable Energy Development, PacifiCorp, 825 NE Multnomah, Suite 1800, Portland, OR 97232; email: *Tim.Hemstreet@pacificorp.com;* phone: (503) 813–6170.

FERC Contact: Kristen Sinclair; email: *kristen.sinclair@ferc.gov;* phone: (202) 502–6587.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications 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. 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–15247–000.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's website at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–15247) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 7, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–02957 Filed 2–10–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9393–01–OMS]

Cross-Media Electronic Reporting: Authorized Program Revision Approval, Maine Department of Health and Human Services—Drinking Water Program (ME DHHS–DWP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Environmental Protection Agency's (EPA) approval of the Maine Department of Health and Human Services—Drinking Water Program (ME DHHS–DWP) request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA approves the authorized program revisions/modifications as of February 11, 2022.

FOR FURTHER INFORMATION CONTACT: Shirley M. Miller, U.S. Environmental Protection Agency, Office of Information Management, Mail Stop 2824T, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (202) 566–2908, *miller.shirley@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 13, 2005, the final Cross-Media Electronic Reporting Rule (CROMERR) was published in the **Federal Register** (70 FR 59848) and codified as part 3 of title 40 of the CFR. CROMERR establishes electronic reporting as an acceptable regulatory alternative to paper reporting and establishes requirements to assure that electronic documents are as legally dependable as their paper counterparts. Subpart D of CROMERR requires that state, tribal or local government agencies that receive, or wish to begin receiving, electronic reports under their EPA-authorized programs must apply to EPA for a revision or modification of those programs and obtain EPA approval. Subpart D provides standards for such approvals based on consideration of the electronic document receiving systems that the state, tribe, or local government will use to implement the electronic reporting. Additionally, § 3.1000(b) through (e) of 40 CFR part 3, subpart D provides special procedures for program revisions and modifications to allow electronic reporting, to be used at the option of the state, tribe or local government in place of procedures available under existing program-specific authorization regulations. An application submitted under the subpart D procedures must show that the state, tribe or local government has sufficient legal authority to implement the electronic reporting components of the programs covered by the application and will use electronic document receiving systems that meet the applicable subpart D requirements.

On December 7, 2021, the Maine Department of Health and Human Services—Drinking Water Program (ME DHHS–DWP) submitted an application titled Compliance Monitoring Data Portal (CMDP) for revisions/modifications to its EPA-approved programs under title 40 CFR to allow new electronic reporting. EPA reviewed ME DHHS–DWP's request to revise/modify its EPA-authorized programs and, based on this review, EPA determined that the application met the standards for approval of authorized program revisions/modifications set out in 40 CFR part 3, subpart D. In accordance with 40 CFR 3.1000(d), this notice of EPA's decision to approve ME DHHS–DWP's request to revise/modify its following EPA-authorized programs to allow electronic reporting under 40 CFR is being published in the **Federal Register**:

Part 142: National Primary Drinking Water Regulations Implementation (NPDWR) reporting under CFR 141

ME DHHS–DWP was notified of EPA's determination to approve its application with respect to the authorized programs listed above. Also, in this notice, EPA is informing interested persons that they may request a public hearing on EPA's action to approve the State of Maine's request to revise its authorized public water system program under 40 CFR part 142, in accordance with 40 CFR 3.1000(f). Requests for a hearing must be submitted to EPA within 30 days of publication of this **Federal Register** notice. Such requests should include the following information:

(1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in EPA's determination, a brief explanation as to why EPA should hold a hearing, and any other information that the requesting person wants EPA to

consider when determining whether to grant the request;

(3) The signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

In the event a hearing is requested and granted, EPA will provide notice of the hearing in the **Federal Register** not less than 15 days prior to the scheduled hearing date. Frivolous or insubstantial requests for hearing may be denied by EPA. Following such a public hearing, EPA will review the record of the hearing and issue an order either affirming this determination or rescinding such determination. If no timely request for a hearing is received and granted, EPA's approval of the State of Maine's request to revise its part 142—National Primary Drinking Water Regulations Implementation program to allow electronic reporting will become effective 30 days after this notice is published, pursuant to CROMERR section 3.1000(f)(4).

Dated: February 4, 2022.

Jennifer Campbell,

Director, Office of Information Management.

[FR Doc. 2022–02986 Filed 2–10–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–003]

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 31, 2022 10 a.m. EST Through February 7, 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. 20220013, Draft Supplement, USFS, NAT, Nationwide Aerial Application of Fire Retardant on National Forest System Land, *Comment Period Ends:* 03/29/2022, *Contact:* Laura Conway 406–802–4317

Amended Notice:

EIS No. 20210187, Draft, USFS, UT, Southern Monroe Mountain Allotments Livestock Grazing Authorization, *Comment Period Ends:* 02/22/2022, *Contact:* Jason Kling 435–896–1080. Revision to FR Notice Published 12/23/2021; Extending the Comment Period from 02/07/2022 to 02/22/2022.

EIS No. 20220003, Draft, BLM, UT, Pine Valley Water Supply Project, *Comment Period Ends:* 03/11/2022, *Contact:* Brooklynn Cox 435–865–3073. Revision to FR Notice Published 01/07/2022; Extending the Comment Period from 02/22/2022 to 03/11/2022.

Dated: February 7, 2022.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2022–02959 Filed 2–10–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2022–0105; FRL–9477–01–OAR]

Proposed Information Collection Request; Comment Request; Recordkeeping and Reporting for the Renewable Fuel Standard Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''Recordkeeping and Reporting for the Renewable Fuel Standard (RFS) Program,'' EPA ICR No. 2546.03 OMB Control No. 2060–0725) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for renewal of an existing collection. 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.

DATES: Comments must be submitted on or before April 12, 2022.

ADDRESSES: You may send comments, identified by Docket ID No EPA–HQ–OAR–2022–0105, by any of the following methods:

- *Federal eRulemaking Portal:* Submit your comments at *https://www.regulations.gov* (our preferred method). Follow the online instructions for submitting comments.
- *Email:* Email your comments to *a-and-r-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2022–0105 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air & Radiation 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 notice. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For detailed instructions on sending comments and additional information on this action, see 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 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 on EPA Docket Center services and the status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Anne-Marie Pastorkovich, Environmental Protection Agency, telephone number: 202–343–9623; email address: *pastorkovich.anne-marie@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 *www.regulations.gov* or in person as described in the **ADDRESSES** section. 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.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments

and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

This ICR package is a renewal of an existing collection, ''Recordkeeping and Reporting for the Renewable Fuel Standard Program,'' OMB Control Number 2060–0725, expiring August 31, 2022. The RFS regulations are in 40 CFR part 80, subpart M. Because it is more efficient and easier for regulated parties to understand, we seek to consolidate the following approved ICRs into this collection:

- Modifications to Fuel Regulations to Provide Flexibility for E15; Modifications to RFS RIN Market Regulations (Final Rule), OMB Control Number 2060–0723, expiring November 30, 2022; and
- Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, Response to the Remand of the 2016 Standards, and Other Changes (Final Rule), OMB Control Number 2060–0728, expiring December 31, 2023.

When this ICR renewal of 2060–0725 is complete, and once it is approved by OMB, we will seek to cancel 2060–0723 and 2060–0728, as they will no longer be necessary.

What is the RFS program?

The RFS program was created under the Energy Policy Act of 2005 (EPAct), which amended the Clean Air Act (CAA). The Energy Independence and Security Act of 2007 (EISA) further amended the CAA by expanding the RFS program. EPA implements RFS in consultation with U.S. Department of Agriculture and the Department of Energy. The RFS program is a national policy that requires a certain volume of renewable fuel to replace or reduce the quantity of petroleum-based transportation fuel, heating oil or jet fuel.

Obligated parties under the RFS program are refiners or importers of gasoline or diesel fuel. Obligated parties, and exporters of renewable fuel, must meet an annual Renewable Volume Obligation (RVO). Parties meet their RVO by blending renewable fuels into transportation fuel, or by obtaining credits (called ''Renewable Identification Numbers'', or RINs). EPA calculates and establishes RVOs every year through rulemaking, based on the CAA volume requirements and projections of gasoline and diesel production for the coming year. The standards are converted into a percentage and obligated parties must demonstrate compliance annually. RINs are the credits that obligated parties use to demonstrate compliance with the standard. RINS are generated by producers and importers of renewable fuels and traded by various parties. Obligated parties must obtain sufficient RINs for each category to demonstrate compliance with the annual standard.

To track compliance with the RFS program, various parties involved with the production and blending of renewable fuels, and who generate, trade, or use RINs, must register with EPA, and submit various types of compliance reports related to the activity they engage in under the program. Our estimates as to burden are explained in the supporting statement that has been placed in the public docket. Domestic and foreign entities may be subject to these regulations and to the associated information collection. The RFS program was developed with certain flexibilities, including for small entities such as small refiners and small refineries, small blenders, and small volume production facilities and importers.

What are the recordkeeping and reporting requirements associated with the RFS program?

The reporting requirements of the RFS program typically fall under registration and compliance reporting. Recordkeeping requirements include product transfer documents (PTDs) and retention of records that support items reported. Recordkeeping and reporting are based upon the role the party fills under the regulations. A party may be registered in more than one role. Basing the recordkeeping and reporting upon a party's roles in the program ensures that parties must sustain only the burden necessary under the program. EPA continuously assesses its registration and reporting systems to provide the best possible service to the regulated community and to enhance, simplify, and streamline the experience. Because RFS relies upon a marketplace of RINs, EPA has created and maintains the EPA Moderated Transaction System (EMTS) capable of handling a high volume of RIN trading activities.

Who are the respondents for the RFS program?

The respondents to this ICR are: RIN Generators (producers and importers of renewable fuel), Obligated Parties (refiners and importers of gasoline and diesel), Exporters (of renewable fuel), RIN Owners, independent third-party Quality Assurance Plan (QAP) Providers, Third Parties (Auditors who submit reports on behalf of other respondents), and certain petitioners under the international aggregate compliance approach (such petitions are infrequent). These parties and their associated information collections are described in detail in the supporting statement and tables, which have been placed in the docket.

Form Numbers:

- RFS010X: RFS Activity Report—versions RFS0104, RFS0105, and RFS 0106
- RFS030X: RFS Annual Compliance Report, versions RFS0303, RFS0304
- RFS500: Redesignation of Non-Transportation Distillate Fuel (NTDF) as or to Motor Vehicle Non-Road Locomotive Marine (MVRNLM) Diesel Fuel
- RFS0601: RFS Renewable Fuel Producer Supplemental Report
- RFS0701: RFS Renewable Fuel Producer Co-Products Report
- RFS0801: RFS Renewable Biomass Report
- RFS0901: RFS Production Outlook Report
- RFS1000: Report for RIN Generating Advanced Fuel Producers and Importers using Grain Sorghum as a Feedstock
- RFS1200: Invasive Species Reporting
- RFS1300: Producers of Renewable Fuel using Crop Residue as a Feedstock form
- RFS1400: Reporting Fuels under 80.1451(b)(1)(ii)(T)
- RFS1500: Reporting Fuels under 80.1451(b)(1)(ii)(T)—Finished Fuel Blending,
- RFS1600: Reporting Fuels under 80.1451(b)(1)(ii)(T)—Blender Contact
- RFS2000: Batch Verification
- RFS2100: Aggregate RIN Verification.
- RFS2200: On-Site Audit Report

- RFS2300: List of Potentially Invalid RINs
- RFS2400: Mass Balance
- RFS2500: RFS Efficient Producer Data Report
- RFS2700: RFS Cellulosic Biofuel Producer Questionnaire
- ATT010X: Attest Engagement Form ATT0100 and ATT0100–ALT
- Cellulosic Waiver Credit Form
- URF (unified reporting format; the format used to fill out most RFS forms)

Reporting using templates or that occurs within systems; with system user guides listed:

- EMTS: RFS RIN Generation Report [1]
- EMTS: RFS RIN Transaction Report [2]
- Engineering Review Template
- OTAQ Reg (Registration System) User Guide
- User Guide for DCFUEL in EPA's Central Data Exchange
- Quick Start Guide for Registration for DCFUEL in EPA's Central Data Exchange
- Quick Start Guide for Report Submission for DCFUEL in EPA's Central Data Exchange

Respondents/affected entities: RIN Generators, Obligated Parties, RIN Owners, Exporters, QAP Providers, Third Parties (Auditors) and Petitioners under the international aggregate compliance approach. These parties include producers and importers of renewable fuels and refiners and importers of gasoline and diesel transportation fuels.

Respondent's obligation to respond: The RFS program represents a mixture of voluntary and mandatory reporting, depending upon activity. A single party may register with multiple program roles—*e.g.,* a party might be both an obligated party and a RIN owner.

Estimated number of respondents: 45,473.

Frequency of response: On occasion/daily, quarterly, annual.

Total estimated burden: 859,218 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: The total cost (labor and non-labor) is $78,703,548, of which $16,428,454 is non-labor costs (all of which are purchased services).

Changes in Estimates: There is a decrease in 68,670 hours in the total estimated respondent burden compared with the ICR(s) [3] currently approved by OMB. This decrease is due to several factors, including a change in the number of respondents and certain, one-time requirements that have now been accomplished by respondents (*e.g.,* one-time programming to comply with reporting; initial registration of certain respondents).

Byron J. Bunker,

Director, Compliance Division, Office of Transportation & Air Quality, Office of Air & Radiation.

[FR Doc. 2022–02901 Filed 2–10–22; 8:45 am]

BILLING CODE 6560–50–P

[1] This reporting is done entirely within the EPA Moderated Transaction System (EMTS); descriptive system information has been docketed and will be submitted to OMB with the ICR.

[2] *Id.*

[3] The total hours for the currently approved ICRs 2060–0723, 2060–0725, and 2060–0728 is 927,888 hours. These are the ICRs to be consolidated in this renewal of 2060–0725. The total for this proposed renewal is 859,218. The difference is, therefore, a reduction of 68,670 hours.

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Thursday, February 17, 2022 at 10:00 a.m.

PLACE: Virtual meeting. *Note:* Because of the COVID–19 pandemic, we will conduct the open meeting virtually. If you would like to access the meeting, see the instructions below.

STATUS: This meeting will be open to the public. To access the virtual meeting, go to the commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Audit Division Recommendation Memorandum on the Democracy Engine, Inc., PAC (A19–18)
Proposed Rule of Agency Procedure Concerning the Treatment of Foreign State Respondents at the Initiation of the Enforcement Process
Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

(Authority: Government in the Sunshine Act, 5 U.S.C. 552b)

Laura E. Sinram,

Acting Secretary and Clerk of the Commission.

[FR Doc. 2022–03059 Filed 2–9–22; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than March 14, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *Community Bancshares of Mississippi, Inc. Employee Stock Ownership Plan, Brandon, Mississippi;* to acquire additional voting shares, for a total of 19.27 percent of the voting shares of Community Bancshares of Mississippi, Inc., Brandon, Mississippi, and thereby indirectly acquire voting shares of Community Bank of Mississippi, Forest, Mississippi.

Board of Governors of the Federal Reserve System, February 8, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–03001 Filed 2–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–10338 and CMS–10409]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by April 12, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10338 Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered Group Health Plans and Issuers and Individual Market Issuers

CMS–10409 LTCH CARE Data Set for the Collection of Data Pertaining to the Long-Term Care Hospital Quality Reporting Program

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered Group Health Plans and Issuers and Individual Market Issuers; *Use:* The information collection requirements ensure that claimants receive adequate information regarding the plan's claims procedures and the plan's handling of specific benefit claims. Claimants need to understand plan procedures and plan decisions in order to appropriately request benefits and/or appeal benefit denials. The information collected in connection with the HHS-administered federal external review process is collected by HHS, and is used to provide claimants with an independent external review. *Form Number:* CMS–10338 (OMB control number: 0938–1099); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 497,262; *Total Annual Responses:* 517,014,153; *Total Annual Hours:* 1,198,692. (For policy questions regarding this collection contact Laura Byabazaire at 301–492–4128.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* LTCH CARE Data Set for the Collection of Data Pertaining to the Long-Term Care Hospital Quality Reporting Program; *Use:* We are requesting an extension to the Long-Term Care Hospital Continuity Assessment Record and Evaluation Data Set (LTCH CARE Data Set or LCDS) Version 5.0 that will be effective on October 1, 2022.

On November 2, 2021 the Centers for Medicare & Medicaid Services (CMS) issued a final rule (86 FR 62240) which finalized proposed modifications to the effective date for the reporting of measures and certain standardized patient assessment data in the Long-term Care Hospital Quality Reporting Program (LTCH QRP). Per the final rule CMS will require LTCHs to start collecting assessment data using LCDS Version 5.0 beginning October 1, 2022. The information collection request for LCDS Version 5.0 was re-approved on December 7, 2021 with an October 1, 2022 implementation date. CMS is asking for an extension of the approved LCDS Version 5.0, which currently expires on December 31, 2022.

The LTCH CARE Data Set is used to collect, submit, and report quality data to CMS for compliance with the Long-Term Care Hospital Quality Reporting Program (LTCH QRP). *Form Number:* CMS–10409 (OMB control number: 0938–1163); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 415; *Total Annual Responses:* 204,936; *Total Annual Hours:* 145,831. (For policy questions regarding this collection contact Christy Hughes at 410–786–5662.)

Dated: February 8, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–02992 Filed 2–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0215]

Proposed Information Collection Activity; Tribal TANF Data Report, TANF Annual Report, and Reasonable Cause/Corrective Action Documentation Process

AGENCY: Office of Family Assistance, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the form OFA–0084: Tribal TANF Data Report, TANF Annual Report, and Reasonable Cause/Corrective Action Documentation Process (OMB #0970–0215, expiration 4/30/2022). There are no changes requested to the form.

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 *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: 42 U.S.C. 612 (section 412 of the Social Security Act as amended by Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996), mandates that federally recognized Indian tribes with an approved Tribal TANF program collect and submit to the Secretary of the Department of Health and Human Services data on the recipients served by the tribes' programs. This information collection includes both aggregated and disaggregated data on case characteristics and individual characteristics. In addition, tribes that are subject to a penalty are allowed to provide reasonable cause justifications as to why a penalty should not be imposed or may develop and implement corrective compliance procedures to eliminate the source of the penalty. Finally, there is an annual report, which requires the tribes to describe program characteristics. All of the above requirements are currently approved by OMB and ACF is simply proposing to extend them without any changes.

Respondents: Native American tribes and tribal organizations operating Tribal TANF programs.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
Final Tribal TANF Data Report	75	4	451	135,300
Tribal TANF Annual Report	75	1	40	3,000
Tribal TANF Reasonable Cause/Corrective	10	1	60	600

Estimated Total Annual Burden Hours: 138,900.

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: 42 U.S.C. 612, 45 CFR part 286.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–02922 Filed 2–10–22; 8:45 am]

BILLING CODE 4184–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; OPRE Data Collection for State Child Welfare Data Linkages Descriptive Study (New Collection)

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) is requesting approval from the Office of Management and Budget (OMB) for a new primary data collection about connected child welfare data. We define connected data as child welfare data that are linked or integrated with data from other systems or agencies. The State Child Welfare Data Linkages Descriptive Study (Data Linkages Descriptive Study) will gather systematic information on the extent to which states connect their child maltreatment data to other data sets; how any linked data sets are created, managed, and used; and challenges states face in linking data.

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: Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The State Child Welfare Data Linkages Descriptive Study will examine the extent to which child welfare agencies in 50 states, Puerto Rico, and Washington, DC, link administrative data on child maltreatment to data in other systems and to learn more about states' practices related to sharing and linking data. The study aims to inform the ongoing and

accurate surveillance of child maltreatment and identify facilitators and barriers to connected data efforts (integrated data or linked data).

These data are not available from existing sources. This study aims to present an internally valid description of the data capacity of participating state child welfare agencies, not to promote statistical generalization to different sites or service populations.

Respondents: State child welfare directors, designated state child welfare agency staff (identified by a state child welfare director as having knowledge about the state's connected data efforts), and designated county staff (identified by a state child welfare director as having knowledge about a county's connected data efforts).

Annual 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)	Annual burden (in hours)
Initial survey of state child welfare directors	52	1	0.67	35	18
Survey of connected data efforts [1]	208	1	0.58	121	61
Interviews with individuals responsible for connected data efforts	120	1	1	120	60

Estimated Total Annual Burden Hours:109

[1] Estimates for burden hours define respondent by survey administration and not by the number of different people completing the survey.

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: 44 U.S.C. 5105.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–02928 Filed 2–10–22; 8:45 am]

BILLING CODE 4184–29'–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0106]

Proposed Information Collection Activity; LIHEAP Carryover and Reallotment Report

AGENCY: Office of Community Services, Administration for Children and Families, HHS.

ACTION: Request for Public Comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting renewal of the Low Income Home Energy Assistance Program (LIHEAP) Carryover and Reallotment Report (Office of Management and Budget (OMB) #0970–0106, expiration date April 30, 2022) with changes. Changes include the addition of one and the removal of two sources in pre-populated lines, the re-descriptions of annual funding sources, and minor wording changes.

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 *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The LIHEAP statute and regulations require LIHEAP grant recipients to report certain information to HHS concerning funds forwarded and funds subject to reallotment. The 1994 reauthorization of the LIHEAP statute, the Human Services Amendments of 1994 (Public Law 103–252), requires that the carryover and reallotment report for one fiscal year be submitted to HHS by the grant recipient before the allotment for the next fiscal year may be awarded.

We are requesting minor changes in the collection of data with the Carryover and Reallotment Report for FY 2022, a form for the collection of data, and the Simplified Instructions for Timely Obligations of LIHEAP Regular Block Grant, Reallotted, and Supplemental Funds and Reporting Funds for Carryover and Reallotment. The form clarifies the information being requested and ensures the submission of all the required information. The form facilitates our response to numerous queries each year concerning the amounts of obligated funds. Use of the form is mandatory for prior-year grant recipients that seek current current-year LIHEAP funds.

Respondents: State governments, tribal governments, insular areas, and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
LIHEAP Carryover and Reallotment Report	207	1	7	1,449

Estimated Total Annual Burden Hours: 1,449.

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: 42 U.S.C. 8626(b)(2)(B).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–02929 Filed 2–10–22; 8:45 am]

BILLING CODE 4184–80–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0506]

Proposed Information Collection Activity; Evaluation of Employment Coaching for TANF and Related Populations

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) is proposing to continue ongoing approved data collection activities and add additional activities for the sample enrolled in the Evaluation of Employment Coaching for TANF and Related Populations (Office of Management and Budget (OMB)#: 0970–0506). This includes (1) an extension for the previously approved second follow-up survey data collection; (2) new data collection through a third follow-up survey; and (3) new data collection through follow-up semi-structured interviews with management, staff, supervisors, and participants.

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: This study is providing an opportunity to learn more about the potential of coaching to help clients achieve self-sufficiency and other desired employment-related outcomes. It includes the following employment programs: MyGoals for Employment Success in Baltimore; MyGoals for Employment Success in Houston; Family Development and Self-Sufficiency program in Iowa; LIFT in New York City, Chicago, and Los Angeles; Work Success in Utah; and Goal4 It! in Jefferson County, Colorado. Together, these programs include Temporary Assistance for Needy Families (TANF) agencies and other public or private employment programs that serve low-income individuals. Each site has a robust coaching component and the capacity to conduct a rigorous impact evaluation. This study is providing information on whether coaching helps people develop self-regulation skills, obtain and retain jobs, advance in their careers, move toward self-sufficiency, and improve their overall well-being. To meet these objectives, this study includes an impact and implementation study, as approved by OMB. The approved impact study initially included two follow-up surveys at approximately 9 months and 21 months, respectively, after random assignment.

This submission, in part, builds on the existing impact study, which randomly assigned participants to either a ''program group,'' who were paired with a coach, or to a ''control group,'' who were not paired with a coach. The effectiveness of the coaching will be determined by differences between members of the program and control groups in outcomes such as obtaining and retaining employment, earnings, measures of self-sufficiency, and measures of self-regulation.

The proposed extension for the second follow-up survey data collection under OMB #0970–0506 will allow sample members who enrolled at the end of the study intake period to complete the second follow-up survey. There are no changes to the previously approved information collection. Additionally, the proposed new information collection through a third follow-up survey will provide information about participants at least 4 years after random assignment. This survey will provide rigorous evidence on whether the coaching interventions are effective, for whom, and under what circumstances over the longer term. The information collected at a later follow-up point will be used to assess how employment coaching might have a continued effect on participants long after they have left coaching programs.

This submission also builds on the existing implementation study. The proposed new information collection through follow-up semi-structured interviews with management, staff, supervisors, and participants under OMB #0970–0506 will enable additional input from employment coaching program staff and participants on the processes and perceptions of employment coaching. The proposed new data collection instruments will provide descriptive information about how coaches form trusting relationships with their participants and other key topics that have emerged as important in analysis of previously collected study data.

Respondents: Individuals enrolled in the Evaluation of Employment Coaching for TANF and Related Populations study. All participants will be able to opt out of participating in the data collection activities.

Annual Burden Estimates

BURDEN REMAINING FROM PREVIOUSLY APPROVED INFORMATION COLLECTIONS

[Note: Data collection for the second follow-up is expected to be completed within the next year.]

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Average burden per response (in hours)	Annual burden (in hours)
Second follow-up survey	824	1	0.75	618

Estimated Total Annual Burden Hours: 618.

NEW BURDEN REQUESTED

[Note: New data collection is expected to take place over about 3 years]

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)	Annual burden (in hours)
Third follow-up survey	4,239	1	0.75	3,179	1,060
Semi-structured management interviews	20	1	1	20	7
Semi-structured staff and supervisor interviews	40	1	1	40	13
Semi-structured participant interviews, MyGoals	14	1	2.5	35	12
Semi-structured participant interviews, LIFT	7	1	2	14	5
Semi-structured participant interviews, FaDSS and Goal4 It!	14	1	1.5	21	7

Estimated Total Annual Burden Hours: 1,104.

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: 42 U.S.C. 613.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–02920 Filed 2–10–22; 8:45 am]

BILLING CODE 4184–09–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60 Day Information Collection: Urban Indian Organization On-Site Review

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments. Request for approval.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to comment on the information collection titled, ''Urban Indian Organization On-Site Review,'' Office of Management and Budget (OMB) Control Number 0917–00XX. IHS is requesting OMB to approve a new collection.

DATES: *Comment Due Date:* April 12, 2022. Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

ADDRESSES: Send your written comments, requests for more information on the collection, or requests to obtain a copy of the data collection instrument and instructions to Shannon Beyale, Health System Specialist, by one of the following methods:

- *Mail:* Indian Health Service, Office of Urban Indian Health Programs, 5600 Fishers Lane, Mail Stop: 08E65D, Rockville, MD 20857.
- *Phone:* 301–945–3657.
- *Email: Shannon.Beyale@ihs.gov.*

FOR FURTHER INFORMATION CONTACT: To request additional information, please contact Evonne Bennett, Information Collection Clearance Officer at: *Evonne.Bennett@ihs.gov* or 301–443–4750.

SUPPLEMENTARY INFORMATION: The Indian Health Care Improvement Act (IHCIA), at 25 U.S.C. 1655, states that the IHS will annually review and evaluate each Urban Indian Organization (UIO) funded under the law. The IHCIA also requires IHS to develop procedures for evaluating compliance with awards made under the statute. Section 1655 states, in part:

(a) Contract Compliance and Performance

The Secretary, through the Service, shall develop procedures to evaluate compliance with grant requirements under this subchapter and compliance with, and performance of contracts entered into by [UIOs] under this subchapter. Such procedures shall include provisions for carrying out the requirements of this section.

(b) Annual Onsite Evaluation

The Secretary, through the Service, shall conduct an annual on-site evaluation of each [UIO] which has entered into a contract or received a grant under Section 1653 of this title for purposes of determining the compliance of such organization with, and evaluating the performance of such organization under, such contract or the terms of such grant.

To meet statutory compliance, the IHS will conduct annual on-site reviews of UIOs funded under the IHCIA to ensure grant and contract compliance and the delivery of safe and high-quality health care.

This notice announces our intent to establish a new information collection.

Title: Urban Indian Organization On-Site Review. *Need and Use of Information Collection:* The Office of Urban Indian Health Programs (OUIHP) at IHS Headquarters provides national oversight of the annual on-site reviews. The IHS Urban Indian Organization On-Site Review is conducted annually by the IHS Area Offices to evaluate IHS-funded Urban Indian Organizations compliance with Federal Acquisition Regulation (FAR) contractual requirements and grant requirements established through the IHCIA. The on-site review requirements are based on best-practice standards for delivering safe and high quality health care. *Agency Form Number:* none. *Members of Affected Public:* IHS-funded Urban Indian Organizations. *Status of the Proposed Information Collection:* new.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of responses per respondent, Average burden hour per response, and Total annual burden hours.

Data collection instrument(s)	Estimated number of respondents	Responses per respondent	Average burden hour per response *	Total annual burden hours
UIOs	41	1	16	656
Total	41	1	16	656

There are no direct costs to respondents to report.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points:

(a) Whether the information collection activity is necessary to carry out an agency function;

(b) whether the agency processes the information collected in a useful and timely fashion;

(c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information);

(d) whether the methodology and assumptions used to determine the estimates are logical;

(e) ways to enhance the quality, utility, and clarity of the information being collected; and

(f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Elizabeth A. Fowler,

Acting Deputy Director, Indian Health Service.

[FR Doc. 2022–02969 Filed 2–10–22; 8:45 am]

BILLING CODE 4165–16–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: Center for Scientific Review Special Emphasis Panel; Small Business: Endocrinology, Metabolism, Nutrition and Reproductive Sciences.

Date: March 11, 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: Baskaran Thyagarajan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 800B, Bethesda, MD 20892, (301) 867–5309, *thyagarajanb2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; NIH Director New Innovator Award Program (DP2).

Date: March 15–16, 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.

Contact Person: Imoh S. Okon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, 301–347–8881, *imoh.okon@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biobehavioral and Behavioral Processes.

Date: March 15, 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: Pablo M. Blazquez Gamez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *pablo.blazquezgamez@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnostics and Treatments (CDT).

Date: March 21–22, 2022.

Time: 9:00 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: Victor A. Panchenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 802B2, Bethesda, MD 20892, *victor.panchenko@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Drug Discovery and Development.

Date: March 21–22, 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: Sergei Ruvinov, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@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: February 7, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–02917 Filed 2–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel; Genetic Architecture of Mental Disorders in Ancestrally Diverse Populations (U01).

Date: March 10, 2022.

Time: 1:00 p.m. to 3:00 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: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: February 7, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–02904 Filed 2–10–22; 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: Center for Scientific Review Special Emphasis Panel; Small Business: Psychopathology, Substance Abuse and Community-Based Interventions Across the Lifespan.

Date: March 9–10, 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: David Erik Pollio, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1006F, Bethesda, MD 20892, (301) 594–4002, *polliode@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Clinical Neurophysiology, Devices, Neuroprosthetics and Biosensors.

Date: March 10–11, 2022.

Time: 9:00 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: Cristina Backman, Ph.D., Scientific Review Officer, ETTN IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5211, MSC 7846, Bethesda, MD 20892, 301–480–9069, *cbackman@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Aging and Development, Auditory Vision and Low Vision Technologies.

Date: March 10–11, 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: Barbara Susanne Mallon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *mallonb@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Neuropathophysiology of Decision Making and Chemobrain.

Date: March 10, 2022.

Time: 1:30 p.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: Wei-Qin Zhao, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7846, Bethesda, MD 20892–7846, 301–827–7238, *zhaow@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Mobile Health: Technology and Outcomes in Low and Middle Income Countries (R21/R33—Clinical Trial Optional).

Date: March 11, 2022.

Time: 10:00 a.m. to 4:00 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: Michael J. McQuestion, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, Bethesda, MD 20892, 301–480–1276, *mike.mcquestion@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Planning Grant for Global Infectious Disease Research Training.

Date: March 11, 2022.

Time: 10:00 a.m. to 4:00 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: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–996–5819, *zhengli@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

Date: March 15–16, 2022.

Time: 9:00 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: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6189, MSC 7804, Bethesda, MD 20892, 301–408–9916, *sizemoren@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Radiation Therapy and Biology SBIR/STTR.

Date: March 15–16, 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: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict—Lung Disorders.
Date: March 15–16, 2022.
Time: 9:00 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: George M. Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Anti-Infective Therapeutics.
Date: March 15–16, 2022.
Time: 9:30 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: Bidyottam Mittra, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20894, 301–435–4057, *bidyottam.mittra@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Health Promotion in Communities: Vaccine Hesitancy.
Date: March 15, 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: Lisa Tisdale Wigfall, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1007G, Bethesda, MD 20892, (301) 594–5622, *wigfalllt@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; The Blood-Brain Barrier, Neurovascular Systems and CNS Therapeutics.
Date: March 16, 2022.
Time: 10:00 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: Linda MacArthur, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4187, Bethesda, MD 20892, 301–537–9986, *macarthurlh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Musculoskeletal, Rehabilitation and Skin Sciences.
Date: March 16–17, 2022.
Time: 10:00 a.m. to 10:00 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: Carmen Bertoni, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805B, Bethesda, MD 20892, (301) 867–5309, *bertonic2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices.
Date: March 17–18, 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: Willard Wilson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20817, 301–867–5309, *willard.wilson@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–21–026: Tissue Mapping Centers for the Human BioMolecular Atlas Program (U54).
Date: March 17–18, 2022.
Time: 9:30 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: Raj K. Krishnaraju, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, Bethesda, MD 20892, 301–435–1047, *kkrishna@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Infectious, Foodborne and Waterborne Disease Diagnostics and Methods in Microbial Sterilization and Disinfection.
Date: March 17–18, 2022.
Time: 9:30 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: Gagan Pandya, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, RM 3200, MSC 7808, Bethesda, MD 20892, (301) 435–1167, *pandyaga@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–20–117: Maximizing Investigators' Research Award (MIRA) for Early Stage Investigators (R35—Clinical Trial Optional).
Date: March 17–18, 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: Kevin Czaplinski, Ph.D., Scientific Review Officer, Center for Scientific Review, 6901 Rockledge Drive, Bethesda, MD 20892, (301) 480–9139, *czaplinskik2@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: February 7, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–02903 Filed 2–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information (RFI): Inviting Comments and Suggestions on a Framework for the NIH-Wide Strategic Plan for Diversity, Equity, Inclusion, and Accessibility

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: This Request for Information (RFI) is intended to gather broad public input to assist the National Institutes of Health (NIH) in developing the NIH-Wide Strategic Plan for Diversity, Equity, Inclusion, and Accessibility (DEIA). NIH invites input from stakeholders throughout the scientific research, advocacy, and clinical practice communities, as well as the general public, regarding the proposed framework for the NIH-Wide Strategic Plan for DEIA. Organizations are strongly encouraged to submit a single response that reflects the views of their organization and their membership as a whole.

DATES: This RFI is open for public comment for a period of 60 days. Comments must be received by 11:59:59 p.m. (ET) on April 3, 2022, to ensure consideration.

ADDRESSES: All comments must be submitted electronically on the submission website available at *https://rfi.grants.nih.gov/?s=61e9a09a971100006d005012.*

FOR FURTHER INFORMATION CONTACT: Please direct all inquiries to: Marina Volkov, *nihstrategicplan@od.nih.gov,* 301–496–4147.

SUPPLEMENTARY INFORMATION: The purpose of the NIH-Wide Strategic Plan for DEIA is to articulate NIH's vision for embracing, integrating, and strengthening DEIA across all NIH activities to achieve the NIH mission. The Strategic Plan will capture activities that NIH will undertake to meet the vision of the Strategic Plan, and will be organized around accomplishments, needs, opportunities, and challenges in addressing DEIA in the NIH internal and extramural workforce, its structure and culture, and the research it supports.

NIH has implemented a range of other initiatives to advance DEIA. Among them, the UNITE initiative (*https://www.nih.gov/ending-structural-racism/unite*) was established in 2021 to identify and address structural racism within the NIH-supported and the greater scientific community. Please note that an RFI on the Draft 2022–2026 Chief Officer for Scientific Workforce Diversity (COSWD) Strategic Plan (*https://grants.nih.gov/grants/guide/notice-files/NOT-OD-22-054.html*) was released on January 12, 2022 and, therefore, is open for public comment at the same time as this Framework for the NIH-Wide Strategic Plan for DEIA. You are encouraged to respond to both.

The NIH-Wide Strategic Plan for DEIA is being developed in part as a response to *Report 116–450 on H.R. 7614: Diversity at NIH Working Group and Strategic Plan,* and is responsive to *Executive Order 14035* and the *Government-Wide Strategic Plan to Advance Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce* (*https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/25/executive-order-on-diversity-equity-inclusion-and-accessibility-in-the-federal-workforce/*).

The NIH-Wide Strategic Plan for DEIA will highlight NIH's ongoing and future efforts to foster DEIA within the biomedical and health research enterprise. The Framework for the NIH-Wide Strategic Plan for DEIA, below, articulates NIH's priorities in three key areas (Objectives): Organizational practices to center and prioritize DEIA within the workforce; broad efforts to manage and sustain DEIA through structural and cultural change; and research to promote both workforce and health equity. These Objectives apply across NIH.

NIH-Wide Strategic Plan for DEIA Framework

Objective 1: Implement Organizational Practices To Center and Prioritize DEIA in the Workforce

- NIH Workforce
- Workforce at Institutions Supported by NIH Funding

Objective 2: Grow and Sustain DEIA Through Structural and Cultural Change

- Stewardship
- Partnerships and Engagements
- Accountability and Confidence
- Management and Operations

Objective 3: Advance DEIA Through Research

- Workforce Research
- Health Research

The NIH seeks comments on any or all of NIH's priorities across the three key areas (Objectives) articulated in the framework, including potential benefits, drawbacks or challenges, and other priority areas for consideration.

NIH encourages organizations (*e.g.,* patient advocacy groups, professional organizations) to submit a single response reflective of the views of the organization or membership as a whole.

Responses to this RFI are voluntary and may be submitted anonymously. Please do not include any personally identifiable information or any information that you do not wish to make public. Proprietary, classified, confidential, or sensitive information should not be included in your response. The Government will use the information submitted in response to this RFI at its discretion. The Government reserves the right to use any submitted information on public websites, in reports, in summaries of the state of the science, in any possible resultant solicitation(s), grant(s), or cooperative agreement(s), or in the development of future funding opportunity announcements. This RFI is for informational and for planning purposes only and is not a solicitation for applications or an obligation on the part of the Government to provide support for any ideas identified in response to it. Please note that the Government will not pay for the preparation of any information submitted or for use of that information.

We look forward to your input and hope that you will share this RFI opportunity with your colleagues.

Dated: February 7, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–02972 Filed 2–10–22; 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 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 Aging Special Emphasis Panel; Immunometabolism and Aging.

Date: February 23, 2022.

Time: 1:00 p.m. to 3:00 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: Kimberly Firth, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892, 301–402–7702, *firthkm@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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 7, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–02918 Filed 2–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; 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 Minority Health and Health Disparities Special Emphasis Panel; Clinical Research Education and Career Development (CRECD) Program (R25-Independent Clinical Trial Not Allowed).

Date: March 23, 2022.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Cancer Institute, Gateway Plaza, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Maryline Laude-Sharp, Ph.D., Scientific Review Officer, Office of Extramural Research Administration, National Institute on Minority Health and Health Disparities, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Ste. 525, MSC. 9206, Bethesda, MD 20892, 301–451–9536, *mlaudesharp@mail.nih.gov.*

Dated: February 7, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–02919 Filed 2–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Meeting of the Substance Abuse and Mental Health Services Administration National Advisory Council

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given for the meeting on March 24, 2022 of the Substance Abuse and Mental Health Services Administration National Advisory Council (SAMHSA NAC). The meeting is open to the public and can only be accessed virtually. Agenda with call-in information will be posted on the SAMHSA website prior to the meeting at: *https://www.samhsa.gov/about-us/advisory-councils/meetings.* The meeting will include, but not be limited to, remarks from the Assistant Secretary for Mental Health and Substance Use; approval of prior meeting minutes; updates on SAMHSA priorities; follow up on topics related to the previous SAMHSA NAC meeting; and council discussions.

DATES: March 24, 2022, 1:00 p.m. to approximately 5:00 p.m. (EDT)/Open.

ADDRESSES: The meeting will be held virtually.

FOR FURTHER INFORMATION CONTACT: Carlos Castillo, CAPT USPHS, Committee Management Officer and Designated Federal Official; SAMHSA National Advisory Council, 5600 Fishers Lane, Rockville, Maryland 20857 (mail); telephone: (240) 276–2787; email: *carlos.castillo@samhsa.hhs.gov*

SUPPLEMENTARY INFORMATION: The SAMHSA NAC was established to advise the Secretary, Department of Health and Human Services (HHS), and the Assistant Secretary for Mental Health and Substance Use, SAMHSA, to improve the provision of treatments and related services to individuals with respect to substance use and to improve prevention services, promote mental health, and protect legal rights of individuals with mental illness and individuals with substance use disorders or misuse.

Interested persons may present data, information, or views orally or in writing, on issues pending before the Council. Written submissions must be forwarded to the contact person no later than seven days before the meeting. Oral presentations from the public will be scheduled for the public comment section. Individuals interested in making oral presentations must notify the contact person by 4:00 p.m. (EDT), March 17, 2022. Up to three minutes will be allotted for each presentation, and as time permits, as these are presented in the order received. Public comments received will become part of the meeting records.

To obtain the call-in number, access code, and/or web access link; submit written or brief oral comments; or request special accommodations for persons with disabilities, please register on-line at: *https://snacregister.samhsa.gov/MeetingList.aspx,* or communicate with SAMHSA's Committee Management Officer, Carlos Castillo.

Meeting information and a roster of Council members may be obtained either by accessing the SAMHSA Council's website at *http://www.samhsa.gov/about-us/advisory-councils/,* or by contacting Carlos Castillo.

Dated: February 5, 2022.

Carlos Castillo,

Committee Management Officer.

[FR Doc. 2022–02900 Filed 2–10–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[CBP Dec. 22–03]

Termination of the In-Bond Export Consolidator Program and Associated Bond

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces the termination of the In-Bond Export Consolidator program (IBEC program) and the associated bond, known as the In-Bond Export Consolidation bond (IBEC bond), implemented at Customs District 52 (Miami). Consequently, IBEC program participants who intend to continue their operations must transition their facility status to either a customs bonded warehouse, container freight station, foreign trade zone, or a facility operated as a non-vessel operating common carrier, depending on their business needs, and also obtain the appropriate bond(s). U.S. Customs and Border Protection (CBP) is providing a transition period of one year from the date of this notice for IBEC program participants (including both IBEC program facilities and the operators who manage the facilities) to transition the status of their facilities, as set forth in this notice.

DATES: IBEC program participants (including both IBEC program facilities and the operators who manage the facilities) who intend to continue in-bond export consolidation operations have until February 11, 2023 to transition to one of the alternate facility types listed in this notice and obtain the appropriate bond(s). As of February 11, 2022, CBP will no longer accept applications for new IBEC bonds

(designated as Activity Code 14 on the CBP Form 301). IBEC bonds executed prior to February 11, 2022, may continue to be used to secure activities until February 11, 2023.

FOR FURTHER INFORMATION CONTACT: Christopher Dow, Assistant Port Director, Miami Seaport, Office of Field Operations, U.S. Customs and Border Protection, *IBEC@cbp.dhs.gov* (email preferred) or 305–869–2653.

SUPPLEMENTARY INFORMATION:

Background

In the 1980s, non-vessel operating common carriers, non-aircraft operating common carriers, exporters, and other freight consolidators (known as ''export consolidators'') in Customs District 52 (Miami) established a service that involved the receipt into their facilities of individual exportation shipments for consolidation prior to exportation. Due to conflicts between industry practices and the customs regulations, the U.S. Customs Service (the predecessor agency of U.S. Customs and Border Protection (CBP)) established the In-Bond Export Consolidator program (IBEC program) in 1986 [1] as a pilot program to accommodate the growing export consolidation industry.[2] All entities that intended to continue the consolidation for export of merchandise traveling under a customs bond were required to participate and accept the conditions of the IBEC program. In 1998, the U.S. Customs Service created a special bond, known as the In-Bond Export Consolidation bond (IBEC bond), in an effort to maintain procedural and regulatory control over the bonded freight for export.[3] The IBEC bond covered the consolidation, cartage, transportation, and exportation of in-bond merchandise in the custody of the U.S. Customs Service (now CBP).[4] The IBEC bond was required by specific instruction pursuant to section 113.1 of title 19, Code of Federal Regulations (CFR) (19 CFR 113.1). Today, the IBEC bond is also known as the Activity Code 14 bond, as designated on the CBP Form 301 (Customs Bond). Currently, there are 194 active IBEC bond holders, and they operate within the Miami Seaport and Port Everglades ports of entry.

CBP continues to have concerns with maintaining procedural and regulatory control over merchandise destined for export to ensure the protection of the revenue of the United States and compliance with the laws and regulations enforced by CBP. Specifically, the IBEC program has made it more challenging for CBP to ensure that the custody and manipulation of merchandise complies with regulations such as 19 CFR 19.11(e) and 125.41(a). For these reasons, CBP is terminating the IBEC program and IBEC bond. The IBEC program is being terminated pursuant to the broad discretion afforded to the agency under the applicable regulations, including 19 CFR parts 4, 18, 19, 112, 113, 125, 144, and 146. The IBEC bond is being terminated pursuant to 19 U.S.C. 1623 and 19 CFR part 113.

In order to continue their operations, existing IBEC program participants, which include both IBEC program facilities as well as the operators who manage the facilities, must transition their export consolidation activities to a customs bonded warehouse (*see* 19 CFR parts 19 and 144), a container freight station (*see* 19 CFR 19.40–19.49), a foreign trade zone (*see* 19 CFR part 146), or a facility operated as a non-vessel operating common carrier (NVOCC) (*see* 19 CFR 4.7(b)(3)) [5]. In addition, IBEC program participants must procure the appropriate bond(s) to operate as one of these alternate facility types (*see* 19 CFR part 113). These transition decisions will need to be made by the IBEC program participants based on their business models and business needs.

CBP has begun working with all IBEC program participants to guide them as they transition into one of the alternate facility types and continues to conduct outreach to IBEC program participants to ensure the trade community's continuity of operations. IBEC program participants with questions about the transition may contact the point of contact listed above in this notice, preferably by email.

CBP recognizes that current IBEC program participants may need a transition period to transition the status of their facilities, as set forth in this notice. Therefore, current IBEC program participants (including both IBEC program facilities and the operators who manage the facilities) who intend to continue in-bond export consolidation operations have until February 11, 2023 to transition to one of the alternate facility types listed in this notice and obtain the appropriate bond(s). As of February 11, 2022, CBP will no longer accept applications for new IBEC bonds (designated as Activity Code 14 on the CBP Form 301). IBEC bonds executed prior to February 11, 2022, may continue to be used to secure activities until February 11, 2023. CBP will continue to work closely with IBEC program participants to ensure the trade community's understanding and compliance with this notice.

Pete Flores,

Executive Assistant Commissioner, Office of Field Operations.

[FR Doc. 2022–02938 Filed 2–10–22; 8:45 am]

BILLING CODE 9111–14–P

[1] Information Bulletin 86–66 (Miami Customs District, Sept. 12, 1986).

[2] The IBEC program was briefly cancelled beginning May 25, 1991, and then restarted again as early as September 19, 1991, as explained in Information Bulletin No. 91–75 (Miami Customs District, Sept. 19, 1991).

[3] Information Bulletin No. 99–013 (Miami Customs District, Dec. 3, 1998). Information Bulletin No. 99–013, which announced the creation of the IBEC bond, superseded previous statements of the IBEC program's requirements/status dating back as far as 1988.

[4] The IBEC bond terms can be found in the ''Sample Application for In-Bond Export Consolidation (IBEC) Bond,'' which can be accessed at *https://www.cbp.gov/sites/default/files/documents/Sample%20Type%2014-%20IBEC%20Bond-final.pdf* (last accessed Jan. 26, 2022).

[5] NVOCCs are regulated by the Federal Maritime Commission (FMC). Those IBEC program participants interested in operating as NVOCCs should consult with the FMC to ensure all applicable requirements are met. *See* Ocean Transportation Intermediaries, *https://www.fmc.gov/resources-services/ocean-transportation-intermediaries/* (last accessed Jan. 26, 2022).

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2021–0009]

Revision of a Currently Approved Information Collection for the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program

AGENCY: Cybersecurity and Infrastructure Security Agency, DHS.

ACTION: 30-Day notice and request for comments; revision of information collection request: 1670–0029.

SUMMARY: The Infrastructure Security Division (ISD) within the Cybersecurity and Infrastructure Security Agency (CISA) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. CISA previously published this ICR, in the **Federal Register** on June 23, 2021, for a 60-day comment period. In this notice, CISA solicits public comment concerning this ICR for an additional 30-days.

DATES: Comments are due March 14, 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 submitted in response to this notice may be made publicly available to through relevant public websites. For this reason, please do not include confidential information in your comments, such as sensitive personal information or proprietary information. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice. Comments that include protected information such as trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI),[1] Sensitive Security Information (SSI),[2] or Protected Critical Infrastructure Information (PCII) [3] should not be submitted to the public docket. Comments containing protected information should be appropriately marked and packaged in accordance with all applicable requirements and submission must be coordinated with the point of contact for this notice provided in **FOR FURTHER INFORMATION CONTACT** section. CISA will forward all comments containing protected information that are received before the submission deadline to the OMB Desk Officer.

FOR FURTHER INFORMATION CONTACT: Ryan Donaghy, 703–603–5000, *CISARegulations@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The CFATS Program identifies chemical facilities of interest and regulates the security of high-risk chemical facilities through a risk-based approach. The CFATS Program is authorized under the Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 [4] or ''CFATS Act of 2014''. CISA collects necessary information through 1670–0029 to implement the CFATS Personnel Surety Program.

CISA received one nongermane comment in response to the 60-day notice.[5]

CISA continues to rely on the analysis and resulting burden estimates provided in the 60-day notice.[6]

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Analysis

Agency: Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

Title: Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program.

OMB Number: 1670–0029.

Instrument: CFATS Personnel Surety Program.

Frequency: ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 149,271 respondents.

Estimated Time per Respondent: 0.1667 hours (10 minutes).

Total Burden Hours: 24,879 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost: $2,201,152.

Dated: February 7, 2022.

Robert J. Costello,

Chief Information Officer, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency.

[FR Doc. 2022–02967 Filed 2–10–22; 8:45 am]

BILLING CODE 9110–9P–P

[1] For more information about CVI see 6 CFR 27.400 and the CVI Procedural Manual at *www.dhs.gov/publication/safeguarding-cvi-manual.*

[2] For more information about SSI see 49 CFR part 1520 and the SSI Program web page at *www.tsa.gov/for-industry/sensitive-security-information.*

[3] For more information about PCII see 6 CFR part 29 and the PCII Program web page at*www.dhs.gov/pcii-program.*

[4] The Protecting and Securing Chemical Facilities from Terrorist Attacks Act of 2014 (also known as the CFATS Act of 2014, Pub. L. 113–254) codified the CFATS program into the Homeland Security Act of 2002. See 6 U.S.C. 621 *et seq.,* as amended by Public Law 116–136, Sec. 16007 (2020).

[5] The nongermane comment may be viewed at *https://www.regulations.gov/comment/CISA-2021-0009-0002.*

[6] 86 FR 32960 (June 23, 2021). The 60-day notice titled, ''Revision of a Currently Approved Information Collection for the Chemical Facility Anti-Terrorism Standards (CFATS) Personnel Surety Program'' may be viewed at *https://www.federalregister.gov/d/2021-13110.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–04; OMB Control No. 2577–0272]

30-Day Notice of Proposed Information Collection: Public Housing Agency Executive Compensation Information

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* March 14, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Colette Pollard, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW, (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–3400, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the

information collection for a period of 60 days was published on November 16, 2021 at 63416.

A. Overview of Information Collection

Title of Proposal: Public Housing Agency Executive Compensation Information.

OMB Approval Number: 2577–0272.

Type of Request: Revision of currently approved collection.

Form Number: HUD–52725.

Description of the need for the information and proposed use: Pursuant to a notice issued annually (most recently PIH Notice 2019–21), HUD collects information on the compensation provided by public housing agencies (PHAs) to its employees. More specifically, under this collection PHAs are to report the compensation paid to the top management official, the top financial official, and all employees who are paid an annual salary over the compensation cap imposed by Congress in HUD's annual appropriations (Level IV of the Executive Schedule).

This reporting is similar to the information that non-profit organizations receiving federal tax exemptions are required to report to the IRS annually. Because PHAs receive significant direct federal funds HUD has been collecting compensation information to enhance regulatory oversight by HUD, as well as by state and local authorities. HUD provides the information collected to the public. The compensation data collected includes base salary, bonus, and incentive and other compensation, and the extent to which these payments are made with any Section 8 and 9 appropriated funds.

One of the primary purposes of this amendment to the PHA executive compensation information collection is to reduce the reporting burden on ALL PHAs by moving from an annual collection to collecting one year of data once every three years—this will reduce the reporting burden on PHAs by 66.7%.

While HUD may only collect PHA compensation data once every three years, PHAs are still subject to the annual compensation restrictions imposed by Congress. Therefore, all years remain subject to potential review by HUD to ensure compliance with the Annual Appropriations Act.

Respondents: Public Housing Agencies.

Estimated Number of Respondents: 4,000.

Estimated Number of Responses: 4,000.

Frequency of Response: Triennially (once every three years).

Average Hours per Response: One hour.

Total Estimated Burdens: The total burden hours is estimated to be 4,000 hours triennially. The total burden cost is estimated to be $128,080.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2022–02980 Filed 2–10–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–05; OMB Control No: 2501–0035]

30-Day Notice of Proposed Information Collection: Promise Zones Reporting

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

DATES: *Comments Due Date:* March 14, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at *Anna.P.Guido@hud.gov* or telephone 202–402–5535. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on August 20, 2021 at 86 FR 46865.

A. Overview of Information Collection

Title of Information Collection: Promise Zones Reporting.

OMB Approval Number: 2501–0035.

Type of Request: Reinstatement with change of a previously approved collections.

Form Number: HUD–9916 Promise Zone Annual Narrative Report; HUD–9917 Quarterly Investments & Assistance Report; HUD–9919 Quarterly Progress and Annual Priorities Report.

Description of the need for the information and proposed use: This collection is a reinstatement with changes to a previous collection that collected information for reporting purposes. The HUD–XXXX ''New Neighborhood Amenities'' form, from the original 2501–0035 OMB approval, has been removed from this collection because the form was never used. Additionally, HUD Form 9917 (Bi-annual Non-Federal Investment report) and HUD Form 9918 (Monthly Federal Grants Report) have been merged so that HUD 9917 will now collect the information previously captured in

HUD 9918. HUD 9917 has therefore been reformatted to collect this new information and to be more user-friendly; HUD 9918 has been removed and retired from this collection. HUD–9917 will now be called the Quarterly Investments and Assistance Report; it will be collected quarterly and submitted cumulatively. These changes will reduce unnecessary copying and pasting, reformatting, and file management, and will ultimately reduce the burden on respondents.

HUD designated fourteen communities as urban Promise Zones between 2014 and 2016. Under the Promise Zones initiative, the federal government invests in and partners with high-poverty urban, rural, and tribal communities to create jobs, increase economic activity, improve educational opportunities, leverage private investment, and reduce violent crime. Additional information about the Promise Zones initiative can be found at *https://www.hud.gov/program_offices/field_policy_mgt/fieldpolicymgtpz,* and questions can be addressed to *promisezone@hud.gov.* The federal administrative duties pertaining to these designations shall be managed and executed by HUD for ten years from the designation dates pursuant to sections 2 and 3 of the HUD Act, 42 U.S.C. 3531–32, to assist the President in achieving maximum coordination of the various federal activities which have a major effect upon urban community, suburban, or metropolitan development; to develop and recommend the President policies for fostering orderly growth and development of the Nation's urban areas; and to exercise leadership, at the direction of the President, in coordinating federal activities affecting housing and urban development. To facilitate communication between local and federal partners, HUD proposes that Promise Zone Lead Organizations submit minimal reports and documents to support collaboration and problem solving between local and federal partners. These reports will also assist in communications and stakeholder engagement, both locally and nationally.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Annual Report Narrative (9916)	14	1	14	10	140	$36.13	$5,058.20
Quarterly Investments and Assistance report (9917)	14	4	56	20	1,120	36.13	40,465.60
Quarterly Progress of Annual Priorities report (9919)	14	4	56	10	560	36.13	20,232.80
Quarterly Spotlights (Public Communications materials)	14	4	56	2	112	36.13	4,046.56
Total			182	42	1,932		69,803.16

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Anna P. Guido,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2022–02978 Filed 2–10–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2022–0005; FXES11140100000–212–FF01E0000]

St. Martin's Habitat Conservation Plan and Categorical Exclusion for the Yelm Mazama Pocket Gopher, Thurston County, Washington

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, received an application from Saint Martin's Abbey (applicant) for an incidental take permit (ITP) pursuant to the Endangered Species Act. The ITP would authorize the applicant's take of the Yelm subspecies of the Mazama pocket gopher, incidental to otherwise lawful construction and maintenance activities at Saint Martin's University in Thurston County, Washington. The application includes a habitat conservation plan (HCP) with measures to minimize and mitigate the impacts of the taking on the covered species. We have also prepared a draft environmental action statement for our preliminary determination that the HCP and our permit decision may be eligible for categorical exclusion under the National Environmental Policy Act. We provide this notice to open a public comment period and invite comments from all interested parties regarding the documents.

DATES: Please submit written comments by March 14, 2022.

ADDRESSES: To request further information or submit written comments, please use one of the following methods:

- *Internet:* You may view or download copies of the HCP, draft environmental action statement, and additional information at *http://www.fws.gov/wafwo/.* You may submit

comments via *http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–R1–ES–2022–0005.

- *Email: wfwocomments@fws.gov.* Include ''St. Martin's Abbey HCP'' in the subject line of the message.
- *U.S. Mail:* Public Comments Processing; Attn: Docket No. FWS–R1–ES–2022–0005; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

FOR FURTHER INFORMATION CONTACT: Marty Acker, Section 10/NEPA Coordinator, Washington Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES**), telephone: 360–753–9440. If you use a telecommunications device for the deaf, please call the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), received an application for an incidental take permit (ITP) pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The ITP would authorize the applicant's ''take'' of the Yelm subspecies of the Mazama pocket gopher (*Thomomys mazama yelmensis*), listed as threatened under the ESA, incidental to otherwise lawful construction and maintenance activities at Saint Martin's University in Thurston County, Washington. The application includes a habitat conservation plan (HCP) that describes actions the applicant will take to minimize and mitigate the impacts of the taking on the Yelm pocket gopher (the covered species). We have also prepared a draft environmental action statement (EAS) for our preliminary determination that the HCP and our permit decision may be eligible for a categorical exclusion under the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*). We provide this notice to open a public comment period and invite comments from all interested parties regarding the documents.

Background

Section 9 of the ESA prohibits ''take'' of fish and wildlife species listed as endangered or threatened. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term ''harm,'' as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

Section 10(a)(1)(B) of the ESA contains provisions that authorize the Service to issue permits to non-Federal entities for the take of endangered and threatened species caused by otherwise lawful activities, provided the following criteria are met: (1) The taking will be incidental; (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking; (3) the applicant will ensure that adequate funding for the plan will be provided; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan. Regulations governing permits for endangered and threatened species are found at 50 CFR 17.22 and 17.32, respectively.

Proposed Action

The applicant proposes to construct and maintain facilities on the existing Saint Martin's University campus in Thurston County, Washington. The HCP plan area is a 232-acre (ac) area. As described in the HCP, within the plan area, the 139-ac redevelopment area (permit area) contains 3.4 ac of occupied Yelm pocket gopher habitat, 1.4 ac of unoccupied Yelm pocket gopher habitat, 7.1 ac of landscaped trees and shrubs, 68.4 ac of developed buildings and infrastructure, and 0.7 ac of stormwater facilities, while the remaining 57.5 ac is forest, and not habitat. Proposed covered activities include construction within the 139-ac permit area during the 20-year permit term that may include construction and maintenance of up to six new buildings; replacement of existing buildings; construction and maintenance of associated parking lots, sidewalks, landscaping, storm water facilities, and utilities; and landscaping and management of athletic fields. The final number of buildings and activities are currently unknown, and building will be in response to University growth and student body needs, so the HCP describes the maximum amount of proposed construction and maintenance activity likely to occur during the permit term.

The proposed action is anticipated to impact up to 12 ac of Yelm pocket gopher habitat in the permit area. Due to differences in Yelm pocket gopher occupancy, the applicant has proposed a functional-ac system to quantify the impacts to the Yelm pocket gopher at the project site, based on the extent and permanence of impacts to ac of habitat. In this system, acreages are weighted according to Yelm pocket gopher occupancy, existing habitat quality, and land development. The resulting value is 4 functional ac of impact, out of the original 12 ac of Yelm pocket gopher habitat in the redevelopment area. The plan area also includes 26 ac of Yelm pocket gopher habitat outside of the redevelopment area on fields that are maintained by mowing.

The applicant proposes to mitigate for unavoidable impacts to Yelm pocket gopher by acquiring credits in the Service-approved Leitner Prairie conservation site, which is currently occupied by the Yelm pocket gopher. These credits will fully fund the permanent management, monitoring, and adaptive management on 4 ac of the Leitner Prairie conservation site. The conservation site will be managed for successful Yelm pocket gopher feeding, breeding, and sheltering.

In addition to mitigation at the conservation site, 26 ac of grassland habitat occupied by Yelm pocket gophers will be maintained on the project site by mowing during the 20-year permit term to provide additional mitigation. This mitigation offsets the impact of the taking attributable to the project site being located outside of the service area where the conservation site is located. Service areas are geographic areas we have defined to recognize possible differences between subpopulations within the range of the Yelm pocket gopher.

The Service proposes to issue the requested 20-year ITP based on the applicant's commitment to implement the HCP, if ESA section 10(a)(2)(B) permit issuance criteria are met.

Public Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. We specifically request information, views, and suggestions from interested parties regarding our proposed Federal action, including, without limitation, adequacy of the HCP, whether the HCP meets requirements for permits at 50 CFR parts 13 and 17, and adequacy of the EAS pursuant to the requirements of NEPA. We will post all comments on *https://www.regulations.gov.* This generally means that we will post online any personal information that you provide (see Public Availability of Comments under **SUPPLEMENTARY INFORMATION**). We request that you submit comments by only the methods described above.

Public Availability of Comments

All comments and materials we receive become part of the public record

associated with this action. Before including your address, phone number, email address, or other personally identifiable information in your comments, you should be aware that your entire comment—including your personally identifiable information—may be made publicly available at any time. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety on *https://www.regulations.gov.*

Next Steps

After public review, we will evaluate the permit application, associated documents, and any comments received to determine whether the permit application meets the requirements of section 10(a)(2)(B) of the ESA. We will also evaluate whether issuance of the requested section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation under section 7(a)(2) of the ESA on the proposed ITP action. The final NEPA and permit determinations will not be completed until after the end of the 30-day comment period; we will fully consider all comments received during the comment period. If we determine that all requirements are met, we will issue an ITP under section 10(A)(1)(B) of the ESA to the applicant for the take of the covered species, incidental to otherwise lawful covered activities.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.32), and NEPA (42 U.S.C. 4321 *et seq.*) and its implementing regulations (40 CFR 1506.6 and 43 CFR 46.205).

Robyn Thorson,

Regional Director, Columbia-Pacific Northwest and Pacific Islands Regions, U.S. Fish and Wildlife Service.

[FR Doc. 2022–02932 Filed 2–10–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2021–N195; FXES11140200000–223–FF02ENEH00]

Application for an Incidental Take Permit; Oil and Gas Habitat Conservation Plan for the Lesser Prairie-Chicken; Colorado, Kansas, New Mexico, Oklahoma, and Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice advises the public that LPC Conservation LLC (applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit (ITP) supported by the *Oil and Gas Habitat Conservation Plan for the Lesser Prairie-chicken; Colorado, Kansas, New Mexico, Oklahoma and Texas* (HCP). The applicant has applied to the Service for the ITP pursuant to the Endangered Species Act. The requested ITP, if approved, would authorize incidental take of the lesser prairie-chicken (*Tympanuchus pallidicinctus;* LEPC) resulting from activities covered by the HCP (*e.g.,* all activities associated with oil and gas upstream and midstream buildout, including ancillary (*e.g.,* access road) ground disturbing activities associated with these project types) and would authorize incidental take resulting from conservation actions taken to avoid, minimize, and mitigate impacts of incidental take to LEPC that result from covered activities. If approved, the requested ITP would become effective should the LEPC become federally listed during the life of the ITP and HCP. With this notice we announce the availability of a draft environmental assessment (EA) that has been prepared to evaluate the ITP application in accordance with the requirements of the National Environmental Policy Act. We are making the ITP application package, including the HCP and draft EA, available for public review and comment.

DATES: *Submission of comments:* We will accept comments received or postmarked on or before March 14, 2022.

ADDRESSES:

Obtaining documents: You may obtain copies of the ITP application, HCP, draft EA, or other related documents on the internet at *https://www.fws.gov/southwest/es/ArlingtonTexas.*

Submitting comments: You may submit written comments by email to *arles@fws.gov.* Please note that your comment is in reference to the above-referenced HCP. For more information, see Public Availability of Comments.

FOR FURTHER INFORMATION CONTACT: Debra Bills, Field Supervisor, U.S. Fish and Wildlife Service, Arlington, Texas, Ecological Services Office; telephone 817–277–1100. Hearing or speech impaired individuals may call the Federal Relay Service at 800–877–8339 for TTY service.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), make available the *Oil and Gas Habitat Conservation Plan for the Lesser Prairie-chicken; Colorado, Kansas, New Mexico, Oklahoma and Texas* (HCP). The LPC Conservation LLC (applicant) has applied for an incidental take permit (ITP). If approved, the requested ITP would become effective and authorize incidental take of the lesser prairie-chicken (*Tympanuchus pallidicinctus;* LEPC) should the LEPC become federally listed during the life of the ITP and HCP under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*).

We are considering issuing a section 10(a)(1)(B) ITP for the LEPC, a species that is not currently listed under the ESA, in response to the applicant's application and supporting HCP. While our 2016 revised HCP handbook (Handbook) provides guidance that an ITP and supporting HCP include at least one ESA-listed animal species, the issuance of this ITP could provide for LEPC conservation in several ways. First, the proposed HCP may meet the Service's conservation recommendation for the LEPC because it emphasizes avoidance and minimization and focuses mitigation in areas that can serve as conservation strongholds for this species. Depending on enrollment, this mitigation strategy could help to preclude the need to list the LEPC or could help to recover the LEPC, if the LEPC is listed in the future. Second, the proposed HCP would provide taxpayer and industry savings in the use of an overarching conservation planning strategy. In contrast, the processes of developing a candidate conservation agreement with assurances (CCAA) prior to a future listing and then developing an HCP or multiple HCPs after a potential future listing would be inefficient for both the Federal agency and industry participants. The proposed HCP would be more efficient because potential participants could enroll on a project-by-project basis either before or after a potential future listing. This

allows for greater, more consistent, and more predictable conservation efforts to be undertaken. Third, with this proposed HCP, the Service would issue a permit that does not go into effect until a future listing, if one occurs. This is the same as our practice for permits associated with CCAAs, and ITPs associated with multi-species HCPs that include unlisted species. Although the permit would not go into effect until a future listing, if it occurs, participants would be required to implement all conservation activities identified within the HCP at the time they enroll, providing for prelisting conservation of the covered species. Finally, the proposed HCP would support States' ability to manage the unlisted species, similar to how a CCAA would support this, in that the proposed ITP does not become effective until such time that the covered species may be listed. Prelisting participation is voluntary for participants, and provides the affected States with continued regulatory authority regarding wildlife species.

We believe that considering an HCP without a currently listed species is supported by the House Conference Report (Conference Report) to the 1982 ESA amendments that created HCPs, which expressly considered both listed and unlisted species (H.R. Report No. 97–835, at 30 (1982)). The Conference Report states that ''although the conservation plan is keyed to the permit provisions of the Act [ESA] which only apply to listed species, the committee intends that conservation plans may address both listed and unlisted species.'' *Ibid.* The Conference Report continues by stating that the inclusion of unlisted species supports the Congressional purpose that species not be viewed in isolation but in terms of their relationship to the ecosystem as a whole. This broad view of conservation, including conservation planning and permitting for unlisted species, is ''consistent with the purposes of several other fish and wildlife statutes (*e.g.,* Fish and Wildlife Act of 1956, Fish and Wildlife Coordination Act) which are intended to authorize the Secretary to cooperate with the States and private entities on matters regarding conservation of all fish and wildlife resources of this nation.'' *Ibid.* The Conference Report encourages the Secretary to develop ''creative partnerships between the public and private sectors'' and notes that the Secretary ''may utilize this provision to approve conservation plans that provide long-term commitments regarding the conservation of listed as well as unlisted species.'' *Ibid.*

Through the proposed minimization and mitigation measures, the HCP would provide long-term commitments regarding the conservation of LEPC that would fully offset impacts to the species associated with habitat loss and fragmentation resulting from implementation of the covered activities by participants in the HCP. The HCP would provide opportunities for voluntary pre-listing conservation that may be used to evaluate the species' status in a future listing decision, and potential participants would have the option to enroll in the HCP prior to or after a potential future listing decision. As such, processing the ITP application and HCP under section 10(a)(1)(B) of the ESA could provide for long-term conservation for the LEPC and more flexibility and long-term regulatory certainty for participants, as described above.

Based on the information above, we have determined that processing this ITP application and HCP is consistent with the Conference Report and current regulations, and, therefore, we may process this ITP application and HCP under section 10(a)(1)(B) of the ESA and its implementing regulations (50 CFR 17.22(b) and 50 CFR 17.32(b)).

In accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), we advise the public that:

1. We have prepared a draft EA to evaluate the ITP application. We are accepting comments on the ITP application and draft EA.

2. The applicant has developed an HCP, which describes the measures the applicant has volunteered to take to meet the issuance criteria for a 10(a)(1)(B) ITP associated with an HCP. The issuance criteria for HCPs are found at 50 CFR 17.22(b)(2) and 50 CFR 17.32(b)(2).

3. The HCP would be implemented by those parties who voluntarily enroll, providing conservation upon enrollment, but the subject ITP would not be effective until such time as the covered species may be listed in the future. The ITP would be effective only for those participants fully implementing the conservation plan.

4. As described in the HCP, the potential incidental take of LEPC could result from otherwise lawful, voluntary activities covered by the HCP.

5. We have included the alternative of issuing an enhancement of survival permit (ESP) under section 10(a)(1)(A) of the ESA, the CCAA Policy, and implementing regulations (50 CFR 17.22(d) and 50 CFR 17.32(d)), and we will accept comments related to this alternative.

Background

Section 9 of the ESA and our implementing regulations at 50 CFR part 17 prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take is defined under the ESA as to ''harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct'' (16 U.S.C. 1538(19)). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity.

Regulations governing such take of endangered and threatened species are found at 50 CFR 17.21–22 and 50 CFR 17.31–32, respectively.

Proposed Action

The proposed action involves the issuance of a 10(a)(1)(B) ITP to the applicant and approval of the proposed HCP. The ITP would cover incidental ''take'' of the LEPC associated with oil and gas upstream and midstream buildout, including ancillary (*e.g.,* access road) ground-disturbing activities associated with these project types within the HCP permit area that could affect potentially suitable LEPC habitat (the ''covered activities''). In addition, the covered activities include grassland improvement and management activities that could occur in potential LEPC habitat on mitigation parcels to manage the parcel for LEPC. Beyond initial construction of a project, other ground-disturbing activities could occur during some types of repairs required during the operations and maintenance phase, project repowering, or project decommissioning within the permit area.

The requested term of the ITP is 30 years, and the ITP would authorize incidental take of LEPC associated with impacts on up to 500,000 acres of suitable LEPC habitat within the plan area (approximately 1.7 percent of the 30,178,085 total acres of potentially suitable LEPC habitat within the plan area) resulting from implementation of the covered activities by participants in the HCP.

To meet the requirements of a section 10(a)(1)(B) ITP, the applicant has developed, and proposes to implement, the HCP, which describes the conservation measures the applicant has voluntarily agreed to undertake. These measures will be implemented prior to or concurrent with proposed impacts. These measures include LEPC habitat conservation through enhancement and restoration. On average, for every acre of LEPC habitat impacted, 2 acres of perpetual LEPC habitat conservation would be required. Of those 2 acres, 1

acre would consist of restoration and the other acre would consist of enhancement. Restoration actions include removal of woody vegetation encroachment, removal of infrastructure, and conversion of cropland to grasslands. Enhancement efforts primarily include actions to maintain or enhance the quality of existing LEPC habitat, such as prescribed burning, prescribed grazing, and chemical and mechanical manipulation of the vegetative community. Implementation of the proposed LEPC habitat conservation measures are projected to result in no net loss of LEPC habitat. The ITP would authorize incidental take that may result from the implementation of the proposed conservation measures, including activities occurring on mitigation parcels that, while providing a long-term benefit to LEPC, may have temporary impacts to the species.

The HCP, including the proposed conservation measures, was developed in coordination with the Service. Implementation of the HCP requirements, including the conservation measures, would be required for all participants in the HCP regardless of the listing status of the LEPC. The proposed conservation measures, once implemented, would fully offset impacts to the LEPC associated with habitat loss and fragmentation resulting from implementation of the covered activities.

Alternatives

We are considering two alternatives to the proposed action as part of this process: Issue an ESP for a CCAA, and a No Action Alternative.

1. Issue an Enhancement of Survival Permit for a Candidate Conservation Agreement With Assurances

Under this alternative, instead of approving the HCP and issuing an ITP, the Service would issue an ESP pursuant to section 10(a)(1)(A) of the ESA, supported by a CCAA, to the applicant for incidental take associated with the covered activities in the CCAA. The proposed covered activities in the CCAA would be the same as those proposed in the HCP. The permit term for the ESP would be 30 years. Under this alternative, it is assumed the applicant (in the role of CCAA administrator) would require enrolled projects to implement all the avoidance, minimization, mitigation, monitoring, adaptive management, and reporting processes described in the HCP as part of the CCAA. It is anticipated that a similar level of oil and gas development within the permit area would occur under an HCP or a CCAA for each project. However, the enrollment of projects under the CCAA would end on the future date of a possible listing of the covered species, whereas the HCP enrollment would continue for the duration of the permit. We anticipate that this alternative would result in the same level of potential impacts to LEPC and the same level of LEPC conservation as what is proposed in the HCP for those enrolled prior to listing; however, projects after a potential listing would need to develop their own HCPs or find an alternative coverage for incidental take. This action would be consistent with existing Service guidance for conservation actions of unlisted species.

2. No Action Alternative

Under this alternative, the Service would not issue an ITP or an ESP, and therefore this programmatic permitting structure would not be available for willing participants. While the LEPC remains unlisted, potentially participating entities (*i.e.,* oil and gas companies) would have little economic or legal incentive to voluntarily initiate the conservation or management activities that are proposed in the HCP to benefit the LEPC. Therefore, unless potentially participating entities voluntarily participate in another programmatic permitting option, should one be available, or voluntarily develop their own standalone permitting option, conservation measures above and beyond those directed by existing Federal, State, and local laws, policies, or regulations likely would not be implemented, and the LEPC would not gain additional protections and conservation benefits over what currently exist. On private lands, where the State or Federal government has no authority to protect or direct the management of LEPC habitat, LEPC conservation programs would be implemented entirely at the discretion of the landowners and private developers.

Next Steps

We will evaluate the permit application, HCP, associated documents, and comments we receive to determine whether the ITP application meets the requirements of ESA, NEPA, and implementing regulations, or whether the issuance of an ESP should be considered. If we determine that all requirements are met, we will approve the HCP and issue the ITP under section 10(a)(1)(B) of the ESA (16 U.S.C. 1531 *et seq.*) to the applicant in accordance with the terms of the HCP and specific terms and conditions of the authorizing ITP. Alternatively, we could approve this plan as a CCAA and issue an ESP under section 10(a)(1)(A) of the ESA and applicable regulations if we determine that all requirements of the ESA, NEPA, and implementing regulations are met. We will consider comments on both the alternative and the denial of issuing a permit in our final decision. We will not make our final decision until after the 30-day comment period ends, and we have fully considered all comments received during the public comment period.

Public Availability of Comments

All comments we receive become part of the public record associated with this action. Requests for copies of comments will be handled in accordance with the Freedom of Information Act, NEPA, and Service and Department of the Interior policies and procedures. 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 to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under the authority of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 50 CFR 17.32) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Amy L. Lueders,

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2022–02939 Filed 2–10–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033383; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Anniston Museum of Natural History, Anniston, AL; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Anniston Museum of Natural History has corrected an inventory of human remains and associated funerary objects, published in a Notice of Inventory Completion in the **Federal Register** on August 10, 2018. This notice corrects the cultural affiliation. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Anniston Museum of Natural History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Anniston Museum of Natural History at the address in this notice by March 14, 2022.

FOR FURTHER INFORMATION CONTACT: Daniel D. Spaulding, Anniston Museum of Natural History, 800 Museum Drive, Anniston, AL 36206, telephone (256) 237–6766, email *dspaulding@annistonmuseum.org.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the correction of an inventory of human remains and associated funerary objects under the control of the Anniston Museum of Natural History, Anniston, AL. The human remains and associated funerary objects were removed from Moundville in Tuscaloosa County, AL.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation published in a Notice of Inventory Completion in the **Federal Register** (83 FR 39776–39777, August 10, 2018). Transfer of control of the items in this correction notice has not occurred.

Correction

In the **Federal Register** (83 FR 39776, August 10, 2018), column 3, sentence 1 under the heading ''Summary'' is corrected by substituting the following sentence:

The Anniston Museum of Natural History has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations.

In the **Federal Register** (83 FR 39777, August 10, 2018), column 1, paragraph 4, under the heading ''Determinations Made by the Anniston Museum of Natural History,'' is corrected by substituting the following paragraph:

Officials of the Anniston Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 10 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Alabama-Coushatta Tribe of Texas [previously listed as Alabama-Coushatta Tribes of Texas]; Coushatta Tribe of Louisiana; Jena Band of Choctaw Indians; Seminole Tribe of Florida [previously listed as Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood, & Tampa Reservations)]; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; and The Seminole Nation of Oklahoma (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Daniel D. Spaulding, Anniston Museum of Natural History, 800 Museum Drive, Anniston, AL 36206, telephone (256) 237–6766, email *dspaulding@annistonmuseum.org,* by March 14, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Anniston Museum of Natural History is responsible for notifying the Cherokee Nation; Eastern Band of Cherokee Indians; United Keetoowah Band of Cherokee Indians in Oklahoma; and The Tribes that this notice has been published.

Dated: February 3, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–02979 Filed 2–10–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033385; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Reclamation, Oklahoma-Texas Area Office, Oklahoma City, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation, Oklahoma-Texas Area Office (Reclamation), has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Reclamation. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Reclamation at the address in this notice by March 14, 2022.

FOR FURTHER INFORMATION CONTACT: Kate Ellison, Archeologist, Bureau of Reclamation, Oklahoma-Texas Area Office, 5924 NW 2nd Street, Suite 200, Oklahoma City, OK 73127, telephone

(405) 470–4816, email *kellison@usbr.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, Bureau of Reclamation, Oklahoma City, OK. The human remains were removed from Lake Thunderbird Reservoir, Cleveland County, OK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Reclamation professional staff in consultation with representatives of the Absentee-Shawnee Tribe of Indians of Oklahoma. Representatives from the Wichita and Affiliated Tribes (Wichita, Keechi, Waco, & Tawakonie), Oklahoma were also contacted but declined to consult, on the basis that the land from which the human remains were removed is outside of the Tribe's traditional territory.

History and Description of the Remains

On July 1, 1982, human remains representing, at minimum, one individual were removed from the Little Axe Skeletal Remains Site (34CL210) in Cleveland County, OK. The burial was discovered by a visitor to Little River State Park, who noted the presence human remains exposed by erosion on an access road within the state park near Clear Bay and reported the exposed human remains at the Little Axe Grocery store, whereupon a store employee contacted state park officials. Larry Neal of the Oklahoma Archaeological Society notified Reclamation archeologists of the discovery on July 6, 1982. After consulting with the Oklahoma State Medical Examiner's Office and the Absentee-Shawnee Tribe of Indians of Oklahoma, Reclamation archeologists removed the human remains and took them to the Reclamation office in Amarillo, TX. Beginning in December of 1982, the human remains were curated at the Mabee-Gerrer Museum of Art, St. Gregory College in Shawnee, OK. On May 23, 1995, the human remains were moved to the Museum of the Great Plains in Lawton, OK, by Hector Garcia and placed on a one-year loan. The individual is represented by a nearly complete skeleton. The remains probably belong to a male 18–20 years old. No known individual was identified. No associated funerary objects are present.

Determinations Made by the U.S. Department of the Interior, Bureau of Reclamation, Oklahoma-Texas Area Office

Officials of the U.S. Department of the Interior, Bureau of Reclamation, Oklahoma-Texas Area Office have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Absentee-Shawnee Tribe of Indians of Oklahoma.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Kate Ellison, Archeologist, Bureau of Reclamation, Oklahoma-Texas Area Office, 5924 NW 2nd Street, Suite 200, Oklahoma City, OK 73127, telephone (405) 470–4816, email *kellison@usbr.gov,* by March 14, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to the Absentee-Shawnee Tribe of Indians of Oklahoma may proceed.

The U.S. Department of the Interior, Bureau of Reclamation, Oklahoma-Texas Area Office is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma that this notice has been published.

Dated: February 3, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–02976 Filed 2–10–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033384; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Beloit College, Logan Museum of Anthropology, Beloit, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: Beloit College, Logan Museum of Anthropology has completed an inventory of human remains, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Beloit College, Logan Museum of Anthropology. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Beloit College, Logan Museum of Anthropology at the address in this notice by March 14, 2022.

FOR FURTHER INFORMATION CONTACT: Nicolette B. Meister, Director, Logan Museum of Anthropology, Beloit College, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of Beloit College, Logan Museum of Anthropology, Beloit, WI. The human remains were removed from an unknown location in the Northeast region of the United States.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal

agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by Beloit College, Logan Museum of Anthropology professional staff in consultation with representatives of the Oneida Indian Nation [previously listed as Oneida Nation of New York]; Onondaga Nation; Seneca Nation of Indians [previously listed as Seneca Nation of New York]; and the Seneca-Cayuga Nation [previously listed as Seneca-Cayuga Tribe of Oklahoma]. In addition, an invitation to consult was extended to the Cayuga Nation; Oneida Nation [previously listed as Oneida Tribe of Indians of Wisconsin]; Saint Regis Mohawk Tribe [previously listed as St. Regis Band of Mohawk Indians of New York]; Tonawanda Band of Seneca [previously listed as Tonawanda Band of Seneca Indians of New York]; and the Tuscarora Nation. Hereafter, the Indian Tribes identified in this section are referred to as ''The Consulted and Notified Indian Tribes.''

History and Description of the Remains

On an unknown date, human remains representing, at minimum, one individual were removed from an unknown location in the Northeast region of the United States. The provenience of these previously uncatalogued human remains (TR 73.22) is based on their having been found by the Logan Museum of Anthropology in a box labeled ''NE: Iroquois.'' The human remains belong to an adult female around 36 years in age. No known individual was identified. No associated funerary objects are present.

Determinations Made by the Logan Museum of Anthropology, Beloit College

Officials of Beloit College, Logan Museum of Anthropology have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and The Consulted and Notified Indian Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Nicolette B. Meister, Beloit College, Logan Museum of Anthropology, 700 College Street, Beloit, WI 53511, telephone (608) 363–2305, email *meistern@beloit.edu,* by March 14, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains to The Consulted and Notified Indian Tribes may proceed.

Beloit College, Logan Museum of Anthropology is responsible for notifying The Consulted and Notified Indian Tribes that this notice has been published.

Dated: February 3, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–02977 Filed 2–10–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0033386; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, Norman, OK

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Sam Noble Oklahoma Museum of Natural History (Museum) at the University of Oklahoma has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Museum. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Museum at the address in this notice by March 14, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Marc Levine, Associate Curator of Archaeology, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072–7029, telephone (405) 325–1994, email *mlevine@ou.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, Norman, OK. The human remains and associated funerary objects were removed from Le Flore County, OK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Sam Noble Oklahoma Museum of Natural History professional staff in consultation with representatives of the Cherokee Nation; Eastern Band of Cherokee Indians; Quapaw Nation [previously listed as The Quapaw Tribe of Indians]; The Chickasaw Nation; The Choctaw Nation of Oklahoma; The Muscogee (Creek) Nation; The Osage Nation [previously listed as Osage Tribe]; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

In 1938, human remains representing, at minimum, four individuals were removed from the Redwine 1 site (34Lf71) in Le Flore County, OK. Some of the human remains were transferred to the Museum in the 1950s, In 2006, additional human remains were donated to the Museum by a descendant of one of the original excavators. The fragmentary human remains belong to one adult, 20–25 years old; two adults, 20–35 years old; and one adult more

than 20 years old. All the individuals are of indeterminate sex. No known individuals were identified. The 75 associated funerary objects are 46 blue glass beads, 10 red glass beads, six white glass beads, four smoky glass beads, four red and white glass beads, three clear glass beads, and two copper earrings.

The Redwine 1 site has been dated to ca. A.D. 1838, based on the presence of diagnostic historic artifacts. Although this site is located within lands reserved for the Choctaw Nation of Oklahoma, it was also inhabited by Cherokee groups. A review of the archeological, geographical, and historical evidence, as well as the information obtained via tribal consultation, has led the Museum to conclude that these individuals are most likely culturally affiliated with the Cherokee Nation, The Choctaw Nation of Oklahoma, and the United Keetoowah Band of Cherokee Indians of Oklahoma.

Determinations Made by the Sam Noble Oklahoma Museum of Natural History

Officials of the Sam Noble Oklahoma Museum of Natural History have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of four individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 75 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Cherokee Nation; The Choctaw Nation of Oklahoma; and the United Keetowah Band of Cherokee Indians in Oklahoma (hereafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Marc Levine, Associate Curator of Archaeology, Sam Noble Oklahoma Museum of Natural History, University of Oklahoma, 2401 Chautauqua Avenue, Norman, OK 73072–7029, telephone (405) 325–1994, email *mlevine@ou.edu,* by March 14, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Sam Noble Oklahoma Museum of Natural History is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: February 3, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–02975 Filed 2–10–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1279 (Review)]

Hydrofluorocarbon Blends From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that revocation of the antidumping duty order on hydrofluorocarbon blends from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on July 1, 2021 (86 FR 35131) and determined on October 4, 2021 that it would conduct an expedited review (87 FR 117, January 3, 2022).

The Commission made this determination pursuant to section 751(c) of the Act (19 U.S.C. 1675(c)). It completed and filed its determination in this review on February 7, 2022. The views of the Commission are contained in USITC Publication 5278 (February 2022), entitled *Hydrofluorocarbon Blends from China: Investigation No. 731–TA–1279 (Review).*

By order of the Commission.

Issued: February 7, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–02927 Filed 2–10–22; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Barcode Scanners, Mobile Computers with Barcode Scanning Capabilities, Scan Engines, RFID Printers, Components Thereof, and Products Containing the Same, DN 3603;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.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: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Zebra Technologies Corporation and Symbol Technologies, LLC on February 4, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain barcode scanners, mobile computers with barcode scanning capabilities, scan engines, RFID printers, components thereof, and products containing the same. The complainant names as respondents: Honeywell International

Inc. of Charlotte, NC; and Hand Held Products, Inc. of Charlotte, NC. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j). Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3603'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: February 7, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–02925 Filed 2–10–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https:/www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov*

JUDICIAL CONFERENCE OF THE UNITED STATES

Committee on Rules of Practice and Procedure; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Committee on Rules of Practice and Procedure; Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a meeting on June 7, 2022 in Washington, DC. The meeting is open to the public for observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *https://www.uscourts.gov/rules-policies/records-rules-committees/agenda-books.*

DATES: June 7, 2022.

FOR FURTHER INFORMATION CONTACT: Bridget Healy, Esq., Acting Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

(Authority: 28 U.S.C. 2073.)

Dated: February 8, 2022.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2022–02964 Filed 2–10–22; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Criminal Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Criminal Rules; notice of open meeting.

SUMMARY: The Advisory Committee on Criminal Rules will hold a meeting on April 28, 2022 in Washington, DC. The meeting is open to the public for

observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *https://www.uscourts.gov/rules-policies/records-rules-committees/agenda-books.*

DATES: April 28, 2022.

FOR FURTHER INFORMATION CONTACT: Bridget Healy, Esq., Acting Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

(Authority: 28 U.S.C. 2073.)

Dated: February 8, 2022.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2022–02960 Filed 2–10–22; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Evidence Rules; Meeting of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Evidence Rules; notice of open meeting.

SUMMARY: The Advisory Committee on Evidence Rules will hold a meeting on May 6, 2022 in Washington, DC. The meeting is open to the public for observation but not participation. An agenda and supporting materials will be posted at least 7 days in advance of the meeting at: *https://www.uscourts.gov/rules-policies/records-rules-committees/agenda-books.*

DATES: May 6, 2022.

FOR FURTHER INFORMATION CONTACT: Bridget Healy, Esq., Acting Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

(Authority: 28 U.S.C. 2073.)

Dated: February 8, 2022.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2022–02963 Filed 2–10–22; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 20–03]

John X. Qian, M.D.; Decision and Order

On November 18, 2019, a former Acting Administrator, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause and Immediate Suspension of Registration (hereinafter, OSC/ISO) to John X. Qian, M.D. (hereinafter, Respondent). Administrative Law Judge Exhibit (hereinafter, ALJX) 1 (Order to Show Cause), at 1. The OSC proposed the revocation of Respondent's Certificates of Registration Nos. FQ7186174, FQ7906968, and BQ7364970, and denial of the pending application for a new DEA Certificate of Registration (hereinafter, COR or registration), Application No. W18124091C, pursuant to 21 U.S.C. 824(a)(4) ''because [his] continued registration is inconsistent with the public interest. . . .'' *Id.* (citing 21 U.S.C. 823(f)).

I. Procedural History

The OSC alleged that ''from at least early 2017, through at least April 29, 2019,[1] [Respondent] unlawfully issued or approved the issuance of prescriptions for controlled substances'' to three patients ''that were not for a legitimate medical purpose, were beneath the standard of care for the practice of medicine in the State of California, and were not issued in the usual course of professional medical practice.'' *Id.* at 5. The OSC alleged violations of 21 U.S.C. 841(a) and 842(a); 21 CFR 1306.04(a); Cal. Health & Safety §§ 11153(a), 11154(a); and Cal. Bus. § Prof. §§ 725(a), 22334, and 2242(a). *Id.*

Pursuant to 21 U.S.C. 824(d) and 21 CFR 1301.36(e), the former Acting Administrator immediately suspended Respondent's Certificate of Registration, found ''that [Respondent's] continued registration [was] inconsistent with the public interest'' and that ''continued registration while [the] proceedings are pending constitutes an imminent danger to the public health or safety.'' *Id.* at 13. Pursuant to 21 U.S.C. 824(f) and 21 CFR 1301.36(f), the former Acting Administrator authorized DEA Special Agents (hereinafter, SA) and Diversion Investigators (hereinafter, DI) serving the OSC on Respondent to place under seal or to remove for safekeeping all controlled substances that Respondent possessed pursuant to the suspended registrations and to take the registrations themselves. *Id.*

The OSC notified Respondent of the right to either request a hearing on the allegations or submit a written statement in lieu of exercising the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 13 (citing 21 CFR 1301.43).

By letter dated November 21, 2019, Respondent timely requested a hearing.[2] ALJX 2 (Request for Hearing), at 1. The matter was placed on the docket of the Office of Administrative Law Judges and was assigned to Mark M. Dowd (hereinafter, ALJ). In addition to the traditional procedural history, the parties filed robust Joint Stipulations of Facts, ALJX 10 (Joint Stipulations of Facts), and the Government filed several Motions in Limine, which I will briefly summarize here. The first, a Motion in Limine to Exclude Second Expert Witness, ALJX 11, sought to exclude the testimony of a second expert witness identified a week before the hearing in this matter was scheduled to begin. *Id.* at 1. The ALJ found good cause for the Respondent's delay and agreed to permit both of Respondent's experts to testify so long as the testimony was not cumulative or repetitive. ALJX 12 (Order Granting in Part Government's Motion in Limine and to Exclude Evidence). Respondent ended up calling only the later-added expert witness to testify. The second was a Motion in Limine to Exclude Character Witnesses, ALJX 13, which alleged that the dozen character witnesses that Respondent proposed could only offer testimony that was either irrelevant or duplicative. ALJX 13. The ALJ did not grant the Government's motion, but he did limit the number of witnesses who could discuss Respondent's character and dispensing experience to three patients and four medical professionals and limited the scope of the testimony to what was relevant to the hearing. Transcript of Proceedings in the Matter of John X. Qian, M.D. (hereinafter, Tr.), 7–10. In the end, Respondent did not call any witnesses for these purposes but instead presented documentary evidence. During the hearing, the Government filed a Motion in Limine to Strike Testimony and Evidence, ALJX 18, related to Respondent's treatment of E.N. that predated the medical records provided to the Government in response to a subpoena (which began in July 2012). ALJX 18, at 1. The ALJ

[1] In the Prehearing Statement, the Government clarified the relevant time period to be between early 2017 and ''late 2019.'' ALJX 4, at 15.

[2] I find that the Government's service of the OSC was adequate.

determined that the issue was simply a miscommunication between the parties and denied the Government's motion. ALJX 21 (Order Denying Motion to Strike).

The hearing in this matter took place both in-person in San Diego, California, and virtually, and spanned eight days in February and May of 2020. Recommended Decision (hereinafter, RD), at 1. On July 27, 2020, the ALJ issued his Recommended Rulings, Findings of Fact, Conclusions of Law and Decision. The Respondent filed Exceptions to the Recommended Decision on August 14, 2020.[3] (hereinafter ''Respondent's Exceptions'') ALJX 30. The Government was granted leave to file a response to the Respondent's Exceptions, and it filed them on September 11, 2020. *See* ALJX 31–33. I have reviewed and agree with the procedural rulings of the ALJ during the administration of the hearing.

Having considered the record in its entirety, I find that Respondent issued one-hundred and fifteen prescriptions beneath the applicable standard of care and outside of the usual course of the professional practice in California in violation of federal law, and I find that Respondent committed violations of state law. I agree with the ALJ that revocation is the appropriate sanction. RD, at 242. I make the following findings of fact.

II. Findings of Fact

A. DEA Registration

The parties stipulated that Respondent is registered with DEA as an individual practitioner authorized to handle controlled substances in schedules II through V under DEA Certificate of Registrations FQ7186174, at 5360 Jackson Drive, Suite 100, La Mesa, CA 91942, scheduled to expire on April 30, 2020;[4] FQ7906968, at 7024 Seville Ave., Suite D, Huntington Park, CA 90255, scheduled to expire on April 30, 2021; and BQ7364970 (and XBQ7364970), at 5395 Ruffin Rd., Suite 204, San Diego, CA 92123, scheduled to expire on April 30, 2022. ALJX 10, at 1; GX 1a–c (Respondent's Certificates of Registration), 2a–c (Respondent's Certificate of Registration Histories); RD, at 159. The parties further stipulated that Respondent submitted an application for a DEA COR as an individual practitioner authorized to handle controlled substances in scheduled II through V under Application No. W18124091C, at 344 F St., Suite 203, Chula Vista, CA 90910. ALJX 10, at 1; RD, at 160.

B. Government's Case

The Government's documentary evidence[5] consisted of voluminous patient records for three individuals to whom Respondent issued the controlled substances prescriptions that are at issue in this case. *See e.g.,* GX 4, 5, 8, 9, 12, and 13. The Government's evidence also contained prescription records and California Controlled Substance Utilization Review and Evaluation System (hereinafter, CURES) reports for those three individuals, the Curriculum Vitae for its expert witness, some DEA records, and an Accusation filed against Respondent by the Medical Board of California (hereinafter, MBC). *See* GX 1–3, 6, 7, 10, 11, 14–16, 23. Finally, the Government produced a number of guidelines and publications that it presented as evidence in support of establishing the standard of care in California. GX 17–22. Additionally, the Government called three witnesses: DI, the Government's expert Dr. Timothy Munzing, and a systems analyst for an electronic medical record program, Mr. Parag Deshpande.

DI testified regarding her professional background and education. Tr. 66–69. She also testified about her investigation-related actions since early-2019 in this matter including, but not limited to, her involvement in obtaining and reviewing CURES reports, pharmacy records, and records from Respondent pursuant to the May 7, 2019 administrative subpoena, including records for patients D.B., B.G., and E.N. *Id.* at 71–168. DI testified that her review of the records indicated that various red flags were present and she retained Dr. Munzing as an expert to review the records at issue. *Id.* at 167, 169, 183–222. Having read and analyzed all of the record evidence, I agree with the ALJ that DI's testimony was ''credible and should be afforded considerable weight.'' RD, at 165.

Dr. Munzing testified regarding his professional and educational background. Tr. 249–256; GX 16 (Curriculum Vitae of Dr. Munzing); RD, at 27–30. He graduated medical school from the University of California, Los Angeles, in 1982 and has been Board-certified in family medicine since 1985. *Id.* at 250–51. He has been employed with Kaiser Permanente for thirty-five years and has experience treating pain patients. *Id.* at 250–254, 971–72, 980–83. Also, he has authored several peer-reviewed publications on pain management and prescribing for chronic pain.[6] *Id.* at 253–55, 952–53. Dr. Munzing has testified as an expert witness approximately thirty times and has been qualified as an expert witness in cases where the respondent was a pain specialist. *Id.* at 257–60. Dr. Munzing was accepted in this matter as ''an expert in the standard of care [for] prescribing controlled substances in the State of California, including for management of pain.''[7] Tr. 260, 265.

[3] This decision, as compared to the ALJ's decision with which Respondent took exception, has been simplified and narrowly focuses on the issues that are relevant to my determination as to whether or not the relevant prescriptions were issued within the usual course of professional practice and standard of care in California and in compliance with the relevant state laws, as it was established in this case. Several of Respondent's Exceptions relate to findings in the ALJ's decision that I have not determined to be relevant to my decision and, accordingly, I have not addressed those Exceptions in detail. Throughout this decision, I have addressed in detail Respondent's exceptions to findings that my decision relies upon.

[4] The fact that a registrant allows his registration to expire during the pendency of an OSC does not impact my jurisdiction or prerogative under the Controlled Substances Act (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.,* 84 FR 68,474 (2019). Accordingly, even though one of the registrations at issue in this case has expired, it is still included as part of my revocation order. *Infra* ''Order.''

[5] I have reviewed and considered all of the documentary evidence presented by both the Government and Respondent, and hereby incorporate the entire record; I have not cited to every record in this decision.

[6] Dr. Munzing describes chronic pain as ''pain that last[s] three months'' or more and that is ''less likely to suddenly get completely better.'' Tr. 276. In contrast, Dr. Munzing explains that acute pain is shorter term such as when you are injured and your body heals with or without surgery. *Id.*

[7] At the hearing, Respondent objected to Dr. Munzing's qualification as an expert based on his ''lack of specialty in the area of pain management.'' Tr. 262. Throughout the hearing stage, Respondent repeatedly argued that Dr. Munzing's experience in pain management is lacking, that his lack of experience is evident in his testimony, and that his opinions can be afforded no weight. ALJX 28 (Respondent's Posthearing), at 4–7, 11–2, 21–22, 25–28; ALJX 30 (Respondent's Exceptions), at 2–10, 14–21. Respondent also took exception to the ALJ's determination that Dr. Munzing was qualified as an expert in this matter. ALJX 30, at 2–7. I have fully considered these arguments. Many of the areas where Respondent focused on Dr. Munzing's lack of experience, such as in determining what morphine milligram equivalent (MME) is too high for a particular patient, developing a titration schedule for patients, or managing a patient's pain pump, did not end up being relevant to my decision in this case. This is because the record established through the testimony of both experts that the standard of care does not set a cap on MMEs, it does not dictate a titration schedule, and it does not have firm rules for managing pain pumps. *Infra* II.D.3.a. Moreover, Respondent's general medical decision making is not the basis for the allegations in the OSC; the OSC allegations are focused on whether or not the identified prescriptions were issued in accordance with the applicable standard of care and in the usual course of professional practice and in accordance with state law. *See generally,* OSC. The expert testimony in this case is necessary, in conjunction with California law and guidelines, to understand the applicable standard of care. Dr. Munzing clearly demonstrated his expertise in how the standard of care applied to the facts in this case and furthermore, his testimony regarding his expertise was credible. Tr. 1112–16, 1199–1201, 1206–07. Moreover, as is demonstrated below, *infra* II.D., in those places where Dr. Munzing's and Dr.

The ALJ conducted a thorough analysis of Dr. Munzing's credibility, *see* RD, at 165–169 and I agree with much of it. I agree that Dr. Munzing's prior experience as a government witness and his compensation therefore does not create an actual credibility concern. RD, at 165. I agree that Dr. Munzing's professional experience with regard to pain management, while sufficient to be qualified as an expert witness and to offer credible opinions, was not as robust as Dr. Polston's. RD, at 167. Dr. Munzing was a family practitioner, he was not Board-certified as a pain management specialist, Tr. 251, 973, 976; however, Dr. Munzing explained that in the Kaiser Permanente system (where he worked), the family practitioner managed pain conditions and prescribed the necessary medication even when consulting with a pain management specialist. Tr. 971–72, 980–83. The nature of Dr. Munzing's practice, along with his peer-reviewed publications in pain management, Tr. at 253–55, 952–53, suggest that he had more experience in prescribing controlled substances for pain management than a typical family practitioner. Dr. Polston, however, was a Board-certified pain management specialist and had more clinical experience treating complex pain in patients with chronic conditions including more experience titrating patients down from extraordinarily high levels of opioids and managing patients with pain pumps.[8] *Infra* II.C.; RD, at 167.

The ALJ found that ''Dr. Munzing's testimony critiquing [Respondent's] actual treatment of the three subject patient[s] carrie[d] limited weight,'' because it did not ''address[] the patient-specific strategies used and described by [Respondent].'' RD, at 168–69. I disagree. I find that, overall, Dr. Munzing's testimony was more detailed and reflected a much more thorough review of the Respondent's records than Dr. Polston's. Dr. Polston opined regarding the medical records in their entirety, which allowed Dr. Polston to apply subsequent prescribing rationale retroactively to justify earlier prescriptions, even though there was no documented justification at the time that the prescription was issued. Tr. 616. However, Dr. Munzing approached each prescription individually while also looking at the records as a whole. Tr. 1196–97. His testimony focused on whether the medical records justified each prescription at the time the prescription was issued consistent with 21 CFR 1306.04. Tr. 1233; *infra* III.A.2.a.

With regard to recordkeeping, the ALJ found that ''Dr. Munzing's testimony . . . was internally consistent, did not depend [on] specialized expertise relating to the evaluation of pain management specialists, was consistent with the relevant statute and Guidelines, and thus was wholly credible.'' RD, at 169. I agree that Dr. Munzing's testimony regarding recordkeeping was wholly credible.

The ALJ found, and I agree, that ''[t]he basic tenets of the standard of care for prescribing opioids, as described by Dr. Munzing, was fully credible and not controverted by the Respondent.'' RD, at 168. Ultimately, as addressed with more specificity in the Standard of Care section below, where the two experts differed regarding application of the standard of care, I find that Dr. Munzing's testimony was more detailed and more closely aligned with the law and guidelines governing the standard of care in California. *Infra.* II.D. I therefore find Dr. Munzing's testimony to be fully credible.

As a rebuttal witness, the Government called Mr. Deshpande who was a systems analyst with BizMatics, the company who developed the electronic medical record (hereinafter, EMR) program used by Respondent and his practice. Tr. 1874–75, 1878–79. Mr. Deshpande explained the operation of Respondent's EMR system, Tr. 1892–1901, and explained that physicians have the ability to ''copy over'' specific sections of information from a previously completed visit report to the current visit for the same patient. Tr. 1901. The system can also be set up so that it automatically copies information from the most recent previous visit into the current visit record. Tr. 1902–03. Finally, Mr. Deshpande explained his assessment of the number of times entries and findings from precious encounters were automatically copied into the record for a current encounter related specifically to the three individuals for whom the controlled substance prescriptions at issue in this case were written. Tr. 1910–49. The ALJ found, and I agree, that Mr. Deshpande had ''a high level of expertise in each of the areas in which he offered testimony.'' RD, at 170. The ALJ also found, and I agree, that ''[h]is testimony was internally consistent and generally consistent with the testimony of [Respondent] regarding the basic functioning of the program.'' *Id.* Therefore, the ALJ ''found his testimony fully credible and deserving considerable weight.'' *Id.* I agree.

C. Respondent's Case

The Respondent's documentary evidence was largely duplicative of the Government's documentary evidence.[9] *See* RX E–J, N–P. The Respondent presented the Curriculum Vitae of his expert, Dr. Gregory Polston, along with his expert report. RX HHH, TTT. The Respondent also presented a number of publications including the MBC's 2007 Prescribing Guidelines, RX A, a clarification memorandum from the authors of the CDC Guidelines, RX D, an AMA article criticizing the CDC Guidelines' impact on pain treatment, RX DD, an MBC Update to Prescribers, RX SS, and an Aberrant Drug Taking Behaviors Information Sheet, RX TT.[10] Respondent introduced several curricula vitae and declarations of support from other medical professionals. *See* RX T–AA, RR, HHH, PPP. The record also contained declarations that patients of Respondent offered in support of Respondent's case. RX JJ–LL. Respondent produced records regarding training programs he had attended, RX PP–QQ, his Curriculum Vitae, RX RR, his Board Certifications, RX XX–YY, and miscellaneous records related to his practice generally, *e.g.* RX LLL–MMM, QQQ. Finally, there were some records offered in support of Respondent's treatment of the specific individuals at issue in this case. RX, JJJ–KKK, RRR–SSS, UUU–VVV. Additionally, Respondent called two witnesses: His expert, Dr. Gregory Polston, and himself.

Polston's testimony differed regarding the standard of care, California law and guidelines aligned more closely with Dr. Munzing's testimony. Accordingly, I affirm the ALJ's decision to qualify Dr. Munzing as an expert in this case.

[8] Although Dr. Polston's testimony regarding the appropriateness of Respondent's titration with respect to the standard of care was at times more detailed and credible than Dr. Munzing's, as described in *infra* II.D.3.a. and RD, at 183–87, Dr. Munzing's testimony was more far more credible than Dr. Polston's regarding the requirement to document a titration treatment and plan appropriately. Ultimately, I find that, as demonstrated by Respondent's recordkeeping, Respondent failed to provide documentation that justified the titration schedule used and the gaps between downward adjustments, and that failure to document supported a finding that Respondent issued prescriptions outside the usual course of professional practice and beneath the applicable standard of care. *Infra* II.D.3.a.

[9] Duplicative documentary evidence that was offered, but not admitted, included the CDC Guidelines; the MBC Guidelines for Prescribing; pain agreements, urine drug screens, CURES reports summaries, and patient records for the individuals at issue in this case. I agree with the ALJ's decision to not admit these duplicates.

[10] Respondent also attempted to introduce what the ALJ characterized as a ''newspaper article,'' which the ALJ did not admit because it was not ''necessarily reliable'' and was not ''authenticate[d].'' Tr. 1847. I agree that absent evidence establishing the reliability therein, newspaper articles should not be admitted into evidence. *See Jones Total Health Care Pharmacy, L.L.C.,* 71 FR 79188, 79222 n. 11 (2016).

Respondent testified regarding his medical education and background—he came to the United States as a visiting scholar to conduct research related to cancer cells in 1990. Tr. 1316–19. He then decided to change his focus to Physical Medicine and Rehabilitation (hereinafter, PMR), which complimented his specialized training in anesthesiology. Tr. 1319–22. Respondent became Board-certified in PMR in 2003, and Board-certified in pain medicine in 2005 (which he allowed to lapse in 2015). Tr. 1328–30. Respondent opened his own practice at the end of 2005, and described himself as the ''go-to-guy'' in the San Diego area for pain management and stated that his multiple practice locations see approximately 100 patients a day. Tr. 1336–43.

Respondent offered some testimony regarding his office policies, his recordkeeping practices, and how his EMR system worked.[11] *See e.g.* Tr. 1564–68. Respondent testified that he was the attending or supervising physician for each of the three individuals at issue in this case, B.G., D.B., and E.N., that he was personally responsible for the treatment each individual received from Respondent and Respondent's staff, and that he was personally responsible for the controlled substance prescriptions issued to each individual by Respondent and Respondent's staff. Tr. 1564–68; ALJX 10, at 3; *see also* Tr. 399. Respondent also offered testimony regarding his understanding of the standard of care in California, which I have credited where it aligns with the testimony of the two experts in this case. Tr. 1561–86.

The ALJ found Respondent's testimony to be credible at times.[12] *See e.g.* RD, at 199, 208, 212, and 216. But at other times, the ALJ found Respondent to be so not credible that it ''suggest[ed] [Respondent] deliberately misled [the] tribunal during the hearing.'' RD, at 225.

I find that, at times, Respondent's testimony was self-serving to the point it denied belief. On cross examination, Respondent was asked if a particular individual had ''obtained [Soma] from her daughter's prescription, then she's obtained Soma in an unlawful manner, correct?'' Tr. 1688. Respondent testified, ''[l]et's put it this way. If it's a Soma, if you [are] so close to each other, it could be from a liquid contamination to make her urine positive too.'' *Id.* When pressed by the ALJ to explain how Soma could show up in your system ''[u]nless you took the Soma tablet,'' Respondent said ''you could get contaminat[ion] with the food or drop it somewhere.'' Tr. 1689. Dr. Munzing's testimony completely discredited Respondent's suggestion of ''liquid contamination.'' Tr. 2066, 2118; *Infra* II.E.2.

Another area of Respondent's testimony that lacked credibility, as the ALJ thoroughly assessed, was Respondent's testimony regarding his recordkeeping, particularly how the patient records that were verbatim for every visit were created. RD, at 216–224 (citing Tr. 1786–1804). Specifically, the ALJ ''found that Respondent lacked candor in [the] proceeding by his fallacious explanation for the verbatim repetition of examination results throughout the medical records.'' RD, at 240. Respondent testified that the records regarding the physical examination remained the same for lengthy periods because Respondent was doing the exact same examination of the patient from the prior month. Tr. 1775–79, 1799–1801. Because the selections were the same, according to Respondent, the records produced the same narrative. *Id.* However, Respondent's version of events conflicts with Mr. Deshpande's evidence showing that the examination results were copied forward and further conflicts with Dr. Munzing's and Dr. Polston's testimony that you would expect some visit to visit variability in the examination even for patients with chronic pain. I agree with the ALJ and discredit Respondent's testimony in this area.

Overall, I find credible those portions of Respondent's testimony that were supported by the medical records, the expert testimony, and the record as a whole. Where his testimony was inconsistent with the record, I do not credit Respondent's testimony.

Dr. Polston testified regarding his professional and educational background. Tr. 509–38; RX HHH (Curriculum Vitae of Dr. Polston); RD, at 91–94. He graduated medical school from the University of Wisconsin in 1989 and has been Board-certified in anesthesiology since 1999. Tr. 509–10, 519; RX HHH, at 2. He completed a fellowship in pain management in 2001 and his practice has been limited to pain management since that time. Tr. 513. His experience includes work as a private practice pain physician with the Advanced Medical Centers of Alaska, a Clinical Professor at the University of California San Diego, a Clinical Director with the Center for Pain Medicine University of California San Diego Medical Center, and a Clinical Director and a Clinical Professor with the VA San Diego Medical Center. *Id.* Also, he has authored journal articles and book chapters regarding pain management, has served on numerous committees, and has received awards for his work as is set forth in his Curriculum Vitae and in the RD. RX HHH, at 2–8; RD, 92–94. Dr. Polston has been retained as an expert witness on behalf of physicians approximately ten times, Tr. 535, and has assisted the MBC in evaluating pain physicians since approximately 2010, Tr. 528. Dr. Polston was accepted in this matter as ''an expert in the area of pain management.'' Tr. 538.

The ALJ conducted a thorough analysis of Dr. Polston's credibility, *see* RD, at 170–171, much of which I agree with. I agree that Dr. Polston ''sometimes argued the position of his

[11] I do not find a violation with regard to the Government's allegation related to a note related to alcohol use and, therefore, I will not address this allegation further. The Government alleged that Respondent's recordkeeping was deficient because the records repeatedly included an internally inconsistent note that stated, ''[p]atient states that [she or he] drinks alcohol [she or he] never drinks alcohol.'' OSC, at 4; RD, at 205–06. Respondent explained that this note appeared as a result of a computer glitch; an error within the computer program that produced the inconsistent statement in printed records despite the proper selection of one option (drinks alcohol) or the other (never drinks alcohol) in the system's drop down menu. Tr. 1412–24, 1831–32. As the computer error was corroborated by Mr. Deshpande's testimony, Tr. 2000–04, I agree with the ALJ and find that the Government did not sustain their burden as to this allegation. RD, at 206. In his decision, the ALJ found for Respondent but noted there was ''some level of negligence attributable to him for his failure to confirm the EMR was operating properly.'' RD, at 206. The Respondent took exception to this note. ALJX 30, at 14. I do not see anything in the record that suggests that Respondent's failure to catch the computer glitch meant that the relevant prescriptions were issued outside the standard of care. Accordingly, the ALJ's note is not relevant to and is not being considered as part of my decision in this matter.

[12] The ALJ evaluated Respondent's credibility, ''within the relevant factual findings.'' RD, at 171. Many of the specific factual findings where the Respondent was found credible were on issues that I have found were not material to the case. For example, the ALJ credited Respondent's testimony that Retrospective Drug Utilization Review letters were so routine in the practice of pain management that they did not represent red flags under the circumstances of this case. RD, at 212. However, I found that the government did not explain why the 2016 Drug Utilization Review letter at issue in this case was relevant to the 2017–2019 prescribing so the issue is not material to my decision. *See infra* n. 55. The ALJ credited Respondent's testimony that he was aware of and investigating E.N.'s 2015 increase in pain, RD, at 216; but again, the Government did not explain how this 2015 issue was relevant to the relevant prescribing in 2017–2019. *Infra* n. 52. The ALJ credited Respondent's testimony that an inconsistent drug screen was not aberrant because medication infused through a pain pump would not be expected to show up in urine. Tr. 208. This issue was abandoned by the Government and is not material to my decision in this case. *Infra.* n. 49.

sponsor in lieu of a direct response.'' [13] RD, at 170. I agree that Dr. Polston's professional experience with regard to pain management was robust and that he appeared to have more hands-on professional experience in the areas of downward titration and pain pump management than Dr. Munzing.[14] RD, at 167, 171. I disagree with the ALJ that Dr. Polston ''offered credible detailed testimony relating to the specifics of [Respondent's] treatment, prescribing and titration strategies.'' RD, at 170. Instead, I find that Dr. Polston's testimony lacked detail and often took the specific facts of the case, excused gaps or filled them with speculation, and then conclusively determined that the standard of care was met without adequately explaining why.[15] *See* Tr. 714–16, 756, 773. I find that Dr. Polston's testimony, while generally credible, was not as thorough or as specific as Dr. Munzing's.

The two experts were generally in agreement about the basic elements of the standard of care in California. However, Dr. Polston seemed to advocate for leniency in the standard of care when applied to pain physicians, testifying that guidelines for prescribing opioids for pain have been and are continuing to evolve, and that because of this, ''pain physicians, maybe, should be judged differently . . . [because] across the country, [there is] a wide variance of how . . . opioids are'' prescribed. Tr. 566–68.[16] Dr. Polston rarely expanded upon the text of the law and guidelines governing the standard of care in California. In one place where Dr. Polston did expand—namely regarding what constitutes a sufficient physical examination to satisfy the standard of care in California, his testimony appeared to be in conflict with the relevant guidelines. *See infra* II.D.2. and II.E.2. With regard to recordkeeping, the ALJ found that ''Dr. Polston's opinions had diminished reliability,'' because the ''testimony was inconsistent with the relevant Guideline, was sometimes illogical, and frankly, sometimes defied common sense.'' RD, at 171.

Ultimately, as addressed with more specificity in the Standard of Care section below, I find that Dr. Munzing's testimony regarding the standard of care was more detailed and more closely aligned with the law and guidelines governing the standard of care in California. Accordingly, I differ with the ALJ, and find generally overall, not just on recordkeeping, that Dr. Munzing's testimony is more credible than Dr. Polston's where the two experts offered different opinions.

[13] For example, Dr. Polston testified that in the prior seven years, he, himself, had not prescribed controlled substances to a chronic pain patient on a regular basis above 800 MME. Tr. 703. Right after this acknowledgment, the ALJ asked Dr. Polston, ''other than palliative care, cancer patients, have you ever taken a patient to 2,400 MME?'' *Id.* at 704. Dr. Polston evasively replied, ''That's where I—that's where some of the caution that—that some of those patients who have come in—they have come into my practice. And I don't think that that is—at the—at those higher doses that I would—would say that coming from before these documents came in, and at the time when they came in, suddenly there was a lot of physicians who stopped prescribing, and that they . . . taken them off, and then we were faced with a lot of these kind of patients.'' Tr. 704. I found this testimony to be evasive and it caused me to question Dr. Polston's objectivity.

Another example of evasiveness and inconsistency occurred during Dr. Polston's testimony regarding whether it is outside of the standard of care to repeatedly copy physical examination notes from a prior office visit into physical exam notes for a current office visit without performing a physical examination during the current visit. *See* Tr. 717–23. Documentation of a physical examination that did not occur seems to be patently false, yet Dr. Polston evaded acknowledging this.

[14] Ultimately, as explained herein, I did not find that Respondent's titration schedule or use of pain pumps was in itself outside the standard of care. *Supra* n. 7–8; *infra* n. 28, 49.

[15] By way of one example, when asked if there was a physical examination performed on patient B.G. regarding his MS during a specific office visit, Dr. Polston answered ''[there is] a lot of inference there. One that . . . there's no significant changes in the physical exam since the last follow-up visit. The fact that he's got good hygiene is telling me . . . that he's being cared for and getting himself dressed.'' Tr. 773. Dr. Polston seems to be stating that the note ''good hygiene'' was sufficient to satisfy the physical examination requirement of the standard of care. Not only is his opinion based on an ''inference,'' but Dr. Polston's testimony reflects an extreme departure from Dr. Munzing's credible testimony on what a physical examination requires. *See infra.* II.D.2, II.E.1.

Additionally, when Dr. Polston testified about whether the physical examination notes are simply ''cop[ied] forward'' from past office visits, he stated, ''when I see a 'just copy forward,' and I see other changes, then I would say that I would think that most physicians are doing . . . hopefully are doing the right things.'' Tr. 716. Again, Dr. Polston evaded the question and filled the gap with an assumption.

[16] The standard of care guidelines that are being relied upon in this case explicitly state that they are the ''standard of care in managing pain patients,'' and that physicians and surgeons are expected to follow them. GX 17, at 59. I cannot see any justification for carving out pain specialists who are managing pain patients from its requirements. Notably, the MBC Guide to the Laws states ''[i]n continuing care situations for chronic pain management, the physician and surgeon should have a more extensive evaluation of the history, past treatment, diagnostic tests, and physical exam.'' GX 17, at 59. This suggests that Dr. Polston's position of leniency is inconsistent with the standard of care. The standard of care applied here is that standard of care that was in place in the State of California at the time of Respondent's actions as determined by the exert testimony and supporting literature. Any differences in the standard of care that existed prior to or after Respondent's actions are not relevant to this matter, nor is the standard of care in other geographic locations.

D. The Standard of Care in the State of California

The parties seem to be largely in agreement as to the general components of the standard of care in this case, that the standard of care is primarily informed by California law and guidance, and that it is primarily captured by a 2014 publication from the MBC entitled, ''The Guide to the Laws Governing the Practice of Medicine by Physicians and Surgeons,'' (hereinafter, MBC Guide to the Laws). Tr. 266–67, 554–55, 567, 698; RD, at 168, 172–73; GX 17 (MBC Guide to the Laws). Based on this publication and the entire record, I find that the standard of care for managing pain patients in California requires: (1) History and physical examination; (2) treatment plan objectives; (3) informed consent; (4) periodic review; (5) consultation; and (6) complete and accurate records. Tr. 270–87, 694–95; RD, at 31–32, 172–73. Additionally, according to Dr. Munzing, there is a 2014 publication from the MBC titled, ''Guidelines for Prescribing Controlled Substances for Pain'' (hereinafter, MBC Guidelines for Prescribing). GX 18. According to Dr. Munzing, this publication is ''not intended to mandate the standard of care,'' but it provides examples of how the standard of care captured in the MBC Guide to the Laws applies to the prescribing of controlled substances for pain. Tr. 291–92, 567. Dr. Munzing testified that the MBC Guidelines for Prescribing is ''a little bit more expansive, but . . . in alignment with the [MBC Guide to the Laws].'' Tr. 292. Additionally, in 2016, the Center for Disease Control (hereinafter, CDC) issued ''Guidelines for Prescribing Opioids for Chronic Pain'' (hereinafter, CDC Guidelines) which, according to Dr. Polston, provide ''recommendations'' specifically for primary care physicians, but that pain management ''[s]pecialists will take into consideration all aspects in . . . the literature . . . and review those documents.'' Tr. 550, 552; *see also* Tr. 1586.

1. Requirement To Keep Records

Dr. Munzing clearly testified that each element of the standard of care ''must be documented in the medical records because [the physician] may not be the only person managing that patient.'' Tr. 299. Dr. Munzing testified ''[t]his patient may be seen by the emergency room, may be seen by the primary care physician may be seen by other sub-specialists, orthopedists, psychiatric

doctors.'' [17] *Id.* at 299–300. Dr. Munzing further testified that if a physician is not maintaining adequate and accurate medical records then the physician is acting outside the standard of care. *Id.* at 301. Dr. Polston agreed that ''[m]edical records are incredibly important for physicians.'' Tr. 705.

Dr. Munzing's testimony is supported by the MBC Guide to the Laws, which requires that the physician ''keep accurate and complete records according to items above, including the medical history and physical examination, other evaluations and consultations, treatment plan objectives, informed consent, treatments, medications, rationale for changes in the treatment plan or medications, agreements with the patient, and periodic reviews of the treatment plan.'' [18] GX 17, at 61; *see also id.* at 67. Additionally, the MBC Guide states that ''[d]ocumentation of the periodic reviews should be done at least annually[;]'' and ''[p]ain levels, levels of function, and quality of life should be documented. Medical documentation should include both subjective complaints of patient and caregiver and objective findings by the physician.'' *Id.*

Similarly, the MBC Guidelines for Prescribing explain that

> for a physician treating a patient with opioids for chronic, non-cancer pain, an adequate medical record includes, but is not limited to, the documentation of: the patient's medical history; results of the physical examination . . . ; patient consent; pain management agreement; . . . description of treatments provided, including all medications prescribed or administered (including the date, type, dose and quantity); instructions to the patient, including discussions of risks and benefits with the patient . . . ; results of ongoing monitoring of patient progress (or lack of progress) in terms of pain management and functional improvement; notes on evaluations by, and consultations with, specialists; any other information used to support the initiation, continuation, revision, or termination of treatment and the steps taken in response to any aberrant medication use behaviors . . . ; . . . and results of CURES/PDMP data searches.

GX 18, at 22.

Dr. Polston's opinion regarding the standard of care with regard to recordkeeping was more focused on obstacles created by electronic recordkeeping. *See* Tr. 619–21. Dr. Polston testified that through ''repopulation'' or copying and pasting, electronic records can ''make clinic and visits more efficient.'' Tr. 527. However, he also emphasized limitations in medical software because sometimes a physician may not ''even attempt to copy it or however it was done, and I see errors being repopulated.'' Tr. 615–16. He also explained that some recordkeeping issues occur ''because the electronic record only allows you to enter data in certain spots, and some of the electronic record [do not] have the same amount of power or freedom to document and change things.'' Tr. 616. Dr. Polston seemed to look at records in totality, and seemed to find that here, where the conditions were chronic, justification for a prescription on one date could justify that same prescription on previous dates.[19] Tr. 616, 618–19, 631, 716–17. Regarding recordkeeping, I find that Dr. Munzing's testimony is more in line with California's law and guidance.

Based on the experts' testimony and California law and guidance, I find that the applicable standard of care requires that a physician collect a patient's history and perform a physical examination, create treatment plan objectives, obtain informed consent, conduct a periodic review, and consult with others when needed. The standard of care further requires that the actions taken by the physician and information obtained by the physician in completing each of the standard of care requirements be accurately and completely recorded. Tr. 287. The requirement that information be accurately and completely recorded appears to apply equally to handwritten or electronic records. Based on both Dr. Munzing and Dr. Polston's testimony and California law and guidance, I find that accurate and complete records are an important aspect of prescribing within the standard of care in California.

2. History and Physical Examination

Dr. Munzing testified that obtaining a history and performing a physical exam ''are critically important'' to get specific information about the individual patient's pain, including the duration, location and severity of the pain.[20] Tr. 270. According to Dr. Munzing, the history and exam are also necessary to determine the existence of chronic illnesses, mental health disorders, or alcohol and drug use and abuse. *Id.* Importantly, according to Dr. Munzing, ''[t]he physical exam is important to find out specifically about if you can come up with the most reasonable differential diagnosis or sometimes an exact diagnosis.'' Tr. 270–71.

Consistent with Dr. Munzing's testimony, the MBC Guide to the Laws states that a ''medical history and physical examination must be accomplished.'' GX 17, at 59; *see also* Tr. 271–72. ''This includes an assessment of the pain, physical and psychological function; a substance abuse history; history of prior pain treatment; as assessment of underlying or coexisting diseases or conditions and documentation of the presence of a recognized medical indication for the use of a controlled substance.'' GX 17, at 59. Notably, the MBC Guidelines for Prescribing state that ''[t]he complexity of the history and physical examination may vary based on the practice location. . . . In continuing care situations for chronic pain management, the physician and surgeon should have a more extensive evaluation of the history, past treatment, diagnostic tests, and physical exam.'' *Id. See also,* GX 18, at 54. Further, the requirement for a physical examination is codified in California law. Cal. Bus & Prof. Code § 2242(a) states that it is unprofessional conduct to prescribe controlled substances ''without an appropriate prior examination and a medical indication.'' *See also,* Tr. 286.

The MBC Guide to the Laws also states the physician ''should keep accurate and complete records . . . including the medical history and physical examination.'' GX 17, at 61. It goes on to state that ''[p]ain levels, levels of function, and quality of life should be documented. Medical documentation should include both subjective complaints of patient and caregiver, and objective findings by the physician.'' *Id.* According to Dr. Munzing, the referenced documentation requirement mandates that a physician keep progress notes or other ''documentation verif[ying] what the history showed, what the exam showed . . . so one can look at the documentation . . . and see how did the physician decided that this is . . .

[17] According to Dr. Munzing, when prescribing high doses of opioids, *see infra* II.D.3.a., the documentation should make ''very clear that [the physician] understand[s] the added risks [of prescribing over 80 MME] and . . . how [the physician] came to that determination . . . knowing that [he or she is] putting the patient at higher risk.'' *Id.* at 300.

[18] Dr. Polston agreed that the MBC Guide to the Laws stated this. Tr. 692.

[19] Dr. Munzing explicitly rejected the notion that something documented later in time can justify what occurred prior in time and testified; ''You have to treat a patient in real time. . . . You have to document it [in] real time.'' Tr. 1233.

[20] Dr. Polston cautioned that a patient's assessment of pain ''is a subjective response that . . . is very difficult . . . to quantitate'' because patients are afraid that their medication will be taken away ''[i]f they answer that they have too much pain . . . [or] if they [do not] reflect pain.'' Tr. 817. Dr. Polston's testimony demonstrates why a physical examination with objective findings is important to complement subjective complaints of pain. *See* GX 17, at 61.

the right diagnoses or diagnosis.'' Tr. 272.

Dr. Polston agreed that there needs to be a physical exam to prescribe within the standard of care. Tr. 694. However, he opined that a physician can either perform a ''focused exam'' or can conduct an examination ''just by looking at the patient and—and interacting. . . .'' Tr. 618. According to Dr. Polston, ''physicians are conducting exams just by interviewing and talking to a patient. We're always looking at how [they are] walking, how [they are] . . . sitting, . . . the degree of pain, . . . is it congruent with what [they are] reporting?'' [21] Tr. 718–19. Dr. Polston's latter definition of a physical examination is inconsistent with Dr. Munzing's and I find Dr. Munzing to be more credible. Dr. Munzing testified that the type of information Dr. Polston described as an acceptable physical examination is actually collecting information for the ''history of present illness.'' *See e.g.* Tr. 1139–40. While collecting information regarding the history of present illness is part of the standard of care, it is separate and distinct from the physical examination requirement.[22] Tr. 1143. According to Dr. Munzing, ''[t]he history of present illness is not an exam . . . [it is] not actually examining the patient, physically touching the patient, maneuvering the patient.'' Tr. 1143.

I find that the applicable standard of care in California requires a practitioner treating pain in chronically ill patients, to perform and document an appropriate physical exam, including an assessment of pain and physical and psychological function.

3. Treatment Plan Objectives

Dr. Munzing explained that the history and physical exam requirements help a practitioner arrive at a diagnosis and that the treatment plan is the ''assessment . . . based on what [a practitioner has] determined is the diagnosis.'' Tr. 273. In addition, Dr. Munzing explained that documentation is required ''[s]o one can look at the documentation to . . . see how the physician decide[d] that this is . . . the correct management plan, both initially [and on] an ongoing basis.'' Tr. 272.

The MBC Guide to the Laws requires that the treatment plan ''state[[23]] objectives by which the treatment plan can be evaluated'' such as ''control of pain, increase in function, and improved quality of life.'' GX 17, at 59. ''Multiple treatment modalities and/or a rehabilitation program may be necessary if the pain is complex or is associated with physical and psychosocial impairment.'' *Id.* The MBC Guidelines for Prescribing state that ''[p]ain relief is important, but it is difficult to measure objectively. Therefore, it cannot be the primary indicator to assess the success of the treatment. Effective pain relief improves function, whereas addiction decreases functionality.'' GX 18, at 13.

a. Treatment Plans With >80 MME Prescribed

According to Dr. Munzing, morphine milligram equivalent (hereinafter MME) is a term reflecting the ''common platform [used] when looking at . . . the strength of opioid treatment.'' [24] Tr. 294–94. In California, according to Dr. Munzing, there is a ''yellow flag warning'' meaning that physicians ''should be concerned if the total dosage for a day is 80 milligrams or higher . . . [and] proceed cautiously. Referral to an appropriate specialist should be considered with higher doses.'' Tr. 296. Dr. Munzing explained that ''as one goes higher on the MED or MME[[25]], the . . . risk of the medication increases.'' Tr. 296. The risk increases at higher MME levels ''regardless of how long'' a patient has been prescribed opioids, although for patients on long-term opioids ''the risk probably is somewhat less.'' [26] Tr. 296–97. Dr. Munzing explained that the ''yellow flag warning'' applies equally to pain specialists, because ''the medication is [what is] putting the patient at risk . . . it [does not] change based on the letters at the end of the name of the person prescribing.'' Tr. 298. According to the CDC Guidelines, ''prescriptions opioid-related overdose mortality rates rose rapidly up to prescribed doses of 200 MME/day, after which the mortality rates continued to increase but grew more gradually.'' GX 19 (CDC Guidelines), at 15; *see also* Tr. 306.

Dr. Munzing clarified that despite the ''yellow flag warning . . . there are times when the indications are there and you weigh the potential benefits with the potential risks and one decides that . . . the potential benefits far outweigh the risks and you can proceed at higher amounts.'' Tr. 298. Dr. Munzing testified that there is no cap on the level of MME/day that can be prescribed, but as the dose and ''risk significantly goes up . . . one needs to justify'' the prescribing. Tr. 308–09. Dr. Polston likewise explained that the intent of the CDC Guidelines was not to set 50 or 90 MME as ''hard limits'' and agreed that ''when patients come to a physician already on high doses of opioids, it is permissible to continue on those doses if the doctor believes it is appropriate.'' Tr. 558, 564.[27]

However, the fact that a patient was already on high doses of controlled substances, alone, is not sufficient justification to continue prescribing at that level. Tr. 1217–18. According to Dr. Munzing, physicians who inherit patients on high levels of MME have an obligation to attempt to try alternatives, whether alternative forms of treatment or prescribing lower doses, to ''decrease the risk of the patient while still certainly making every attempt to decrease pain, improve activity.'' Tr. 1277, 1275, 2040–43.

Dr. Munzing explained that when prescribing opioids, it is important to ''titrate up, so slowly adjust up or titrate down, slowly adjusting'' the doses. Tr.

[21] Elsewhere, Dr. Polston seemed to testify that how the patient looks and talks is not a complete physical examination, but only a part of the examination. *See* Tr. 730.

[22] This distinction is also supported by the MBC Guide to the Laws, which separates the history and presentation from the physical examination, stating, ''[i]f a patient's request for opioid medication for pain is inconsistent with the patient's history, presentation, or physical findings, the physician may withhold the medication but must document the reason for the decisions.'' GX 17, at 59 (emphasis added).

[23] I find that the reference to what the treatment plan should ''state'' is a clear indication that the treatment plan must be documented as is also indicated by Dr. Munzing's testimony.

[24] For additional information on how the MME is calculated, *see* Tr. 311–16; GX 21 (Publication by Centers for Medicare & Medicaid Services); GX 22 (Publication by Centers for Disease Control & Prevention).

[25] Dr. Munzing testified that morphine milligram equivalent or MME and morphine equivalent dose or MED have ''identical'' meanings and the two phrases are used interchangeably throughout the record. Tr. 295.

[26] Dr. Munzing explained that there are no studies that look at the effects of a patient who is on, for example, ''300 [MME] for 3 months as opposed to a year,'' and they are ''not going to do that study because of the inherent risks to patients.'' Tr. 297.

[27] I conclude based on the testimony of both of the experts in this case that the Government has not presented substantial evidence of a MME ceiling above which a prescriber would be per se in violation of the standard of care for prescribing controlled substances. Accordingly, if the intent of the Government's allegations regarding prescribing over 90 MME was that any such prescribing per se violated the standard of care, such an inference is unsupported by the record and is not sustained. *See* RD, at 178–83. However, the Government has presented substantial evidence that controlled substance prescriptions must be justified. Tr. 281 (Dr. Munzing testified ''California . . . says that the prescribing must be justified. It has to be in the usual course of professional practice.''). Accordingly, where the evidence in the case established that controlled substance prescribing was not justified by appropriate documentation in the medical records, I have found that the Government established a violation of the standard of care. Dr. Munzing testified that, particularly for B.G. and E.N., the documentation in the medical record did not come anywhere close to justifying the ''extraordinarily high'' levels of opioids Respondent prescribed. Tr. 389, 433–34, 912–13; *infra* II.E.1, II.E.3.

307; *see also* Tr. 700. Dr. Munzing agreed that titration is ''an individual process that differs for each patient,'' and there are no ''evidence-based guidelines . . . that say, 'This is the best way now.' '' [28] Tr. 2091, 2071. Even so, according to Dr. Munzing, it is important to ''come up with a game plan . . . In one month, [we are] going to go down X amount. The next month, [we are] going down X amount. And then you may need to alter that over the way.'' Tr. 2044. Dr. Polston further testified that the literature ''does not support abrupt tapering or sudden discontinuation of opioids,'' which can ''cause health risk for patients.'' Tr. 558, 563; GX 19.

b. Prescribing Opioids and Benzodiazepines

Dr. Munzing testified that before opiates and benzodiazepines are prescribed together, there should be an attempt to ''mitigate'' the risks to the patient and ''try alternative methods that [are] safer.'' Tr. 388. According to Dr. Munzing, healthcare practitioners, including specialists, are bound by the guidance, which states that practitioners ''should limit prescribing opioid pain medicines with benzodiazepines or other CNS [(central nervous system)] depressants only to patients for whom alternative treatment options are inadequate. If these medicines are prescribed together, [practitioners should] limit the dosages and duration of each drug to the minimum possible while achieving the desired clinical effect.'' [29] GX 20, at 1; *see also* Tr. 318–19. This is because, according to Dr. Munzing and the FDA Drug Safety Communication located at GX 20, ''the co-prescribing of opioids and benzodiazepine medications'' presents a ''serious risk of death.'' Tr. 317. Similarly, Dr. Polston testified that there is ''increased risk when you use benzodiazepines . . . with opioids.'' Tr. 662.

4. Informed Consent

With regard to informed consent, Dr. Munzing testified that the standard of care requires a practitioner ''to go through the risks, the benefits, and the alternatives.'' Tr. 273. Dr. Munzing's testimony is supported by the MBC Guide to the Laws which states that ''[t]he physician and surgeon should discuss the risks and benefits of the use of controlled substances and other treatment modalities with the patient, caregiver, or guardian.'' GX 17, at 60. ''A written consent or pain agreement for chronic use is not required but may make it easier for the physician and surgeon to document patient education, the treatment plan, and the informed consent.'' *Id.*

Dr. Polston testified that the patient medication agreements and consent forms found throughout the record, standing alone, are sufficient ''documentation of discussions [regarding what] the risks and benefits of the medication were'' to satisfy the standard of care regarding informed consent. Tr. 609–10. There was limited, if any, evidence presented by the Government regarding whether the patient agreements alone were sufficient to satisfy the informed consent aspect of the standard of care. Here, Respondent's records contained patient agreements for each individual at issue in this case. Accordingly, I cannot find that Respondent violated the informed consent requirements in the standard of care for these individuals.

5. Periodic Review

According to Dr. Munzing, periodic review for patients with chronic pain conditions requires ''checking periodically to see how [they are] doing: Are they getting better with your management? Are they getting worse? Are they having side effects from your . . . management? Are there alternatives that may be safer, may be better? And so looking over time, re-examine them. Is there something new in . . . the medical community that might benefit this person?'' Tr. 274. Periodic reviews are necessary, according to Dr. Munzing, because ''pain, especially chronic pain, usually does not stay exactly the same. It waxes and wanes . . . it may be better one day, worse one day . . . [it is] infrequent that every single day is exactly the same.'' Tr. 274.

Dr. Munzing's opinion is supported by the MBC Guide to the Laws, which states ''[t]he physician and surgeon should periodically review the course of pain treatment of the patient and any new information about the etiology of the pain or the patient's state of health. Continuation or modification of controlled substances for pain management therapy depends on the physician's evaluation of progress toward treatment objectives. If the patient's progress is unsatisfactory, the physician and surgeon should assess the appropriateness of continued use of the current treatment plan and consider the use of other therapeutic modalities.'' GX 17, at 60. ''Patients with pain who are managed with controlled substances should be seen monthly, quarterly, or semiannually, as required by the standard of care.'' *Id.*

It is clear throughout the record that the ''periodic review'' portion of the standard of care also includes monitoring the patient. Both experts referenced the ''four As'' as part of monitoring. The 4As are: ''analgesia, activities of daily living, adverse side effects, aberrant drug taking behaviors.'' Tr. 357, 608–09. While it is clear that there is no set formula for monitoring an individual patient, some of the tools physicians can use include, looking for compliance with the pain agreement, running CURES reports, requiring urine drug screens, checking respiration rate and O2 levels, and using an opioid risk tool. *See* Tr. 604, 684. ''Monitoring can take many forms, including regular visits, . . . updated histories, updated examinations[,] . . . urine drug tests, CURES reviews[,] . . . pill counts to ensure that [they are] taking what [they are] prescribed and not taking potentially things that [you are] not prescribing.'' Tr. 299.

Dr. Munzing described a red flag as anything that comes up while monitoring ''that catches your attention that says that this could be a problem.'' Tr. 321. It could be laboratory results, certain symptoms, something in the CURES database, or a wide variety of things. *Id.* According to Dr. Munzing, red flags require a practitioner to ''investigate further,'' take appropriate action ''determined by what . . . you found,'' and then ''all of that needs to be well-documented in the chart so if someone else . . . can look at [the] records and go, okay. He did this. He resolved that. It doesn't appear to be a problem.'' Tr. 323–24.

Dr. Polston, used the term ''red flag'' in a different way that Dr. Munzing. Dr. Polston differentiated, albeit imprecisely, between ''yellow flags'' and ''red flags'' and referred generally to ''aberrant behavior.'' Tr. 799–800. Dr. Polston described a ''red flag'' as a ''severe deviation from the opioid agreement'' that requires immediate action or even termination of care. Tr.

[28] Both experts testified that there is not a firm titration schedule that could be used to evaluate whether the applicable standard of care is met. Accordingly, to the extent that the Government intended to charge that the percentage of titration up or down for any given prescription or that the titration schedule for any particular individual was outside the standard of care, those charges are not supported by the record here. *See* RD, at 183–87. However, the Government has established that the standard of care requires documentation of a treatment plan, which includes a creation of and documentation of the titration strategy the physician is using—those allegations are addressed below. *See e.g. infra* II.E.1.

[29] The FDA Communication also requires additional warnings be given for informed consent. It states that practitioners should ''[w]arn patients and caregivers about the risks of slowed or difficult breathing and/or sedation, and the associated signs and symptoms.'' GX 20, at 1.

799–800, 802. Dr. Polston testified that regardless of ''whether [it is] a yellow flag, a red flag, or any kind of aberrant behavior, we would hope that [it is] recorded and [there is] some type of medical reasoning applied as to how [you are] interpreting that particular event.'' Tr. 800. He went on to testify ''that when you see something that is considered aberrant in the sense that [it is] not [what is] intended or shows signs of misuse or abuse, the . . . statute said that that needs to be addressed. . . . Simply recording . . . that you [do not] think that [the aberrancy] is significant or . . . [filing] that as the first offence . . . in some ways resolv[es] that. . . . ''[I]f other minor infractions keep occurring, that . . . [would] need[ ] to be recorded and . . . show justification of why [you are] continuing therapy for the patient.'' Tr. 801.

It appears that what Dr. Munzing refers to as a red flag encompasses all of the various aberrancies identified by Dr. Polston. Accordingly, the terms red flag and aberrancy appear interchangeably throughout the record. Regardless of the terminology, both experts seem to agree, and I find, that the applicable standard of care requires that red flags or aberrancies be investigated and that the results of that investigation be documented in the record.

a. Periodic Review With >80 MME Prescribed

Dr. Munzing particularly stressed the importance of monitoring for patients that are on opioids, and stated that a practitioner needs to ''intensely monitor'' the patient when prescribing more than 80–90 MME a day. Tr. 209. Dr. Polston likewise testified that ''[there are] more things [to be] concerned about at higher doses'' of opioids and agreed that there are ''more things [you are] tracking to ensure that the patient's health and safety [is not] at risk.'' Tr. 768.

6. Consultation [30]

According to Dr. Munzing, consultation is the requirement that physicians work ''much more in collaboration with each other, especially with chronic conditions.'' Tr. 276–77. Dr. Munzing stated that when ''managing a patient who is not getting better over time or getting worse, [a physician should] seek consultation with'' a specialist or a colleague for a ''second opinion.'' *Id.* The MBC Guide to the Laws similarly explains that the standard of care requires physicians to ''consider referring the patient as necessary for additional evaluation and treatment in order to achieve treatment objectives.'' GX 17, at 60. Additionally, the Guide notes that ''physicians should give special attention to those pain patients who are at risk for misusing their medications including those whose living arrangements pose a risk for medication misuse or diversion.'' *Id.* Notably, the MBC Guide to the Laws states that ''[c]oordination of care in prescribing chronic analgesics is of paramount importance.'' *Id.*

E. Patients

1. Patient B.G.

By way of background, B.G. was first seen by Respondent on August 12, 2013, for ''pain management consultation.'' GX 8 (Medical Records for B.G.), at 1064. During that office visit, B.G. reported that he had ''been under care of Dr. [M] for pain management for 10 years. He is on high dose of Methadone 240 mg per day. He gets 720 pills per month in the last 7 years.'' *Id.* There are no records in the patient file reflecting Dr. M's care of B.G., but Respondent testified that he unsuccessfully attempted to get those records.[31] *See generally* GX 8; Tr. 341–42, 1449–50. At that time, B.G. complained of low back and leg pain. GX 8, at 1064. The records reflect a note from Respondent stating, ''I [Respondent] told him that he needs a primary care physician [for] his regular medical conditions. And a neurologist for MS in his care. Otherwise, I would not take over his care.'' *Id.* at 1067.

Dr. Munzing testified that between February 14, 2017, and October 3, 2019, Respondent issued forty-three controlled substance prescriptions to B.G. outside the usual course of professional practice and beneath the standard of care in California. Tr. 421–22, 945; GX 24 (Chart of Prescriptions Reviewed by Dr. Munzing), at 1. The prescriptions included prescriptions for Dilaudid 4 mg. ranging from 60 tablets in February 2017 to 30 tablets in August 2017 when the prescription discontinued; Valium 10 mg. ranging from 90 tablets in February 2017 to 45 tablets in October 2019; and Methadone 10 mg. ranging from 600 tablets in February 2017 to 215 tablets in October 2019. GX 24, at 1. During the relevant period Respondent, as the expert witnesses testified, reduced the prescribed controlled substances' overall quantity of opioids from an ''astronomically high'' 2432 MME per day, Tr. 387–88, to 1720 MME per day, Tr. 441 and GX 24, at 1, and his function improved, Tr. 1099, 1191.[32] Dr. Munzing opined that Respondent failed to satisfy the standard of care with regard to performance of physical examinations, treatment plans, periodic review and monitoring, and recordkeeping.

Dr. Munzing testified in great detail regarding why the February 14, 2017 prescriptions were issued outside the standard of care. According to Dr. Munzing, none of the medical records between October 24, 2013, and February 14, 2017 ''confirm that there was [a physical] exam performed.'' [33] Tr. 379. Dr. Munzing testified that a standard physical examination of a back that a pain specialist should perform consists of ''observation, . . . touching the back, range of motion, reflexes.'' Tr. 373. The physical examination notes on February 14, 2017, state:

Review: No significant changes noted in the patient's physical examination in this follow-up visit.

General: The patient is well developed and well-nourished. Patient is alert and oriented. He is in no acute distress. Patient has good hygiene.

Cardiovascular: Cardiovascular examination revealed regular rate and rhythm. No murmurs auscultated. There is no evidence of pedal edema.

Abdomen: Not an obese person. The abdomen is soft, with no masses palpated, no rebound, rigidity or tenderness.

Neurology-Coordination: Diadochokinesia is found to be normal. Finger-to-nose testing is normal. Antalgic. The patient is unable to do heel walk. The patient was unable to do toe walk.

Gait: He is on W/C.

GX 8, at 629 (emphasis removed from original). According to Dr. Munzing, this medical record has ''very little there'' and ''no documentation of any musculoskeletal exam, arm, leg, back, which were the areas that were

[30] Although consultation is not a primary issue in this case, I am including this discussion as helpful in fully understanding the applicable standard of care for prescribing in California. *See also, infra* II.E.

[31] In his fourth exception, Respondent alleges that the ALJ erred by including Respondent's failure to document a discussion with Dr. M as an example of a deficient medical record because Dr. M's died before Respondent took over care of B.G. ALJX 28, at 13. I agree with Respondent on this issue and do not consider Respondent's inability to discuss prior care of B.G. with Dr. M or his inability to obtain records from Dr. M as rendering the relevant prescriptions outside the standard of care.

[32] Dr. Munzing explained that this sort of MME reduction decreases the risk to the patient, Tr. 874, but the MME is still high (in fact, ''anything over 120 MME is high dosage'' Tr. 304), ''and the prescriptions are not medically justified.'' Tr. 389; *see also id.* at 309, 1216–17.

[33] Dr. Polston did not definitively testify regarding whether during B.G.'s October 24, 2013 office visit, the records documented a physical examination related to B.G.'s MS, but instead testified ''[there is] a lot of inference there'' such as ''good hygiene.'' Tr. 773.

complained at.'' [34] Tr. 379–80. The records confirm Dr. Munzing's testimony. Dr. Polston did not testify specifically regarding the sufficiency of the physical examinations of B.G., but did testify generally that ''[a]ll records show appropriate medical histories and examination treatment plans.'' Tr. 684. I credit Dr. Munzing's more specific opinion that this record did not document an adequate physical examination of B.G.

In addition to not covering the areas where B.G. complained of pain, the exam notes were ''always the same.'' Tr. 379. I credit Dr. Munzing's testimony that in complying with the applicable standard of care pain management physicians should see ''some visit-to-visit variability.[[35]] So you might have two visits that might be identical. But over three-and-a-half years, [it is] not going to be identical.'' Tr. 380. According to Dr. Munzing, ''when you look at the medical records . . . there really is no evidence that there is an examination that verifies that this patient is in agony and extreme pain, certainly from an exam standpoint.'' Tr. 388.

Dr. Munzing went on to testify that the remaining relevant prescriptions issued between March 14, 2017, and October 3, 2019, were issued outside of the standard of care for the same reasons as the February 14, 2017 prescriptions. Tr. 405, 407, 409, 411, 415, 433, 438, 444. With regard to the mostly identical physical examination results, Dr. Munzing's testimony is supported by Mr. Deshpande, who testified that from February 14, 2017, to May 8, 2018, twenty-one physical tests [36] of B.G. were copied forward verbatim from prior medical visits without any new information being added. Tr. 1920–22; GX 29b (Bizmatics Subpoena Response), at 4–5. Eight physical tests were added on May 8, 2018, and then all twenty-nine of those physical tests were copied forward verbatim until October 3, 2019. *Id.* Additionally, Dr. Munzing clearly testified that even on the occasions where more information was added, the records did not contain sufficient documentation to justify the high dosages of controlled substances prescribed; therefore, the prescriptions remain outside the standard of care. Tr. 438–39. He stated, ''we have just a long cascade of exams that by and large have been copy with slight variation at times . . . we're still over 2,000 methadone equivalent . . . combination with an opiate which still puts the patient at very significant risk and again, if you look at the medical records, the medical records certainly don't verify and support a prescription at that extreme.'' Tr. at 433–434.

Dr. Munzing opined that the prescriptions were also beneath the standard of care with regard to the documentation of treatment plan objectives. He testified that for the February 14, 2017 prescriptions, the ''total opiate dosage [was] extremely high [at 2,432 MMEs], astronomically high'' given the lack of ''an examination that verified that this patient is in agony and extreme pain.'' Tr. 387–88. Dr. Munzing opined that he ''[did] not see anything in the records that would justify medications anywhere in this range.'' Tr. 389. Moreover, there is a ''combination of an opiate and benzodiazepine,'' but ''[t]here does not appear to be anything [that is] being done to mitigate this and to try alternative methods that were safer.'' Tr. 388. Dr. Munzing repeated these concerns in support of his opinion that the remaining relevant prescriptions between March 2017 and October 2019 were outside the standard of care. Tr. 405, 407, 409, 411, 415, 433, 438, 444.

Dr. Munzing also opined that the treatment plan lacked clarity as to what conditions Respondent was using controlled substances to treat. Dr. Munzing testified regarding this confusion, ''are we treating lumbar pain, are we treating . . . multiple sclerosis pain, or [are] you treating both? And . . . muscular sclerosis pain . . . typically [does not] respond nearly as well to opiates as with other medications that are focused on neuropathic pain.'' Tr. 390. This confusion is further heightened by the Valium prescription, because, as he explained, Valium, generically diazepam, is ''a longer acting benzodiazep[ine] and which makes it many times more risky because it stays in your system longer. [It has] been used for anxiety, [it has] been used sometimes for muscle relaxation.'' Tr. 391. Dr. Munzing confirmed that it is ''dangerous to prescribe Valium with opioids.'' Tr. 392.

According to Dr. Munzing, there is no real indication in B.G.'s early medical records that Respondent was treating B.G. for his MS and there is no indication of the purpose of the Valium prescription.[37] Dr. Munzing testified that the initial exam lacked details regarding the history of the multiple sclerosis condition and lacked ''information that one would expect if [Respondent was] going to take over management of that condition.'' Tr. 342–43. According to a medical record dated March 16, 2016, B.G. reported to another medical provider, Dr. P., that he was taking Valium for ''irritability and depression,'' not for spasticity. GX 8, at 913. It was not until July 14, 2017, that the medical records include a note stating, ''Valium 10 mg tid × 45 for spasticity,'' with spasticity being an apparent reference to one of B.G.'s multiple sclerosis symptoms.[38] GX 8, 485; Tr. 416. But even with the July note, according to Dr. Munzing, it was not clear that Respondent was treating B.G.'s multiple sclerosis because the neurological examination was insufficient to support the prescription.[39] Tr. 417. Dr. Polston was also left to speculate regarding the Valium's purpose in the beginning, stating ''I think [it is] pretty much for anxiety and depression, but [B.G.] also [has] prior multiple back surgeries and spasms would not be irrelevant here.'' Tr. 782; *see also* 818.

Dr. Munzing explained that, while Respondent reduced B.G.'s opioid dosages, he did not document a

[34] Dr. Munzing testified there is ''no mention of the arms . . . [no] mention [of] anything specific about the legs other than he cannot do a heel or toe walk . . . no listing of the back.'' Tr. 384. In short, Dr. Munzing opined that the performance of the physical examination, assuming it was performed as documented, was still outside the standard of care for the patient. *Id.*

[35] Dr. Polson's testimony on cross-examination seemed to agree.

Q Do you typically see even for chronic pain patients over time, some change in their medical condition?

A Somewhat. Some—sometimes not always.

. . .

Q And even if you were conducting the same physical examinations month after month, you would occasionally see for some variance in the results?

A Yes.

Tr. 717.

[36] Mr. Deshpande testified that ''the number of physical tests copied refers to the discrete number of questions or tests or bullets that are part of the physical exam section that got copied from the previous visit to this visit.'' Tr. 1911.

[37] The ALJ found that ''the failure to timely document that [Respondent] was prescribing Valium to B.G. for spasticity represents a violation of the California standard of care relating to complete and accurate recordkeeping.'' Tr. 207. I agree.

[38] In his Exceptions, Respondent argued that the medical record has enough information generally to determine that the Valium prescription was issued for spasticity prior to the 2017 medical note. I find this argument to be without merit particularly because the lack of clarity in the medical records left both Dr. Munzing and Dr. Polston unsure of the exact purpose of the Valium prescription until July 2017. Additionally, Respondent argued that ''there is no nexus between the alleged failure to *timely* document the reason for . . . [the] Valium, and the stated goals of the DEA to avoid diversion.'' ALJX 30, at 13. I also find this argument, which is based on a misunderstanding of the meaning of ''diversion,'' to be without merit for the reasons set forth in *infra,* n.62.

[39] Put another way, even though the purpose of the Valium prescription is known by July 14, 2017, the subsequent Valium prescriptions remain outside the standard of care for Respondent's failure to perform a proper physical examination. *Supra.*

treatment plan for so doing. On February 14, 2017, the first set of prescriptions for the relevant time period, Respondent prescribed B.G. dilaudid 4 mg, 60 tablets; Valium 10 mg., 90 tablets; and methadone, 10 mg. 600 tablets. GX 24, at 1. Monthly from March 2017 through and including August 2017, Respondent prescribed B.G. dilaudid 4 mg, 30 tablets; Valium 10 mg., 45 tablets; and methadone, 10 mg. 300 tablets. *Id.* For the prescriptions between March 2018 and October 2018,[40] the dilaudid prescription was discontinued, Valium 10 mg. stayed constant at 45 tablets, and methadone 10 m.g. reduced gradually from 270 tablets, to 250, to 230, to 225, and finally to 215. *Id.* Dr. Munzing testified that early in B.G.'s treatment, Respondent had an obligation to ''come up with a management strategy to mitigate the risks, to decrease the risks, to bring [the high doses] down,'' it cannot be ''haphazard.'' Tr. 2041, 1072. Here, Dr. Munzing testified, ''there was an initial drop, and then it was kept stable for an extended period of time.'' Tr. 2045. ''Rather than we'll drop it a little bit, and then continue for six months,'' Dr. Munzing testified, Respondent needed to ''come up with a game plan . . . whether it be a three-month, a six-month plan of action, and then it may need to be tweaked along the way . . . or alter[ed].'' Tr. 2044. Respondent's Exhibit SS, a California Department of Public Health note to providers, confirms Dr. Munzing's testimony about the need for a plan and states, with regard to tapering patients on opioids, that physicians should ''[e]nsure patients understand the risks and benefits of dose maintenance versus dose tapering and develop an individualized plan in collaboration with patients.'' RX SS, at 2. According to Dr. Munzing, while the record occasionally documents that Respondent discussed tapering, Tr. 2098, it does not document what specifically was discussed. And there is no documented individualized treatment plan of action for reducing the controlled substance dosage in the records for B.G. between February 2017 and August 2017. GX 8. For example, between the February 2017 visit and the March 2017 visit, the quantity of all controlled substance prescriptions was cut in half without any explanation for the reduction; both medical record records simply stated ''[p]atient to continue on current medication regimen.'' GX 8, at 625. Beginning in December 2017, Respondent documents a plan to ''bring down [Methadone] 5–10 tabs per visit'' and that plan appears in the records through October 2019. GX 8, at 359; GX 9, at 2–6. Accordingly, I find in accordance with Dr. Munzing's testimony, that the failure to document a treatment plan for the reduction of controlled substance prescribing between February 2017, and August 2017, was outside the standard of care.

Dr. Munzing also explained that where Respondent did create what could be considered a treatment plan for B.G., he did not always follow it. He testified that, at Respondent's initial visit with B.G., he documented that he would not treat B.G. without him having a neurologist to manage the MS. Tr. 1067. On February 19, 2018, the medical records prepared by a different provider state that B.G. ''has been on valium tid[41] for several years for spasticity of the LE. Discussed today with [Respondent], who states that because this is a PMR practice we will continue to prescribe this with the patient's opioid pain medications provided that the patient bring[s] an annual note from neurologist or neurosurgeon who currently sees him for MS if the valium continues to be recommended.''[42] GX 8, 306. Again, the Valium continued to be prescribed throughout the relevant period even though Dr. Munzing agreed that he did not see notes from a neurosurgeon or neurologist appear in B.G.'s records at any time. Tr. 427, *see also* 1728–35. Respondent himself testified that despite the note written by his nurse practitioner, which Respondent admitted ''[he] missed,'' he ''do[es] not require neurology . . . [because] [he is] more specialized than regular neurology to manage spasticity.'' Tr. 1739. This testimony directly conflicts with Respondent's initial medical record for B.G., which stated that if B.G. did not see a neurologist for his MS, Respondent ''would not take over his care.'' GX 8, at 1067. Notably, Dr. Polston testified that he ''would insist'' that a pain patient with MS see a neurologist. Tr. 772. Even if Respondent did not make that note as he contests, it appeared in his treatment plan. Regardless of whether or not a neurological consultation was required, it is clear that the treatment plan is not clearly or consistently documented.

Furthermore, Dr. Munzing opined that Respondent's records for B.G. were beneath the standard of care regarding the requirement to conduct periodic review and monitoring. Dr. Munzing repeatedly criticized that Respondent put ''[B.G.] at significant risk'' by prescribing ''high doses'' of opioids in ''combination with a benzodiazepine'' without any evidence of ''attempting alternative medication that would be less risky.'' Tr. 439, *see also* 434. Moreover, an office visit note for May 31, 2016, stated ''[t]he pt say Dr. [P], psych. About a couple of weeks ago, report is recommending to continue Opioid Medications and taper off benzos.'' GX 8, 797. Tr. 427–28. Dr. Munzing testified that Dr. P's recommendation is a red flag and that the standard of care required that Respondent resolve the red flag and document the resolution, which was not done here. Tr. 359. Additionally, Dr. Munzing testified that the notation regarding Dr. P's recommendation continued to be pasted in the medical record until July 14, 2017, yet Respondent never documented a resolution of the red flag and continued prescribing the valium without change. Tr. 363, 368, 385, 402, 413–14. Dr. Munzing testified that on April 29, 2019, when B.G. stated that he ''[could not] live without Valium,'' it presented yet another red flag, and that Respondent needed to ''explore'' whether that statement meant that B.G.'s ''condition is such that he needs it'' or whether he is ''so dependent on it that if he stops it, he has some symptoms [of] withdrawal.'' Tr. 439; GX 8, at 12.

I note that the record contains many examples of appropriate steps that Respondent took to monitor B.G. including running CURES reports, requiring urinary drug screens, requiring regular follow-up appointments, and administering the opioid risk tool questionnaire;[43] Respondent also referred B.G. to a cardiologist and to a pain psychologist.[44] Tr. 664, 1086, 1094, 1097–98. However, Dr. Munzing testified that ''[s]olely that the fact that [they are] doing urine drug screens and a CURES reports, those alone without the other components . . . [do not] provide medically a justification for prescribing.'' Tr. 422. There were also

[40] The prescriptions between August 2017 and March 2018 were not identified as being at issue in this case. *Id.*

[41] Dr. Munzing testified that ''tid'' means three times a day. Tr. 424.

[42] The record goes on to state ''[d]iscussed this with patient who is upset he needs this note when previously neuro input was no required. Discussed the latest opioid guidelines and the potential for additive respiratory depression when benzodiazepines and opioids are taken together. He verbalized understanding, states he was previously on an additional benzodiazepine for anxiety and this was stopped.'' GX 8, at 306.

[43] Dr. Munzing and Dr. Polston both testified that these are appropriate tools to use for monitoring. *See e.g.* Tr. 605, 664, 1023, 1097–98.

[44] Though, as addressed herein, Respondent did not resolve the red flag arising from the pain psychologist's recommendation to taper off benzos. Tr. 1086–89.

additional inaccuracies with B.G.'s patient record. For example, on June 15, 2017, the medical records for B.G.'s office visit on that date do not include a prescription for Valium, GX 8, at 529, when Valium was in fact prescribed, *id.,* at 524. Tr. 408–09. The impact of this inaccuracy is amplified due to the dangers presented by Respondent's prescribing of Valium, a benzodiazepine, concurrently with opioids. *See supra* II.D.3.b. Also, back in August 2013, during the initial evaluation, Respondent noted that, ''[B.G.] gets 720 pills per month in the last 7 years.'' GX 8, at 1064. This note was repeated verbatim throughout Respondent's treatment of B.G. up-to-and-including the last relevant record dated October 3, 2019. GX 9 (Medical Records for B.G.), at 18). According to Dr. Munzing, while this statement may have been accurate in 2013, Tr. 339, once it got carried over ''year after year,'' it was no longer accurate and created an internal inconsistency within the records. Tr. 332.

In accordance with Dr. Munzing's testimony and the record as a whole, I find that, the forty-three relevant prescriptions issued to B.G. for methadone, dilaudid, and Valium between February 14, 2017, and October 3, 2019, were issued outside of the usual course of professional practice and beneath the applicable standard of care in California. Particularly, in accordance with Dr. Munzing's testimony, the relevant prescriptions were issued beneath the standard of care and outside the usual course of professional practice, because Respondent failed to perform and/or document a proper physical examination, develop and/or document treatment plan objectives, appropriately monitor and resolve and/or document the resolution of red flags, and maintain accurate and complete medical records.

2. Patient D.B.

D.B. first saw Respondent for pain management on January 3, 2017, when she complained of pain in her low back and hip. Tr. 449, GX 4 (Medical Records for D.B.), at 1. At that time, according to her medical records, D.B. had received ''three total hip revisions,'' the last of which had complications with infection. Tr. 449. On September 8, 2018, Respondent implanted a pain pump for D.B. to address D.B.'s continuing hip pain. Tr. 450–51; GX 4, at 401, 404. Over the course of D.B.'s visits with Respondent, as the expert witnesses testified, Respondent reduced the prescribed controlled substances' overall MME (outside of the pain pump) from 191 to 90 MME per day and her function improved.[45] Tr. 582–83, 625, 1028, 1034.

Dr. Munzing testified that between January 23, 2017, and August 2, 2019, Respondent issued thirty-one controlled substance prescriptions to D.B. beneath the standard of care in California. Tr. 945; GX 24, at 2. The prescriptions included fentanyl 25 mg./ml. in a 10 ml. vial; hydromorphone 50 mg./ml. in a 10 ml. vial; OxyContin 30 mg., 60 tablets issued roughly every other month between January 2017 and May 2017; and finally oxycodone 15 mg. ranging from 135 tablets in January 2017 to 90 tablets in August 2019. GX 24, at 2. Dr. Munzing opined that Respondent failed to satisfy the standard of care with regard to performance of physical examinations, periodic review and monitoring, and recordkeeping.

Dr. Munzing opined that the physical examinations in the record were beneath the standard of care because the Respondent appeared to have copied and pasted the physical examination repeatedly. Dr. Munzing testified that at some point there was ''a documented hip exam which got copied, copied, copied, copied, copied. So we [cannot] confirm that [an exam] was done at all those times because it was a copy forward. And then suddenly a month after the pump goes in, it drops off, which is . . . curious timing . . . [because] [i]f [you are] really treating hip pain, you want to try [to] find . . . some improvement in that.'' Tr. 1294–95. I credit Dr. Munzing's opinion and find that Respondent failed to adequately perform physical examinations as required by the standard of care for prescribing for pain in California. There are additionally times in the records, where, according to Dr. Munzing, ''[d]espite some increase in hip pain, [there is] no documented exam of the hip.'' Tr. 464, 466.

Dr. Munzing testified that an adequate physical examination of D.B.'s hip would entail things like ''look[ing] for any redness, swelling,'' ''palpat[ing] or touch[ing] it,'' ''somewhat of a range of motion . . . rotational exams . . . [there is] a variety of things you can do even when a patient is sitting there in the wheelchair.'' Tr. 1290–91. Dr. Munzing testified that performing a physical examination was important to determine if, as a result of the pain pump, ''the patient may have increased range of motion'' or if ''she may not have pain when [you are] making some maneuvers, or the pain may change.'' Tr. 1296. Dr. Munzing further stressed the importance of a physical exam because, ''[s]he had a history of an infection . . . [i]f an abscess or other infection started happening, she may not recognize that . . . this is infectious pain instead of other pain.'' *Id.*

Regarding the appropriateness of a physical examination of D.B.'s hip, Dr. Polston testified that D.B. ''is a patient who has a lot of pathology in her hip. She's had five surgeries and I would be very cautious about any type of movement with this patient.'' Tr. 601. Dr. Polston testified the physical examination would consist of ''is there an infection there? . . . If the patient is saying . . . the hip is . . . stable or that [she is] responding to some of the medicines . . . [that is] the exam.'' *Id.* However, the physical examination portion of the records subsequent to October 1, 2018, do not include any mention of the hip whatsoever including mention of whether the hip was evaluated for potential infection.[46] *See* GX 4, at 331. Respondent testified that following the October 1, 2018 physical examination of D.B.'s hip, Tr. 1382–83, no further examination was necessary because the patient's condition was ''permanent and stationary,'' and because of her history, an examination could ''potentially cause another [hip] dislocation right in the office.'' Tr. 1386. Based on Respondent's own admission and a review of the medical records, it does not seem that the Respondent conducted even the limited physical examination of D.B.'s hip that Dr. Polston testified would satisfy the standard of care. Regardless, I credit Dr. Munzing's testimony that Dr. Polston's description of the physical examination requirement did not reflect the standard of care. Tr. 1294.

Dr. Munzing also opined that Respondent issued prescriptions for controlled substances beneath the standard of care due to his failure to ''attempt to get prior medical records to confirm the accuracy of what'' D.B. reported regarding ''her multiple surgeries and . . . an infection . . . in

[45] Dr. Polston testified that the MME D.B. was receiving (for the oral medication prescribed, not the medication in the pain pump) ''was cut in . . . more than a half,'' which, he acknowledged, was an example of a ''pain management specialist doing a[n] outstanding job in the reduction of the medication.'' Tr. 625. Dr. Munzing testified that even though ''[it is] great that [Respondent was] tapering down,'' Tr. 1218, prescriptions that are tapered down still must have ''adequate[ ] justif[ication]'' other ''than just the fact they were on a high dose.'' Tr. 1217.

[46] The History of Present Illness portion of the records contain information like ''[t]he patient complains of pain in the Hip pain [sic.] . . . [o]n average the pain is 7/10 . . . [p]t reports increased pain in the mornings'' and arguably contains information regarding the stability of the hip and D.B.'s response to the medication, which Dr. Polston testified was also required.

her hip.'' [47] Tr. 869–70. Dr. Munzing explained that there is ''a history that the patient has had multiple hip surgeries and presumably . . . is being followed by someone else, but we really [do not] know specifics. And [there is] no imaging.'' Tr. 461. Dr. Munzing opined that Respondent had a ''responsibility to do a thorough history'' initially ''to confirm what [the patient was] saying.'' Tr. 1209. Respondent countered this opinion with testimony that he had ''a brief conversation with the patient transferring place, so you have to trust that physician . . . Second, in pain management, . . . you have to trust your patients.'' Tr. 1366. Notably, Respondent later confirmed that his purported call with the referring physician was ''[n]ot documented.'' Tr. 1692. Dr. Polston conclusively opined that Respondent's failure to secure prior records or imaging did not mean Respondent acted outside the standard of care. Tr. 603. However, Dr. Polston later agreed that he has ''had patients who, in [his] opinion, [were] trying to exaggerate their medical condition,'' and that you must ''consider'' what patients tell you regarding their condition, but that you ''just [cannot] take what they tell you at face value.'' Tr. 725. I credit Dr. Munzing's testimony [48] and find that Respondent failed to confirm D.B.'s prior medical history and/or failed to document that confirmation—either way I find that this failure violated the applicable standard of care.

Dr. Munzing opined that Respondent's periodic review and monitoring of D.B. was beneath the standard of care because Respondent failed to resolve red flags arising from D.B.'s inconsistent urine drug screen collected on July 7, 2017, and released on July 17, 2017.[49] GX 4, at 715–16; Tr. 856–62. On July 7, 2017, D.B. was prescribed neither carisoprodol (Soma) nor hydrocodone/codeine, yet, metabolites of those two medications appeared in D.B.'s urine drug screen and were documented as ''inconsistent'' results. Tr. 856, 858; GX 4, at 715. Dr. Munzing confirmed that ''Soma, in particular, can be very dangerous when prescribed with an opioid.'' Tr. 1246. According to Dr. Munzing, it was ''incumbent upon [Respondent] to, in a very timely manner,[[50]] call a patient, talk to the patient.'' Tr. 1249. Respondent needed to figure out ''[what is] going on, and emphasize to the patient that . . . if [she] . . . got some medication through someone else . . . this can be a . . . fatal problem.'' *Id.* Furthermore, he had to ''document specifically what [he] did and [his] reasoning behind a decision to keep on prescribing.'' Tr. 860. Here, as Dr. Munzing confirmed, the medical record did not document any conversation with the patient, Respondent's determination as to what caused the inconsistent results, or what Respondent planned to do about it. *Id.;* and at 1046, 2151–52.

According to Respondent, the aberrancy was addressed on August 3, 2017, as is documented in the note stating, ''MD reviewed LC/MS [liquid chromatography-mass spectrometry] from the DOS of inconsistent 07/07.'' GX 4, at 708, 1053. Respondent testified that he did not need to contact D.B. sooner following the UDS because there were other, less sensitive drug screens run on the same day that did not show aberrant results; therefore, it could have been ''a possible lab error'' and ''[that is] no reason to call a patient to say you could be in danger.'' Tr. 1436. Respondent's argument is contradicted by the record evidence that the other, ''less sensitive drug screens'' run on D.B. on July 7, 2017, make no mention of, and do not appear to have tested for Soma/carisoprodol or its metabolite meprobamate or hydrocodone and codeine or their metabolite norhydrocodone. GX 4, at 719–20. The possibility of a lab error is also less likely, given that, on cross examination, Respondent confirmed that his office was prescribing Soma to D.B.'s daughter around the time of June 7, 2017. Tr. 1687. Respondent agreed that it was hypothetically ''possible that [D.B.] obtained Soma from her daughter's prescription.'' Tr. 1688. However, Respondent avoided a direct answer when asked whether D.B. could have obtained the Soma unlawfully from her daughter. Tr. 1688. He testified, ''Let's put it this way. If [it is] a Soma, if you [are] so close to each other, it could be from a liquid contamination [to] make her urine positive too.'' *Id.* When pressed by the ALJ regarding how Soma could show up in D.B.'s system unless D.B. took it,[51] Respondent explained how the daughter's Soma could accidentally be ingested if the daughter dropped it in D.B.'s food. Tr. 1688–89. The scenario described by Respondent to any logical person strains credulity. Further, there is no evidence on the record that supports the notion that D.B.'s daughter might have dropped her medication in her mother's food. If Respondent had some information that this scenario explained the presence of the Soma after talking to the patient, then in accordance with Dr. Munzing's testimony, that should have been documented. There is no dispute that the medical record did not capture any discussion regarding a conversation with the patient, Respondent's determination as to what caused the inconsistent results, or what Respondent planned to do about it. Tr. 1690.

I credit Dr. Munzing's opinion and find that Respondent failed to appropriately monitor D.B. in accordance with the standard of care when he failed to timely follow up on the inconsistent drug screen; however, even if waiting until the next appointment had been proper, Respondent further issued the next prescription beneath the standard of care by not adequately documenting resolution of the aberrant UDS in the records. I note that the record contains many examples of appropriate steps that Respondent took to monitor D.B. including running CURES reports, requiring urinary drug screens, requiring regular follow-up appointments, and administering the opioid risk tool questionnaire. Tr. 604–05; 1021–25. However, Respondent's actions with regard to this aberrant UDS did not, and I have found his explanation to not be credible. Therefore, I considered Respondent's failure in monitoring in finding that the prescriptions for controlled substances

[47] Dr. Munzing described this as a failure from a ''foundation standpoint'' and explained that this failure applied to all of the relevant prescriptions issued to this patient. Tr. 869–70.

[48] I find that the MBC Guide to the Laws provides further support to Dr. Munzing's testimony in stating that generally, ''[m]edical documentation should include both subjective complaints of patient and caregiver and objective findings by the physician.'' GX 17, at 61. Therefore, the MBC Guide to the Laws makes it clear that a physician has a duty to do more than rely on the subjective position of the patient.

[49] The OSC alleges other aberrant drug screens for D.B, which the Government appeared to drop from its case in its posthearing brief. OSC, at 6; ALJX 27 (Government's Posthearing), at 9–10. Dr. Polston and Respondent both credibly testified that medication infused through a pain pump does not pass through the blood/brain barrier and as a result, will not necessarily show up in urine. RD, at 194–96. Accordingly, D.B.'s UDS that showed a negative result for prescribed substances were not necessarily aberrant. *Id.* I agree with the ALJ and am not sustaining these allegations from the OSC. *See id.*

[50] Dr. Munzing testified that this UDS showed ''potentially serious findings of aberrancies, and so typically one would not wait [until] the next visit'' to discuss them with the patient. Tr. 1042. Rather, ''[o]ne would pick up the phone and call and manage it over the phone.'' *Id.* And the phone call needed to be in ''[s]hort order,'' which could ''be hours or a couple of days'' but not to wait weeks to the next visit. Tr. 1043.

[51] Dr. Munzing testified that the only way a urine drug screen would test positive for a substance is if the patient ingested that substance. Tr. 2066, 2118; RD, at 77.

issued after the aberrant UDS were issued beneath the standard of care.

In accordance with Dr. Munzing's testimony, I find numerous recordkeeping violations on top of those already addressed above, which contribute to my finding that Respondent's controlled substance prescribing to D.B. was beneath the standard of care and outside the usual course of professional practice. For example, on May 12, 2017, Respondent wrote in the medical records that he was prescribing 120 tablets of oxycodone, but he, in fact, prescribed 135 tablets. *Compare* GX 4, at 761 *with* 757 and GX 6b (Prescription Records for D.B.), at 7–8. Dr. Munzing opined that the prescriptions on this date were beneath the standard of care for the above reasons and because ''the amount prescribed is not consistent with what was written in the chart.'' Tr. 497. Second, different medical records dated January 7, 2019, January 21, 2019, and February 2, 2019, all state ''recheck today 1/3/18'' under ''Urine Drug Screening,'' GX 4, at 104, 128, 141, which Dr. Munzing opined was an errant copy forward from prior examinations. Tr. 851–55. Ultimately, Dr. Munzing opined that the ''internal inconsistency even within [D.B.'s] record'' and between the medical record and accompanying prescriptions, demonstrated that the prescriptions were issued beneath the standard of care. Tr. 871.

Dr. Polston, when asked, opined that ''[i]n totality, . . . the standard of care . . . was . . . met by [Respondent] with regard[ ] to record keeping and charting of this patient D.B.'' Tr. 618–19. Respondent similarly testified that ''the totality of overall my charts are good. Of course there [are] some mistakes. [But] I think my chart[s] overall [are] above average.'' Tr. 1607.

I credit Dr. Munzing's more specific opinion, which more accurately relies on the record evidence, and find that Respondent acted beneath the standard of care when he failed to maintain complete and accurate records for D.B. Although some of these mistakes by themselves might not always amount to a particular prescription being issued beneath the standard of care and outside the usual course of professional practice, the fact that these mistakes were made on top of the other failures further demonstrates that Respondent was not maintaining accurate records or documentation. As Dr. Munzing described it, the ''supporting information is just not there.'' Tr. 871.

In accordance with Dr. Munzing's testimony and the record as a whole, I find that, the thirty-one prescriptions for Fentanyl, oxycodone, hydromorphone and OxyContin issued to D.B. between January 23, 2017, and August 2, 2019, were issued outside of the usual course of professional practice and beneath the applicable standard of care in California. Particularly, in accordance with Dr. Munzing's credible testimony and as supported by California law, the relevant prescriptions were issued outside the standard of care because Respondent failed to perform and/or document a proper physical examination, obtain and/or document an adequate history, appropriately monitor and resolve and/or document the resolution of red flags, and keep accurate and complete records.

3. Patient E.N.[52]

By way of background, E.N. had a history of back surgeries, severe back pain, and weakness in the legs necessitating use of a wheelchair; she became a patient of Respondent in 2006. Tr. 677, 1567. The first medical documentation presented in the record evidence by the Government was dated July 3, 2012, wherein E.N. complained of pain in her low back and knees, complaints, which continued throughout Respondent's treatment of E.N. Tr. 875; GX 12 (Medical Records for E.N.), at 769. Tr. 1145–46; GX 12, at 770. Tr. 877–78; GX 12, p. 766. Over the course of E.N.'s visits with Respondent, for which there are medical records available, the experts testified that Respondent reduced E.N.'s opioid prescriptions from 1,920 MME per day to 960 MME per day [53] and that E.M.'s function improved. Tr. 879, 903, 911, 1147, 1534, 1542.

Dr. Munzing testified that between February 3, 2017, and April 15, 2019, Respondent issued forty-three controlled substance prescriptions to E.N. beneath the applicable standard of care in California. Tr. 945; GX 24, at 3. The prescriptions included prescriptions for Methadone 10 mg. ranging from 360 tablets issued in February 2017 to 120 tablets issued twice a month in April 2019; and a single prescription for Dilaudid 4 mg., 14 tablets issued in January 2019. GX 24, at 3. Dr. Munzing opined that, based on his review of the medical file for E.N., Respondent failed to satisfy the standard of care with regard to performance of a physical examination, periodic review and monitoring, and recordkeeping. Tr. 911, 927–28.

Dr. Munzing credibly testified that the ''extraordinarily high amounts'' of opioids, with a MME ranging from 1440 to 960 per day during the relevant period, Tr. 887, 903, ''would certainly not be medically justified'' by the medical records he reviewed for E.N. Tr. 912–13. Dr. Munzing testified that while the section of the patient records that covers the history of present illness for E.N. is different from visit to visit,[54] the physical examination has ''verbiage that is the same . . . word for word'' continuously between May 25, 2016, and April 15, 2019. Tr. 1173, 1177–78. According to Dr. Munzing, this repeated physical examination is outside the standard of care because ''we [do not] know on any particular date, what truly was the patient's condition at a certain date, and [that is] required to be able to justify, are we going to continue using this, is this the right treatment?'' Tr. 911–12. Dr. Munzing further confirmed that where the physical examination notes were simply repopulated, the ''records do not establish that a physical exam actually occurred.'' Tr. 1237.

Dr. Munzing testified generally that, with regard to E.N.'s records, ''large portions of them, and almost entirely the physical exam, appears to get cut-and-paste or are copied forward.'' Tr. 911. Respondent's counsel pointed out and Dr. Munzing acknowledged that on three dates (May 25, 2016, May 16, 2018, and December 27, 2018), ''new information was put in'' alongside the repopulation. Tr. 1263; *see also* GX 12, at 90, 216, 556. Regarding E.N., Dr. Munzing acknowledged that it would be ''fair to say that on dates when new examination notes appear, that [is] probably an indication there was a physical examination [performed] that

[52] Respondent's second Exception challenges the ALJ's finding that Respondent did not re-evaluate the proper course of treatment in the face of E.N.'s reports of increased pain in November 2015. ALJX 30, at 7. Of note, the ALJ found that that re-evaluation did occur, but that it was not documented in the treatment plan. RD, at 216. Regardless, I do not see anything in the record that ties these facts from November 2015 to the legitimacy of the prescriptions from 2017–2019 that are at issue in this case. Accordingly, I consider the matter to be irrelevant and I have not considered the ALJ's finding on this particular matter in issuing my decision.

[53] Dr. Munzing explained that this sort of MME reduction is commendable and reduces the risk to the patient; however, the MME remains ''extraordinarily high'' and is not medically justified. Tr. 912–13; *see also* 681, 702, 1146, 1152–53.

[54] In his Exceptions, Respondent argued that where the medical records reflected changes to the history of present illness, vital signs, and other sections, it ''clearly demonstrated that Respondent, or other physicians or mid-level providers acting on his behalf, had seen and evaluated the patients on a regular basis.'' ALJX 30, at 17. Even assuming that the information establishes that the patient was seen, it does not establish that an adequate physical examination to justify the prescription occurred. *See supra* II.D.2. Therefore, although it is true that parts of the medical record might have met the standard of care, those parts do not impact my finding that, based on Dr. Munzing's testimony, the physical examination records were not adequate.

matches what was described within the notes.'' Tr. 1238. The Government notably did not allege that the prescriptions issued on May 25, 2016 (which were before the time period of the allegations) or the prescriptions issued on December 27, 2018, were issued beneath the applicable standard of care and outside the usual course of professional practice, GX 24, at 3; therefore, I find that Dr. Munzing's acknowledgement of the documented physical examination on May 16, 2018, only affects the prescription issued on that date. The Government did not present any further testimony regarding the adequacy of the note on May 16, 2018, in documenting the alleged physical examination and therefore I am not finding that the prescription for methadone issued on that date was issued beneath the standard of care.

With regard to the applicable standard of care's requirement to conduct a periodic review and monitoring, the record contains several examples of appropriate steps that Respondent took to monitor E.N. that Dr. Munzing acknowledged met the applicable standard of care. Tr. 1165–66, 1544, 1551, 1555. However, the Government alleged that Respondent's prescriptions for controlled substances to E.N. fell beneath the standard of care when he failed to resolve a particular red flag related to an early refill request.[55] OSC, at 12. On February 8, 2019, E.N. visited Respondent for a ''methodone refill. She can not [sic.] get her previous RX filled due to pharmacy issues. It has tried two different pharmacies without help. She is here for new rx for refill.'' GX 12, at 58; Tr. 919. According to Dr. Munzing, this note constitutes a ''red flag'' because it is ''something that catches [Dr. Munzing's] attention that needs further exploration and documentation.'' Tr. 920. Dr. Munzing testified that the pharmacies could have refused to fill the prescriptions for ''suspicious [or] not-suspicious reasons,'' and that it was therefore ''important . . . to find out from the patient why . . . are they not filling it.'' Tr. 920. Dr. Munzing confirmed that the medical record contains no ''notation or documentation resolving that red flag'' and opined that this failure was ''outside the standard of care.'' Tr. 927–28. Dr. Polston opined that Dr. Munzing's opinion was ''very naïve and shows limited experience in the practice of pain medicine,'' because, at the time, pharmacies were ''extremely concerned about prescribing'' and ''sometimes they [do not] have the medicines themselves.'' Tr. 683. Dr. Polston's testimony seems to imply that because there could have been a perfectly legitimate reason that E.N. required the refill, a scenario Dr. Munzing also acknowledged, there was no red flag present. However, Dr. Polston also acknowledged on cross-examination that there could have been suspicious reasons why the prescription was not filled, such as forgery or impairment (intoxication).[56] Tr. 805, 808. Ultimately, Dr. Polston admitted that he does not know why the prescription was rejected by the pharmacies. Tr. 804, 808. I credit Dr. Munzing's opinion that whether or not the reason for the refill request was legitimate, the reason had to be documented, and I find that Respondent's failure to document the resolution of this red flag was beneath the standard of care and outside the usual course of the professional practice.

In accordance with Dr. Munzing's testimony and the record as a whole, I find that forty-two of the forty-three prescriptions issued to E.N. relevant to this case were issued outside of the usual course of professional practice and beneath the applicable standard of care in California. Particularly, in accordance with Dr. Munzing's testimony, the relevant prescriptions were issued outside the standard of care because Respondent failed to perform and/or document a proper physical examination, appropriately monitor and resolve and/or document the resolution of a red flag, and keep accurate and complete records.

III. Discussion

A. Allegation That Respondent's Registration Is Inconsistent With the Public Interest

Under Section 304 of the CSA, ''[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined by such section.'' 21 U.S.C. 824(a)(4). In the case of a ''practitioner,'' defined in 21 U.S.C. 802(21) to include a ''physician,'' Congress directed the Attorney General to consider the following factors in making the public interest determination:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing . . . controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the . . . distribution[ ] or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(f). These factors are considered in the disjunctive. *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003).

According to Agency decisions, I ''may rely on any one or a combination of factors and may give each factor the weight [I] deem[ ] appropriate in determining whether'' to revoke a registration. *Id.; see also Jones Total Health Care Pharmacy, LLC* v. *Drug Enf't Admin.,* 881 F.3d 823, 830 (11th Cir. 2018) (citing *Akhtar-Zaidi* v. *Drug Enf't Admin.,* 841 F.3d 707, 711 (6th Cir. 2016); *MacKay* v. *Drug Enf't Admin.,* 664 F.3d 808, 816 (10th Cir. 2011); *Volkman* v. *U. S. Drug Enf't Admin.,* 567 F.3d 215, 222 (6th Cir. 2009); *Hoxie* v. *Drug Enf't Admin.,* 419 F.3d 477, 482 (6th Cir. 2005). Moreover, while I am required to consider each of the factors, I ''need not make explicit findings as to each one.'' *MacKay,* 664 F.3d at 816 (quoting *Volkman,* 567 F.3d at 222); *see also Hoxie,* 419 F.3d at 482. ''In short, . . . the Agency is not required to mechanically count up the factors and determine how many favor the Government and how many favor the registrant. Rather, it is an inquiry which focuses on protecting the public interest; what matters is the seriousness

[55] The Government also alleged that Respondent failed to resolve a red flag arising from his receipt of a ''Retrospective Drug Utilization Review Program'' letter dated April 27, 2016, that states that ''[E.N.] has filled medication(s) that may be of concern.'' OSC, at 12. Dr. Munzing opined that to resolve this red flag within the standard of care, Respondent would have had to ''document the fact that they . . . received this,'' determine that ''the potential risks of the medications are worth it, based on the potential benefits to the patient,'' and document ''the justification behind what I'm doing moving forward.'' Tr. 924–25. Assuming that the Government established that Respondent failed to resolve this red flag in accordance with the standard of care, the Government has not tied Respondent's failure to resolve this particular red flag to the specific prescriptions at issue in this case, which do not begin until approximately nine months after the date of this letter. Absent explanation as to how this particular red flag ties to whether or not the relevant prescriptions were issued within the standard of care, I decline to consider this allegation.

[56] Dr. Polston's opinion clearly suggests that if forgery or impairment were the reasons why the prescription was not filled, then there would be documentation of that in the record. Tr. 805, 808. The absence of this documentation seems to be what Dr. Polston uses to support his opinion that the reasons why the prescription were not filled were legitimate and his harsh criticism of Dr. Munzing. *Id.* I cannot conclude that the absence of documentation proves the legitimacy of the prescription, especially not in a case as riddled with recordkeeping problems as this one. *Supra* II.E.; *infra* III.A.2.

of the registrant's misconduct.'' *Jayam Krishna-Iyer,* M.D., 74 FR 459, 462 (2009). Accordingly, as the Tenth Circuit has recognized, findings under a single factor can support the revocation of a registration. *MacKay,* 664 F.3d at 821.

DEA regulations state, ''[a]t any hearing for the revocation . . . of a registration, the . . . [Government] shall have the burden of proving that the requirements for such revocation . . . pursuant to . . . 21 U.S.C. [§] 824(a) . . . are satisfied.'' 21 CFR 1301.44(e). I find that the evidence satisfies the Government's *prima facie* burden of showing that Respondent's continued registration would be ''inconsistent with the public interest.'' 21 U.S.C. 824(a)(4). I further find that Respondent failed to produce sufficient evidence to rebut the Government's *prima facie* case.

1. Factors One and Three: The Recommendation of the Appropriate State Licensing Board or Professional Disciplinary Authority and Respondent's Conviction Record Under Federal or State Laws Relating to Controlled Substances

Respondent argued that a MBC decision regarding Respondent ''stands in favor of Respondent's continued DEA Registration.'' ALJX 28 (Respondent's Posthearing), at 23. In this case, it is undisputed that Respondent holds a valid state medical license in California. *Supra* II.A. However, possession of a state license does not entitle a holder of that license to a DEA registration. *Mark De La Lama, P.A.,* 76 FR 20,011, 20,018 (2011). It is well established that a ''state license is a necessary, but not a sufficient condition for registration.'' *Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (2003). The ultimate responsibility to determine whether a DEA registration is consistent with the public interest resides exclusively with the DEA, not to entities within state government. *Edmund Chien, M.D.,* 72 FR 6580, 6590 (2007), *aff'd Chien* v. *DEA,* 533 F.3d 828 (D.C. Cir. 2008).

In determining the public interest, the ''recommendation of the appropriate State licensing board or professional disciplinary authority . . . shall be considered.'' 21 U.S.C. 823(f)(1). Two forms of recommendations appear in Agency decisions: (1) A recommendation to DEA directly from a state licensing board or professional disciplinary authority (hereinafter, appropriate state entity), which explicitly addresses the granting or retention of a DEA COR; and (2) the appropriate state entity's action regarding the licensure under its jurisdiction on the same matter that is the basis for the DEA OSC. *John O. Dimowo, M.D.,* 85 FR 15,800, 15,810 (2020); *see also Vincent J. Scolaro, D.O.,* 67 FR 42,060, 42,065 (2002).

In this case, neither the MBC nor any other state entity has made a direct recommendation to DEA regarding whether the Respondent's controlled substances registration should be suspended or revoked. There is evidence on the record that effective January 31, 2020, the MBC found, amongst other things, that Respondent had violated state law by committing gross negligence in violation of Cal. Bus. & Prof. Code § 2234 when he failed to recognize the risk to patients associated with concurrent use of high dose opioids, benzodiazepines, and Soma, and failed to perform ongoing patient assessments, GX 26 (MBC Decision Involving Respondent), at 161–162; repeated negligence in violation of Section 2234 when he failed to document certain prescriptions and failed to maintain adequate records documenting his treatment of a patient, *id.* at 163–64; and acted in violation of Sections 2234 and 2266 when he failed to maintain adequate and accurate records of his care and treatment of the patients at issue, *id.* at 165. However, the evidence demonstrates that the matter before the MBC involved entirely different patients during an earlier time frame and was therefore different from, the conduct alleged in this case. GX 26; 21 U.S.C. 823(f)(1). Following its evaluation, the MBC took disciplinary action against Respondent, suspending his license and then probating the suspension, which permitted the Respondent to practice medicine without restriction. GX 26; ALJX 28, at 3–4; RD, at 233.

The evidence before me is different than what the MBC had at the time that it made its decision because it demonstrates that Respondent engaged in additional violations of state and federal law with respect to his prescribing practices. Further, the fact that the MBC did not choose to revoke Respondent's state medical registration carries minimal to no weight under Factor One, because there is no evidence that the MBC would have made the same decision in the face of the continued misconduct found herein involving different patients and continued recordkeeping violations.[57] Accordingly, the terms of the MBC Order have been considered, but I find that they have little impact on the public interest inquiry in this case.[58] *See Jeanne E. Germeil,* 85 FR 73,786, 73,799 (2020); *see also John O. Dimowo, M.D.,* 85 FR 15,810. In sum, while the terms of the MBC Order are not dispositive of the public interest inquiry in this case and are minimized due to the differences between the evidence in the MBC Order and the record evidence before me, I consider the MBC's Order's reprimand of Respondent's California medical license and give it minimal weight in Respondent's favor, because the charges could have resulted in the suspension or revocation of his medical license. *See Jennifer St. Croix,* 86 FR 19,010, 19,022 (2021).

As to Factor Three, there is no evidence in the record that Respondent has a ''conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.'' 21 U.S.C. 823(f)(3). However, as Agency cases have noted, there are a number of reasons why a person who has engaged in criminal misconduct may never have been convicted of an offense under this factor, let alone prosecuted for one. *Dewey C. MacKay, M.D.,* 75 FR 49,956, 49,973 (2010). Agency cases have therefore held that ''the absence of such a conviction is of considerably less consequence in the public interest inquiry'' and is therefore not dispositive. *Id.*

[57] In *Dimowo,* the Acting Administrator found that ''[a]lthough statutory analysis [of the CSA] may not definitively settle . . . [the breadth of the cognizable state 'recommendation' referenced in Factor One], the most impartial and reasonable course of action is to continue to take into consideration all actions indicating a recommendation from an appropriate state;'' however, *Dimowo* also limited the ''recommendations'' DEA would consider to the ''actions of an appropriate state entity on the same matters, particularly where it rendered an opinion regarding the practitioner's medical practice in the state due to the same facts alleged in the DEA OSC.'' *John O. Dimowo,* 85 FR at 15,810. Although the same ''matters'' may include similar types of violations, in this case, I have no indication that the MBC would have made a similar decision in the face of these additional violations and continued misconduct.

[58] In his exceptions, Respondent argued that the ALJ, who found that the MBC decision weighed slightly in Respondent's favor, RD, at 233, should have given greater weight to the MBC's decision and allowed Respondent to continue prescribing. ALJX 30, at 24. For the reasons contained in this analysis, I disagree. I have weighed this factor slightly in his favor, but I find that the fact that the state permitted him to continue to practice of medicine is not dispositive as to whether Respondent's continued controlled substances registration is in the public interest.

2. Factors Two and Four—the Respondent's Experience in Dispensing Controlled Substances and Compliance With Applicable Laws Related to Controlled Substances

(a) Allegation That Respondent Issued Prescriptions for Controlled Substances Outside the Usual Course of the Professional Practice

According to the Controlled Substances Act's (hereinafter, CSA) implementing regulations, a lawful controlled substance order or prescription is one that is ''issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a). The Supreme Court has stated, in the context of the CSA's requirement that schedule II controlled substances may be dispensed only by written prescription, that ''the prescription requirement . . . ensures patients use controlled substances under the supervision of a doctor so as to prevent addiction and recreational abuse . . . [and] also bars doctors from peddling to patients who crave the drugs for those prohibited uses.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 274 (2006).

I found above that the Government's expert credibly testified as supported by California law, the MBC Guide to the Laws and Guidelines for Prescribing, that the standard of care in California requires a physician to, amongst other things, perform and document a physical examination, develop and document a treatment pan, conduct periodic review and monitoring of the patient, and have complete and accurate records in order to prescribe controlled substances. *See supra* II.D. I also found above that Respondent issued one-hundred and fifteen controlled substance prescriptions, often extremely high doses of opioids, to three patients without performing or documenting adequate physical examinations, developing or documenting adequate treatment plans, resolving or documenting resolution of red flags, and/or keeping complete and accurate records as required by the standard of care. *See supra* II.E.

Respondent repeatedly issued prescriptions without complying with the applicable standard of care and state law thus demonstrating that his conduct was not an isolated occurrence, but occurred with multiple patients.[59] *See Kaniz Khan Jaffery,* 85 FR 45,667, 45,685 (2020). For example, Respondent's medical records for all three of the individuals at issue had verbatim language repeated throughout the relevant time frame (with very few exceptions) regarding the physical examination allegedly performed.[60] Dr. Munzing opined that the verbatim records ''do not establish that a physical exam actually occurred'' and they prohibited us from ascertaining truly what ''the patient's condition [was] at a certain date'' and whether the prescribing was ''justif[ied].'' Tr. 911–12, 1237; *supra* II.E.3. The California standard of care clearly and indisputably requires a physical examination including ''an assessment of pain, physical and psychological function,'' and requires physicians to ''keep accurate and completed records . . . including the . . . physical examination.'' GX 17, at 59, 61. In his exceptions, Respondent acknowledged that ''the repopulation of his physical exam findings created inaccuracies and were thus deficient. . . . [And] because of the repopulation of physical exam findings [Respondent] cannot identify which portion or portions of the physical examinations he conducted during his visits with the patients.'' [61] ALJX 30, at 23.

Agency decisions highlight the Agency's interpretation that ''[c]onscientious documentation is repeatedly emphasized as not just a ministerial act, but a key treatment tool and vital indicator to evaluate whether the physician's prescribing practices are 'within the usual course of professional practice.' '' *Cynthia M. Cadet, M.D.,* 76 FR 19,450, 19,464 (2011). DEA's ability to assess whether controlled substances registrations are consistent with the public interest is predicated upon the ability to consider the evidence and rationale of the practitioner at the time that he prescribed a controlled substance—adequate documentation is critical to that assessment. *See Kaniz-Khan Jaffery,* 85 FR 45,686. Here, Respondent's verbatim recordkeeping, failure to document justification for the treatment plan, failure to document resolution of red flags, and other errors, made it impossible to evaluate Respondent's prescribing practices in any meaningful way. *See Mark A. Wimbley, M.D.,* 86 FR 20,713, 20,726 (2021). Further, as Dr. Munzing stated, complete and accurate ''[m]edical records are incredibly important for physicians'' and inaccurate records could jeopardize ''patient safety'' particularly if the ''patient rolls into the ER.'' Tr. 705, 1197. Therefore, recordkeeping is not only important for compliance, but also for the safety of the patients.

DEA decisions have found that ''just because misconduct is unintentional, innocent, or devoid of improper motive, [it] does not preclude revocation or denial. Careless or negligent handling of controlled substances creates the opportunity for diversion and [can] justify the revocation of an existing registration . . .'' *Bobby D. Reynolds, N.P., Tina L. Killebrew, N.P., & David R. Stout, N.P.,* 80 FR 28,643, 28662 (2015) (quoting *Paul J. Caragine, Jr.* 63 FR 51,592, 51,601 (1998). Diversion occurs whenever controlled substances leave 'the closed system of distribution established by the CSA . . . .' '' *Id.* (citing *Roy S. Schwartz,* 79 FR 34,360, 34,363 (2014)).[62] In this case, I have found that Respondent issued controlled substance prescriptions without complying with his obligations under the CSA and California law. *See George Mathew, M.D.,* 75 FR 66,138, 66,148 (2010)).

Respondent's additional arguments likewise lack merit. In his Exceptions, Respondent argued that he has not

[59] And, as I discussed above, Respondent was disciplined by the MBC for similar conduct against different patients than those involved in this case during a prior timeframe. *Supra* III.A.1.

[60] I have chosen this example because it was Respondent's most frequently repeated and pervasive violation of the standard of care. However, each and every instance where I found a violation of the standard of care above, *supra* II.E.1–3, supports my decision in this case.

[61] In the same brief, Respondent took exception to the ALJ's finding that he had ''rampantly neglected his recordkeeping obligations by carrying forward verbatim entries for physical exam findings.'' ALJX 30, at 14–18; RD, at 224–26. I note that ''rampant neglect'' is not the applicable legal standard applied here—the question is whether the records were sufficiently accurate and complete to establish that the relevant prescriptions were issued within the standard of care. They were not. Second, all of Respondent's arguments regarding this exception are repetitive of arguments Respondent has already made and that I have already addressed. For example, Respondent argued the patients' physical examinations would not be expected to change because of their chronic conditions, addressed at *supra* II.E.1; argued Respondent properly monitored the patients, addressed at *supra* II.E.1–3; argued that updates to the history of present illness sections and vital signs demonstrated that the patients were evaluated, addressed at *supra* n. 54.

[62] In his Exceptions, Respondent argues that the Government has not made a *prima facie* case because there was ''no evidence of diversion nor the risk of diversion of controlled substances.'' ALJX 30, at 20. Respondent supports this argument with Dr. Munzing's testimony regarding a variety of red flags that were not present in this case (such as patient reports of lost or stolen medication, requests for early refills, inappropriate physical appearance). *Id.* at 21. The Government, however, is not required to prove that diversion resulted from the unauthorized issuance of prescriptions. *Arvinder Singh, M.D.,* 81 FR 8247, 8249 (2016). Rather, when a practitioner violates the CSA's prescription requirement, set forth in 21 CFR 1306.04(a), by issuing a prescription without a legitimate medical purpose and outside the usual course of professional practice, the DEA [essentially] considers the prescription to have been diverted. *George Mathew, M.D.,* 75 FR 66,146. I find Respondent's argument to lack merit.

committed acts that render his Registration inconsistent with the public interest. ALJX 30, at 21–22. He argued that there were no ''departures from the standard of care with the clinical decision-making and prescribing; the only departures were found relating to documentation.'' *Id.* Respondent also argued that because the ALJ found that ''Respondent's care and treatment and prescribing to each patient [was] appropriate and [met] the standard of care,'' it was ''puzzling'' that the ALJ then found that the ''record-keeping violations delegitimize the controlled substance prescriptions the subject records sought to justify.'' ALJX 30, at 19; RD, at 229.

The question at issue is whether the relevant prescriptions were issued beneath the standard of care and outside of the usual course of professional practice. In assessing whether the issued prescriptions violated 21 CFR 1306.04, it is not essential to count how many elements of the standard of care were violated for each prescription. The ALJ determined that the relevant prescriptions were issued outside of the standard of care due to incomplete and inaccurate record keeping, and that defect cannot be cured by the fact that Respondent, as the ALJ found, complied with other elements of the standard of care. DEA has previously made clear that ''a physician may not expect to vindicate himself through oral representations at the hearing about his compliance with the standard of care that were not documented in appropriately maintained patient records.'' *Lesly Pompy, M.D.,* 84 FR 57,749, 57,760 (2019). This principle was echoed in Dr. Munzing's testimony stating that ''you have to be treating it [in] real time[,] [y]ou have to document it [in] real time,'' you cannot say ''because of this [justification] three years from now, everything before must be that.'' Tr. 1233. What is essential in this case is whether at the time Respondent issued each prescription for a controlled substance, he met the standard of care in issuing that prescription—he had conducted the physical examination, had a treatment plan, monitored the patient, and documented such. California law and guidance emphasizes the importance of documenting crucial aspects of the rationale for prescribing to ensure that a practitioner is doing so in a manner that is transparent and recorded and adequately cares for the patient. Dr. Munzing testified that such practice is of particular importance where the prescriptions for controlled substances are in such high dosages. Tr. 281; *see also id.* at 389, 348–39, 768, 912–13.

The expert testimony demonstrates repeatedly that the accurate documentation of a physical examination and treatment plan that justify the continued prescribing of these high volume controlled substances is not merely a check-the-box exercise. And as explained above, it is impossible for the Agency or anyone to assess the legitimacy of a particular prescription without adequate recordkeeping. *See Carol Hippenmeyer, M.D.,* 86 FR 33,748, 33,772 (finding that ''documentation is critical to effective enforcement of the CSA.'') With a regulated community of nearly two million registrants,[63] DEA must be able to rely on physicians to maintain complete and accurate medical records justifying their prescribing decisions.

Additionally, I find that Respondent's actions as they are documented in the medical records, not the actions he claimed with limited credibility that he performed, provide the best evidence to determine whether or not Respondent acted within the standard of care in issuing these prescriptions. California's standard of care makes clear that complete and accurate recordkeeping is tied to each other element of the standard of care in California. *See* GX 17, at 60. Ultimately, it is impossible to determine whether, as Respondent claims, he did conduct the physical examinations, did have appropriate treatment plans and did adequately address red flags, because he did not document any of these things as he was required to do under state law and the standard of care. Therefore, I cannot find definitively, as Respondent suggests, that the prescriptions he issued were within the usual course of professional practice and within the standard of care. In fact, the record evidence demonstrates that he did not prescribe within the standard of care. The standard of care in California for prescribing controlled substances cannot be met if the justification for those controlled substances is not properly documented.[64]

Respondent repeatedly argued that the individuals ''were never harmed and because [of Respondent's] care, all achieved positive results.'' ALJX 30, at 26. Instead, Respondent claimed, the evidence shows that Respondent significantly lowered each individual's opiate dosage levels ''while allowing the patient[s] to maintain adequate pain control and functionality.'' ALJX 30, at 21. I acknowledge that the record evidence supports a finding that Respondent, in the big picture, reduced the relevant individual's opioid levels with the benefits that Respondent espoused. Respondent does not, however, cite legal authority for the proposition that I must find harm occurred before I may suspend or revoke a registration. And as Dr. Munzing testified, ''I would say not only in pain manage[ment] but in medicine in general, you [cannot] look back and say, based on the fact that there was no documented harm, whatever happened before must be okay.'' Tr. 1298. Moreover, the documentation is too deficient to conclusively determine that no harm occurred. Dr. Munzing testified that he had ''significant concern[s]'' with the documentation, ''[s]o there may very well be things in this case that we [do not] know . . . concerns that [do not just] go away because the patient [has not] overdosed and you [do not] document that [there are] adverse effects.'' Tr. 1034. Furthermore, the violations of the standard of care in this case are not limited to one patient nor are they limited to a specific timeframe. The record evidence demonstrates that for B.G. for example, from February 14, 2017, to May 8, 2018, twenty-one physical tests were copied forward, verbatim from prior medical visits without any new information being added. Tr. 1920–22; GX 29b (Bizmatics Subpoena Response), at 4–5. Eight physical tests were added on May 8, 2018, and then all twenty-nine of those physical tests were copied forward verbatim until October 3, 2019. *Id.* Additionally, each of the patients at issue in this case had many instances of required recordkeeping copied forward. These recordkeeping violations were not isolated: They were systematic; they spanned patients; they spanned years; they spanned different elements of the standard of care in California.

[63] *See* DEA FY 2020 Budget Request *available at https://www.justice.gov/jmd/page/file/1142431/download.*

[64] In his Exceptions, Respondent argued that ''[r]evoking Respondent's certificates based upon recordkeeping violations alone is not supported by Agency precedent,'' and he attempted to distinguish his case from the cases the ALJ cited for the proposition that ''record-keeping violations associated with controlled substance prescriptions may render such prescriptions outside the usual course of professional practice.'' ALJX 30, at 25–26. Respondent's point was that each of the cases the ALJ cited had more going on than record-keeping violations. *Id.,* at 27–28. Respondent's argument fails for the reasons set forth in this paragraph. The Government has established that Respondent's record-keeping violations rendered the relevant prescriptions outside the standard of care, which is sufficient to determine a violation of 21 CFR 1306.04. Once the Government has established a *prima facie* case, I will assess whether the Respondent has presented adequate evidence that he can be entrusted with a registration. *See infra* IV.

Additionally, the act of copying forward the examination made it more difficult for the Agency to determine whether Respondent had violated his legal obligations—the copy and forward served to hide the truth of whether these important aspects of care had occurred. In this case, the repeated and systematic violations of Respondent's obligations to document required elements of the standard of care when prescribing high dosages of opioids manifests a disturbing pattern of indifference that weighs heavily against a finding that Respondent's continued registration would be consistent with the public interest. Overall, I find that in issuing one-hundred and fifteen prescriptions beneath the applicable standard of care and outside the usual course of professional practice in California, Respondent violated 21 CFR 1306.04(a) and these violations of law weigh against Respondent's continued registration under Public Interest Factors 2 and 4.

(b) Violation of State Law

In addition to finding a violation of 21 CFR 1306.04(a), I also find that the Government has proven by substantial evidence that Respondent's prescribing violated state law. California law, just like federal law, requires that a ''prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice.'' Cal. Health & Safety Code § 11153(a). Therefore, for the same reasons I found a violation of 21 CFR 1306.04(a), I find that the record contains substantial evidence that Respondent violated this state provision with respect to the relevant prescriptions issued to B.G., D.B., and E.N. *Supra* III.A.2.a.

Cal. Bus. & Prof. Code § 2242(a) states that it is unprofessional conduct to ''prescribe[ ] . . . without an appropriate prior examination and a medical indication.'' Dr. Munzing testified that it means prescribers ''cannot prescribe controlled substances without an appropriate medical examination and without medical indication.'' Tr. 285. Consistent with my findings above, *supra* II.A.2.a., I find that Respondent issued the relevant controlled substance prescriptions without documenting an appropriate physical examination and/or legitimate medical indication justifying the high prescription doses in violation of Cal. Bus. & Prof. Code § 2242(a).

I am not issuing a finding on the alleged violations of Cal. Health & Safety § 11154(a); Cal. Bus. § Prof. §§ 725(a)[65] and 2234; or California Health & Safety Code § 11190(a) because neither the Government's Expert, nor the Government fully explained their application to this proceeding.

Ultimately I find that the record contains substantial evidence that Respondent issued multiple prescriptions of controlled substances to multiple patients beneath the applicable standard of care and outside the usual course of the professional practice and in violation of state law over the course of several years. I therefore find that Factors Two and Four weigh in favor of revocation.

B. Summary of Factors Two and Four and Imminent Danger

As found above, the Government's case establishes by substantial evidence that Respondent issued controlled substance prescriptions outside the usual course of the professional practice. I, therefore, conclude that Respondent engaged in misconduct which supports the revocation of his registration. *See Wesley Pope,* 82 FR 14,944, 14,985 (2017).

For purposes of the imminent danger inquiry, my findings also lead to the conclusion that Respondent has ''fail[ed] . . . to maintain effective controls against diversion or otherwise comply with the obligations of a registrant'' under the CSA. 21 U.S.C. 824(d)(2). The substantial evidence that Respondent issued controlled substance prescriptions outside the usual course of the professional practice establishes ''a substantial likelihood of an immediate threat that death, serious bodily harm, or abuse of a controlled substance . . . [would] occur in the absence of the immediate suspension'' of Respondent's registration. *Id.* The risk of death was established in this case. There was ample evidence introduced to establish that ''combined use of opioid medicines with benzodiazepines or other drugs that depress the central nervous system has resulted in serious side effects including slowed or difficult breathing and deaths.'' GX 20, at 1; Tr. 317–19, 1278.

Respondent argues in his Exceptions that the ''Government did not prove, at any point, that [Respondent's] continued registration constituted any danger to patients, or any threat of harm, much less imminent danger or harm.'' ALJX 30, at 21. Dr. Munzing's testimony was critical of the conclusion that these patients were not harmed. Dr. Munzing testified, ''[we need to be cognizant whether [it is] prescribing opiates, benzodiazepines, or anything else in medicine is we need to recognize what the potential harms are. And even if that patient so far [has not] experienced harm from whatever your management is, one still needs to be cognizant that that risk is there and not say, 'Well, nothing's happened yet. So that means that everything must be okay.' That certainly is not . . . the case.'' Tr. 1267. He further stated that the patient could be ''stable, stable, stable, stable, stable until they [did not] wake up.'' Tr. 1266.

Thus, as I have found above, at the time the Government issued the OSC/ISO, the Government had clear evidence of violations of law based on the one-hundred and fifteen controlled-substance prescriptions Respondent issued without complying with the California standard of care. *See supra* III.A.2.a.

IV. Sanction

Where, as here, the Government has met its *prima facie* burden of showing that Respondent's continued registration is inconsistent with the public interest, the burden shifts to the Respondent to show why he can be entrusted with a registration. *Garrett Howard Smith, M.D.,* 83 FR 18,882, 18,910 (2018) (collecting cases). Respondent has made minimal effort to establish that he can be entrusted with a registration.

The CSA authorizes the Attorney General to ''promulgate and enforce any rules, regulations, and procedures which he may deem necessary and appropriate for the efficient execution of his functions under this subchapter.'' 21 U.S.C. 871(b). This authority specifically relates ''to 'registration' and 'control,' and 'for the efficient execution of his functions' under the statute.'' *Gonzales* v. *Oregon,* 546 U.S. 243, 259 (2006). A clear purpose of this authority is to ''bar[ ] doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking.'' *Id.* at 270.

In efficiently executing the revocation and suspension authority delegated to me under the CSA for the aforementioned purposes, I review the evidence and arguments Respondent submitted to determine whether or not he has presented ''sufficient mitigating evidence to assure the Administrator that he can be trusted with the responsibility carried by such a registration.'' *Samuel S. Jackson, D.D.S.,* 72 FR 23,848, 23,853 (2007) (quoting *Leo R. Miller, M.D.,* 53 FR 21,931, 21,932 (1988)). '' 'Moreover, because ''past performance is the best predictor of future performance,'' *ALRA Labs, Inc.* v. *DEA,* 54 F.3d 450, 452 (7th Cir. 1995), [the Agency] has repeatedly held that

[65] The ALJ evaluated Cal. Bus. § Prof. §§ 725(a).

where a registrant has committed acts inconsistent with the public interest, the registrant must accept responsibility for [the registrant's] actions and demonstrate that [registrant] will not engage in future misconduct.' '' *Jayam Krishna-Iyer,* 74 FR 459, 463 (2009) (quoting *Medicine Shoppe,* 73 FR 364, 387 (2008)); *see also Jackson,* 72 FR 23,853; *John H. Kennedy, M.D.,* 71 FR 35,705, 35,709 (2006); *Prince George Daniels, D.D.S.,* 60 FR 62,884, 62,887 (1995).

The issue of trust is necessarily a fact-dependent determination based on the circumstances presented by the individual respondent; therefore, the Agency looks at factors, such as the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior and the nature of the misconduct that forms the basis for sanction, while also considering the Agency's interest in deterring similar acts. *See Arvinder Singh, M.D.,* 81 FR 8247, 8248 (2016).

Here, I agree with the ALJ's statement: ''I cannot find that the Respondent has unequivocally accepted responsibility for his proven deficiencies.'' RD, at 240. In his exceptions, Respondent claimed that ''consistently throughout these proceedings . . . [Respondent] recognized that his medical recordkeeping needed improvement.'' [66] However when testifying in his own words, Respondent admitted there were ''some mistakes'' in his recordkeeping, seeming to accept responsibility in one breath, but then in the next maintained that ''overall [his] charts [were] good'' and ''above average.'' Tr. 1607. Respondent's Exceptions also state, ''Respondent accepts that the repopulation of his physical findings created inaccuracies and were thus deficient.'' ALJX 30, at 23. This claim is not supported by Respondent's own testimony that the physical findings were not repopulated, but rather, Respondent conducted the same examination and made the same selections every visit, which simply produced an identical narrative. *See supra* II.C.; Tr. 1775–79; 1799–1801. I do not credit the acknowledgment of responsibility made in Respondent's Exceptions over Respondent's actual testimony, and I find that any of Respondent's testimony that could be considered to be an acknowledgment of responsibility in this case was both equivocal and not credible.

In all, Respondent failed to explain why, in spite of his misconduct, he can be entrusted with a registration. ''The degree of acceptance of responsibility that is required does not hinge on the respondent uttering ''magic words'' of repentance, but rather on whether the respondent has credibly and candidly demonstrated that he will not repeat the same behavior and endanger the public in a manner that instills confidence in the Administrator.'' *Jeffrey Stein, M.D.,* 84 FR 46,968, 49,973 (2019). Here, having considered Respondent's case and statements, I am still left with no confidence in Respondent's future compliance with the CSA.

The Agency also looks to the egregiousness and extent of the misconduct, which are significant factors in determining the appropriate sanction. *Garrett Howard Smith, M.D.,* 83 FR 18,910 (collecting cases). In this case, the ALJ found, and I agree, that the record-keeping was so deficient that it ''delegitimize[d] the controlled substance prescriptions the subject records sought to justify.'' RD, at 229. Furthermore, the record evidence contains testimony from the Government's expert that explains exactly why recordkeeping is so important. In particular, Respondent was prescribing a dangerous combination of high dose controlled substances to a patient and his compliance with the state legal requirements regarding recordkeeping was so egregiously bad that it is difficult to determine what steps Respondent was taking to ensure this patient's safety, or even why a particular controlled substance was being prescribed. These are not solely recordkeeping requirements—these requirements are in place to ensure that practitioners are actively considering the safety of their patients and documenting that they did so. As Dr. Munzing stated, the patient could be ''stable, stable, stable, stable, stable until they [did not] wake up.'' Tr. 1266.

Respondent argues that the sole findings of departures are related to documentation and therefore warrant a sanction less than revocation. ALJX 30, at 25. Respondent's cavalier assumptions about his documentation responsibilities and the fact that he did not undertake this responsibility with seriousness weigh against my ability to entrust him with a registration. *See Singh, M.D.,* 81 FR 8248 (''[U]ntil . . . [a] Respondent can convincingly show he accepts the authority of the law and those bodies charged with enforcing it and regulating his activities, granting [ ] a DEA registration will gravely endanger the public.''). The truth is that it is not possible to tell whether Respondent's care was as appropriate as he claims because his recordkeeping was so abysmal.

In sanction determinations, the Agency has historically considered its interest in deterring similar acts, both with respect to the respondent in a particular case and the community of registrants. *See Joseph Gaudio, M.D.,* 74 FR 10,083, 10,095 (2009); *Singh,* 81 FR 8248. I find that considerations of both specific and general deterrence weigh in favor of revocation in this case. There is simply no evidence that Respondent's behavior is not likely to recur in the future such that I can entrust him with a CSA registration; in other words, the factors weigh in favor of revocation as a sanction.

I will therefore order that Respondent's registration be revoked as contained in the Order below.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 823(f), I hereby revoke DEA Certificate of Registration Nos. FQ7186174, FQ7906968, and BQ7364970. Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a) and 823(f), I hereby deny the pending application for a new DEA Certificate of Registration, Application No. W18124091C, for John X. Qian, M.D., and hereby deny any pending application of John X. Qian, M.D. to renew or modify these registrations, as well as any other pending application of John X. Qian, M.D. for registration in California. This Order is effective March 14, 2022.

Anne Milgram,

Administrator.

[FR Doc. 2022–02973 Filed 2–10–22; 8:45 am]

BILLING CODE 4410–09–P

[66] Respondent also argued that he had taken steps to mitigate and remediate his recordkeeping issues. ALJX 30, at 22. One example of these efforts included taking a course on medical recordkeeping in 2013. *Id.* This does not seem to have been an effective remedial effort given that the recordkeeping violations at issue in this matter took place years later. *Id.* Regardless, where, as here, the Respondent has not credibly accepted responsibility for his misconduct, I do not generally consider evidence of remedial measures. *See Jones Total Health Care Pharmacy, L.L.C.,* 81 FR 79,202–03. Even if he had adequately accepted responsibility, I cannot find that these remedial measures are adequate such that I could entrust him with a registration.

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0102]

Information Collection: NRC Form 655, ''EEO Counselor's Report''

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on this proposed information collection. The information collection is entitled, NRC Form 655, ''EEO Counselor's Report.''

DATES: Submit comments by April 12, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0102. 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.

• *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0102 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

• *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2021–0102.

• *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession ML21160A151. The supporting statement is available in ADAMS under Accession No. ML21160A150.

• *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.

• *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0102 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 655, ''EEO Counselor's Report.''

2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.

3. *Type of submission:* New.

4. *The form number, if applicable:* NRC Form 655.

5. *How often the collection is required or requested:* On occasion.

6. *Who will be required or asked to respond:* Aggrieved persons who believe they have been discriminated against in employment on the basis of race, color, religion, sex, national origin, age, disability, or genetic information.

7. *The estimated number of annual responses:* 30.

8. *The estimated number of annual respondents:* 30.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 30 hours.

10. *Abstract:* As set forth under 29 CFR 1614, the Equal Employment Opportunity (EEO) complaint process prescribes that when an aggrieved individual believes that they have been discriminated against on the basis of their race, color, religion, sex (including sexual orientation, gender identity and expressions, and pregnancy), national origin, age, disability, genetic information (including family medical history), marital status, parental status, political affiliation, military service, and reprisal and seeks EEO counseling, the assigned EEO Counselor will conduct the pre-complaint (Informal) with the intentions of resolving the complaint within the Agency. At the conclusion of the pre-complaint (Informal) process and if the resolution was unsuccessful, the EEO Counselor during the final interview with the aggrieved person must discuss what occurred during the counseling process and provide the aggrieved with information to move the matter forward. Pursuant to 29 CFR 1614.105(c), if the aggrieved individual decides to file a Formal complaint (*i.e.,* NRC Form 646), the EEO Counselor must submit a written report (*i.e.,* EEO Counselors Report) within 15 calendar days to the Office of Small Business and Civil Rights Director or designated official that will contain relevant

information about the aggrieved individual, jurisdiction, claims, bases, Responding Management Officials, witnesses, requested remedies, and the EEO Counselor's checklist. The NRC Form 655, ''EEO Counselor's Report'' is completed by an EEO counselor during this consultation, which must be conducted within 45 days of the date of the matter alleged to be discriminatory or, in the case of personnel action, within 45 days of the effective date of the action. Once the form is completed, an authorized NRC representative will place the completed NRC Form 646 in a secure folder created specifically for the aggrieved individual within an automated tracking system.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: February 8, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–02944 Filed 2–10–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0098]

Information Collection: NRC Form 646, ''Formal Discrimination Complaint''

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on this proposed information collection. The information collection is entitled, NRC Form 646, ''Formal Discrimination Complaint.''

DATES: Submit comments by April 12, 2022. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0098. 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.
- *Mail comments to:* David Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0098 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2021–0098.
- *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession ML21165A134. The supporting statement is available in ADAMS under Accession No. ML21165A132.
- *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.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2021–0098 in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 646, ''Formal Discrimination Complaint.''
2. *OMB approval number:* An OMB control number has not yet been assigned to this proposed information collection.
3. *Type of submission:* New.

4. *The form number, if applicable:* NRC Form 646.

5. *How often the collection is required or requested:* On occasion. The NRC Form 646 is submitted at the time an aggrieved individual decides to file a formal complaint of discrimination.

6. *Who will be required or asked to respond:* Employees, former employees, or applicants for employment with the NRC, who believe that they have been subjected to discrimination based on race, color, national origin, religion, gender, age, disability, reprisal, or sexual orientation.

7. *The estimated number of annual responses:* 30.

8. *The estimated number of annual respondents:* 30.

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 30 hours.

10. *Abstract:* As set forth under 29 CFR 1614, the Equal Employment Opportunity (EEO) complaint process prescribes that when an aggrieved individual believes that they have been discriminated against on the basis of their race, color, religion, sex (including sexual orientation, gender identity and expressions, and pregnancy), national origin, age, disability, genetic information (including family medical history), marital status, parental status, political affiliation, military service, and reprisal and seeks EEO counseling, the assigned EEO Counselor will conduct the pre-complaint (Informal) with the intentions of resolving the complaint within the Agency. At the conclusion of the pre-complaint (Informal) process and if the resolution was unsuccessful, the EEO Counselor during the final interview with the aggrieved person must discuss what occurred during the counseling process and provide the aggrieved with information to move the matter forward. Pursuant to 29 CFR 1614.105(c), if the aggrieved individual decides to file a Formal complaint (*i.e.,* NRC Form 646), the EEO Counselor must submit a written report (*i.e.,* EEO Counselors Report) within 15 calendar days to the Office of Small Business and Civil Rights Director or designated official that will contain relevant information about the aggrieved individual, jurisdiction, claims, bases, Responding Management Officials, witnesses, requested remedies, and the EEO Counselor's checklist. Once received by the NRC, an authorized NRC representative will place the completed NRC Form 646 in a secure folder created specifically for the aggrieved individual within an automated tracking system.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the estimate of the burden of the information collection accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: February 8, 2022.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2022–02943 Filed 2–10–22; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94167; File No. SR–DTC–2021–014]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Provide Settlement Services for Transactions Entered Into Under the Proposed Securities Financing Transaction Clearing Service of the National Securities Clearing Corporation

February 7, 2022.

On July 22, 2021, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–DTC–2021–014 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on August 11, 2021.[3] The Commission received no comment letters on the Proposed Rule Change.

On September 2, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[5] On November 5, 2021, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act,[6] to determine whether to approve or disapprove the Proposed Rule Change.[7]

Section 19(b)(2) of the Act [8] provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[9] The 180th day after publication of the Notice in the **Federal Register** is February 7, 2022.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act,[10] the Commission designates April 8, 2022, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR–DTC–2021–014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02915 Filed 2–10–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 92572 (August 5, 2021), 86 FR 44077 (August 11, 2021) (SR–DTC–2021–014) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] Securities Exchange Act Release No. 92861 (September 2, 2021), 86 FR 50570 (September 9, 2021) (SR–DTC–2021–014).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] Securities Exchange Act Release No. 93533 (November 5, 2021), 86 FR 62853 (November 12, 2021) (SR–DTC–2021–014).

[8] 15 U.S.C. 78s(b)(2).

[9] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Securities Act of 1933 Release No. 11027/ February 8, 2022; Securities Exchange Act of 1934 Release No. 94187/February 8, 2022]

Order Regarding Review of FASB Accounting Support Fee for 2022 Under Section 109 of the Sarbanes-Oxley Act of 2002

The Sarbanes-Oxley Act of 2002 (''SOX'' or the ''Act'') provides that the Securities and Exchange Commission (the ''Commission'') may recognize, as generally accepted for purposes of the securities laws, any accounting principles established by a standard-setting body that meets certain criteria.[1] Section 109 of SOX provides that all of the budget of such a standard-setting body shall be payable from an annual accounting support fee assessed and collected against each issuer, as may be necessary or appropriate to pay for the budget and provide for the expenses of the standard-setting body, and to provide for an independent, stable source of funding, subject to review by the Commission. Under Section 109(f) of the Act, the amount of fees collected for a fiscal year shall not exceed the ''recoverable budget expenses'' of the standard-setting body. Section 109(i) of SOX amends Section 13(b)(2) of the Securities Exchange Act of 1934 to require issuers to pay the allocable share of a reasonable annual accounting support fee or fees, determined in accordance with Section 109 of the Act.

On April 25, 2003, the Commission issued a policy statement concluding that the Financial Accounting Standards Board (''FASB'') and its parent organization, the Financial Accounting Foundation (''FAF''), satisfied the criteria for an accounting standard-setting body under the Act, and recognizing the FASB's financial accounting and reporting standards as ''generally accepted'' under Section 108 of the Act.[2] Accordingly, the Commission undertook a review of the FASB's accounting support fee for calendar year 2022.[3] In connection with its review, the Commission also reviewed the budget for the FAF and the FASB for calendar year 2022.

Section 109 of SOX provides that, in addition to the accounting support fee, the standard-setting body can have additional sources of revenue for its activities, such as earnings from sales of publications, provided that each additional source of revenue shall not jeopardize, in the judgment of the Commission, the actual or perceived independence of the standard setter. In this regard, the Commission also considered the interrelation of the operating budgets of the FAF, the FASB, and the Governmental Accounting Standards Board (''GASB''), the FASB's sister organization, which sets accounting standards used by state and local government entities. The Commission has been advised by the FAF that neither the FAF, the FASB, nor the GASB accept contributions from the accounting profession.

The Commission understands that the Office of Management and Budget (''OMB'') has determined the FASB's spending of the 2022 accounting support fee is sequestrable under the Budget Control Act of 2011.[4] So long as sequestration is applicable, we anticipate that the FAF will work with the Commission and Commission staff as appropriate regarding its implementation of sequestration.

After its review, the Commission determined that the 2022 annual accounting support fee for the FASB is consistent with Section 109 of the Act. Accordingly,

It is ordered, pursuant to Section 109 of SOX, that the FASB may act in accordance with this determination of the Commission.

By the Commission.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–02998 Filed 2–10–22; 8:45 am]

BILLING CODE 8011–01–P

[1] *See* 15 U.S.C. 7201 *et seq.*

[2] *See* Commission Statement of Policy Reaffirming the Status of the FASB as a Designated Private-Sector Standard Setter, Release No. 33–8221 (April 25, 2003) [68 FR 23333 (May 1, 2003)].

[3] The Financial Accounting Foundation's Board of Trustees approved the FASB's budget on November 16, 2021. The FAF submitted the approved budget to the Commission on November 22, 2021.

[4] *See* OMB Report Pursuant to the Sequestration Transparency Act of 2012, *available at https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration_report_FY21_2-10-20.pdf.* The sequestration percentages calculated for FY 2021 will be applied in each of the fiscal years from 2022 to 2029.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94168; File No. SR–NSCC–2021–010]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Establish the Securities Financing Transaction Clearing Service and Make Other Changes

February 7, 2022.

On July 22, 2021, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2021–010 (''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on August 12, 2021.[3] The Commission received comment letters on the Proposed Rule Change.[4]

On September 2, 2021, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] On November 5, 2021, the Commission instituted proceedings pursuant to Section 19(b)(2)(B) of the Act,[7] to determine whether to approve or disapprove the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 92570 (August 5, 2021), 86 FR 44482 (August 12, 2021) (SR–NSCC–2021–010) (''Notice''). NSCC also filed the proposal contained in the Proposed Rule Change as advance notice SR–NSCC–2021–803 (''Advance Notice'') with the Commission pursuant to Section 806(e)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act entitled the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''). 12 U.S.C. 5465(e)(1); 17 CFR 240.19b–4(n)(1)(i). Notice of filing of the Advance Notice was published for comment in the **Federal Register** on August 12, 2021. Securities Exchange Act Release No. 92568 (August 5, 2021), 86 FR 44530 (August 12, 2021) (SR–NSCC–2021–803). The proposal contained in the Proposed Rule Change and the Advance Notice shall not take effect until all regulatory actions required with respect to the proposal are completed.

[4] Comment letters are available at *https://www.sec.gov/comments/sr-nscc-2021-010/srnscc2021010.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 92860 (September 2, 2021), 86 Fed. Reg. 50569 (September 9, 2021) (SR–NSCC–2021–010).

[7] 15 U.S.C. 78s(b)(2)(B).

Proposed Rule Change.[8] The Commission has received additional comment letters on the Proposed Rule Change.[9]

Section 19(b)(2) of the Act[10] provides that proceedings to determine whether to approve or disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of filing of the proposed rule change. The time for conclusion of the proceedings may be extended for up to 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination.[11] The 180th day after publication of the Notice in the **Federal Register** is February 8, 2022.

The Commission is extending the period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that the Commission has sufficient time to consider the issues raised by the Proposed Rule Change and to take action on the Proposed Rule Change. Accordingly, pursuant to Section 19(b)(2)(B)(ii)(II) of the Act,[12] the Commission designates April 8, 2022, as the date by which the Commission should either approve or disapprove the Proposed Rule Change SR–NSCC–2021–010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02912 Filed 2–10–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94166; File No. SR–OCC–2022–801]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Advance Notice Concerning the Options Clearing Corporation's Margin Methodology for Incorporating Variations in Implied Volatility

February 7, 2022.

Pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[3] notice is hereby given that on January 24, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') an advance notice as described in Items I, II and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

This advance notice is submitted in connection with a proposal to simplify OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations (''STANS''), control procyclicality in volatility modeling, provide natural offsets for volatility products with similar characteristics, and build the foundation for a single, consistent framework to model equity volatility products in margin and stress testing. Specifically, this proposed change would:

(1) Implement a new model for incorporating variations in implied volatility within STANS for products based on the S&P 500 Index (such index hereinafter referred to as ''S&P 500'' and such proposed model being the ''S&P 500 Implied Volatility Simulation Model'') to provide consistent and smooth simulated volatility scenarios;

(2) implement a new model to calculate the theoretical values of futures on indexes designed to measure volatilities implied by prices of options on a particular underlying index (such indexes being ''volatility indexes''; futures contracts on such Volatility Indexes being ''volatility index futures''; and such proposed model being the ''Volatility Index Futures Model'') to provide consistent and stable coverage across all maturities; and

(3) replace OCC's model to calculate the theoretical values of exchange-traded futures contracts based on the expected realized variance of an underlying interest (such contracts being ''variance futures,'' and such model being the ''Variance Futures Model'') with one that provides adequate margin coverage while providing offsets for hedged positions in the listed options market.

The proposed changes to OCC's STANS Methodology document are contained in confidential Exhibit 5 of filing SR–OCC–2022–801. Amendments to the existing text are marked by underlining and material proposed to be deleted is marked by strikethrough text. The proposed changes are described in detail in Item 3 below. New sections 2.1.4 (S&P 500 Implied Volatilities Scenarios) and 2.1.8 (Volatility Index Futures), and the replacement text for section 2.1.7 (Variance Futures), specific to the proposed models, are presented without marking. Existing Section 2.1.4 through 2.1.7 have been renumbered to reflect the addition of the new sections but are otherwise unchanged. The proposed changes do not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[4]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the advance notice and none have been received. OCC will notify the Commission of any written comments received by OCC.

(B) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing, and Settlement Supervision Act

Description of the Proposed Change

Background

STANS Overview

STANS is OCC's proprietary risk management system for calculating Clearing Member margin requirements.[5] The STANS methodology utilizes large-scale Monte Carlo simulations to

[8] Securities Exchange Act Release No. 93532 (November 5, 2021), 86 FR 62851 (November 12, 2021) (SR–NSCC–2021–010).

[9] *See supra* note 4.

[10] 15 U.S.C. 78s(b)(2).

[11] 15 U.S.C. 78s(b)(2)(B)(ii)(II).

[12] *Id.*

[13] 17 CFR 200.30–3(a)(57).

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] OCC's By-Laws and Rules can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

[5] *See* Exchange Act Release No. 91079 (Feb. 8, 2021), 86 FR 9410 (Feb. 12, 2021) (File No. SR–OCC–2020–016). OCC makes its STANS Methodology description available to Clearing Members. An overview of the STANS methodology is on OCC's public website: *https://www.theocc.com/Risk-Management/Margin-Methodology.*

forecast price and volatility movements in determining a Clearing Member's margin requirement.[6] STANS margin requirements are calculated at the portfolio level of Clearing Member accounts with positions in marginable securities and consists of an estimate of two primary components: A base component and a concentration/dependence stress test add-on component. The base component is an estimate of a 99% expected shortfall[7] over a two-day time horizon. The concentration/dependence stress test add-on is obtained by considering increases in the expected margin shortfall for an account that would occur due to (i) market movements that are especially large and/or in which certain risk factors would exhibit perfect or zero correlations rather than correlations otherwise estimated using historical data or (ii) extreme and adverse idiosyncratic movements for individual risk factors to which the account is particularly exposed. OCC uses the STANS methodology to measure the exposure of portfolios of options and futures cleared by OCC and cash instruments in margin collateral, including volatility index futures and variance futures.[8]

The models in STANS currently incorporate a number of risk factors. A ''risk factor'' within OCC's margin system is defined as a product or attribute whose historical data is used to estimate and simulate the risk for an associated product. The majority of risk factors utilized in the STANS methodology are the returns on individual equity securities; however, a number of other risk factors may be considered, including, among other things, returns on implied volatility.

Current Implied Volatilities Scenarios Model

Generally speaking, the implied volatility of an option is a measure of the expected future volatility of the option's underlying security at expiration, which is reflected in the current option premium in the market. Using the Black-Scholes options pricing model, the implied volatility is the standard deviation of the underlying asset price necessary to arrive at the market price of an option of a given strike, time to maturity, underlying asset price and the current discount interest rate. In effect, the implied volatility is responsible for that portion of the premium that cannot be explained by the current intrinsic value of the option (*i.e.,* the difference between the price of the underlying and the exercise price of the option), discounted to reflect its time value. OCC considers variations in implied volatility within STANS to ensure that the anticipated cost of liquidating options positions in an account recognizes the possibility that the implied volatility could change during the two-business day liquidation time horizon and lead to corresponding changes in the market prices of the options.

Using its current Implied Volatilities Scenarios Model,[9] OCC models the variations in implied volatility used to re-price options within STANS for substantially all option contracts[10] available to be cleared by OCC that have a residual tenor[11] of less than three years (''Shorter Tenor Options'').[12] To address variations in implied volatility, OCC models a volatility surface[13] for Shorter Tenor Options by incorporating certain risk factors (*i.e.,* implied volatility pivot points) based on a range of tenors and option deltas[14] into the models in STANS. Currently, these implied volatility pivot points consist of three tenors of one month, three months and one year, and three deltas of 0.25, 0.5, and 0.75, resulting in nine implied volatility risk factors. These pivot points are chosen such that their combination allows the model to capture changes in level, skew (*i.e.,* strike price), convexity, and term structure of the implied volatility surface. OCC uses a GARCH model[15] to forecast the volatility for each implied volatility risk factor at the nine pivot points.[16] For each Shorter Tenor Option in the account of a Clearing Member, changes in its implied volatility are simulated using forecasts obtained from daily implied volatility market data according to the corresponding pivot point and the price of the option is computed to determine the amount of profit or loss in the account under the particular STANS price simulation. Additionally, OCC uses simulated closing prices for the assets underlying the options in the account of a Clearing Member that are scheduled to expire within the liquidation time horizon of two business days to compute the options' intrinsic value and uses those values to help

[6] *See* OCC Rule 601.

[7] The expected shortfall component is established as the estimated average of potential losses higher than the 99% value at risk threshold. The term ''value at risk'' or ''VaR'' refers to a statistical technique that, generally speaking, is used in risk management to measure the potential risk of loss for a given set of assets over a particular time horizon.

[8] Pursuant to OCC Rule 601(e)(1), OCC also calculates initial margin requirements for segregated futures accounts on a gross basis using the Standard Portfolio Analysis of Risk Margin Calculation System (''SPAN''). Commodity Futures Trading Commission (''CFTC'') Rule 39.13(g)(8), requires, in relevant part, that a derivatives clearing organization (''DCO'') collect initial margin for customer segregated futures accounts on a gross basis. While OCC uses SPAN to calculate initial margin requirements for segregated futures accounts on a gross basis, OCC believes that margin requirements calculated on a net basis (*i.e.,* permitting offsets between different customers' positions held by a Clearing Member in a segregated futures account using STANS) affords OCC additional protections at the clearinghouse level against risks associated with liquidating a Clearing Member's segregated futures account. As a result, OCC calculates margin requirements for segregated futures accounts using both SPAN on a gross basis and STANS on a net basis, and if at any time OCC staff observes a segregated futures account where initial margin calculated pursuant to STANS on a net basis exceeds the initial margin calculated pursuant to SPAN on a gross basis, OCC collateralizes this risk exposure by applying an additional margin charge in the amount of such difference to the account. *See* Exchange Act Release No. 72331 (June 5, 2014), 79 FR 33607 (June 11, 2014) (File No. SR–OCC–2014–13).

[9] In December 2015, the Commission approved a proposed rule change and issued a Notice of No Objection to an advance notice filed by OCC to modify its margin methodology by more broadly incorporating variations in implied volatility within STANS. *See* Exchange Act Release No. 76781 (Dec. 28, 2015), 81 FR 135 (Jan. 4, 2016) (File No. SR–OCC–2015–016); Exchange Act Release No. 76548 (Dec. 3, 2015), 80 FR 76602 (Dec. 9, 2015) (File No. SR–OCC–2015–804). Initially named the ''Implied Volatility Model,'' OCC re-titled the model the ''Implied Volatilities Scenarios Model'' in 2021 as part of the STANS Methodology's broader reorganization of OCC's Margin Methodology. *See* Exchange Act Release No. 90763 (Dec. 21, 2020), 85 FR 85788, 85792 (Dec. 29, 2020) (File No. SR–OCC–2020–016).

[10] OCC's Implied Volatilities Scenarios Model excludes (i) binary options, (ii) options on commodity futures, (iii) options on U.S. Treasury securities, and (iv) Asians and Cliquets.

[11] The ''tenor'' of an option is the amount of time remaining to its expiration.

[12] OCC currently incorporates variations in implied volatility as risk factors for certain options with residual tenors of at least three years (''Longer Tenor Options'') by a separate process. *See* Exchange Act Release No. 68434 (Dec. 14, 2012), 77 FR 57602 (Dec. 19, 2012) (File No. SR–OCC–2012–14); Exchange Act Release No. 70709 (Oct. 18, 2013), 78 FR 63267 (Oct. 23, 2013) (File No. SR–OCC–2013–16). Because all Longer Tenor Options are S&P 500-based products, the proposed S&P 500 Implied Volatility Simulation Model would eliminate the separate process for Longer Tenor Options with a single methodology for all S&P 500 options.

[13] The term ''volatility surface'' refers to a three-dimensional graphed surface that represents the implied volatility for possible tenors of the option and the implied volatility of the option over those tenors for the possible levels of ''moneyness'' of the option. The term ''moneyness'' refers to the relationship between the current market price of the underlying interest and the exercise price.

[14] The ''delta'' of an option represents the sensitivity of the option price with respect to the price of the underlying security.

[15] The acronym ''GARCH'' refers to an econometric model that can be used to estimate volatility based on historical data. *See generally* Tim Bollerslev, ''Generalized Autoregressive Conditional Heteroskedasticity,'' *Journal of Econometrics,* 31(3), 307–327 (1986).

[16] STANS relies on 10,000 price simulation scenarios that are based generally on a historical data period of 500 business days, which are updated daily to keep model results from becoming stale.

calculate the profit or loss in the account.[17]

In January 2019,[18] OCC modified the Implied Volatilities Scenarios Model after OCC's analyses of the model demonstrated that the volatility changes forecasted by the GARCH model were extremely sensitive to sudden spikes in volatility, which at times resulted in overreactive margin requirements that OCC believed were unreasonable and procyclical.[19] To reduce the oversensitivity of the Implied Volatilities Scenarios Model to large, sudden shocks in market volatility and therefore result in margin requirements that are more stable and that remain commensurate with the risks presented during periods of sudden, extreme volatility, OCC modified the Implied Volatilities Scenarios Model to use an exponentially weighted moving average [20] of forecasted volatilities over a specified look-back period rather than using raw daily forecasted volatilities. The exponentially weighted moving average involves the selection of a look-back period over which the data would be averaged and a decay factor (or weighting factor), which is a positive number between zero and one, that represents the weighting factor for the most recent data point.[21] The look-back period and decay factor are model parameters subject to monthly review, along with other model parameters that are reviewed by OCC's Model Risk Working Group (''MRWG'') [22] in accordance with OCC's internal procedure for margin model parameter review and sensitivity analysis, and these parameters are subject to change upon approval of the MRWG.

The current Implied Volatilities Scenarios Model is subject to certain limitations and issues, which would be addressed by the proposed changes described herein. While the overlay of an exponentially weighted moving average reduces and delays the impact of large implied volatility spikes, it does so in an artificial way that does not target the primary issues that OCC identified with the GARCH model. Consequently, the 2019 modifications were intended to be a temporary solution.

The current model uses the ''nearest neighbor'' method to switch pivot points in the implied volatility surface, which introduces discontinuity in the implied volatility curve for a given tenor. In addition, the implied volatility scenarios for call and put options with the same tenor and strike price are not equal. These issues introduce inconsistencies in implied volatility scenarios.[23] Due to the use of arithmetic implied volatility returns in the current model,[24] it can produce near zero implied volatility, which is unrealistic, in a few simulated scenarios.

In addition, the current model does not impose constraints on the nine pivot points to ensure that simulated surfaces are arbitrage-free because the pivots are not modeled consistently. As a result, the simulated implied volatility surfaces often allow arbitrages across options. Because of the potential for arbitrage, the implied volatilities are not adequate inputs to price variance futures and volatility index futures accurately, both of which assume an arbitrage-free condition.[25] Furthermore, the current Implied Volatilities Scenarios Model may not provide natural offsetting of risks in accounts that contain combinations of S&P 500 options, variance futures, and/or volatility index futures because the copula utilized in the current model indirectly captures the correlation effect between S&P 500 options and volatility index futures or variance futures.

Current Synthetic Futures Model

Volatility indexes are indexes designed to measure the volatility that is implied by the prices of options on a particular reference index or asset. For example, Cboe's Volatility Index (''VIX'') is an index designed to measure the 30-day expected volatility of the S&P 500. Volatility index futures can consequently be viewed as an indication of the market's future expectations of the volatility of a given volatility index's underlying reference index (*e.g.,* in the case of the VIX, providing a snapshot of the expected market volatility of the S&P 500 over the term of the options making up the index). OCC clears futures contracts on such volatility indexes.

OCC currently uses the Synthetic Futures Model to calculate the theoretical value of volatility index futures, among other products,[26] for purposes of calculating margin for Clearing Member portfolios. OCC's current approach for projecting the potential final settlement prices of volatility index futures models the price distributions of ''synthetic'' futures on a daily basis based on the historical returns of futures contracts with approximately the same tenor.[27] The

[17] For such Shorter Tenor Options that are scheduled to expire on the open of the market rather than the close, OCC uses the relevant opening price for the underlying assets.

[18] In December 2018, the Commission approved a proposed rule change and issued a Notice of No Objection to an advance notice filed by OCC to modify the Implied Volatilities Scenarios Model. *See* Exchange Act Release No. 84879 (Dec. 20, 2018), 83 FR 67392 (Dec. 29, 2018) (File No. SR–OCC–2018–014); Exchange Act Release No. 84838 (Dec. 19, 2018), 83 FR 66791 (Dec. 27, 2018) (File No. SR–OCC–2018–804).

[19] A quality that is positively correlated with the overall state of the market is deemed to be ''procyclical.'' While margin requirements from risk-based margin models normally fluctuate with market volatility, a margin model can be procyclical if it overreacts to market conditions, such as generating drastic spikes in margin requirements in response to jumps in market volatility. Anti-procyclical features in a model are measures intended to prevent risk-based models from fluctuating too drastically in response to changing market conditions.

[20] An exponentially weighted moving average is a statistical method that averages data in a way that gives more weight to the most recent observations using an exponential scheme.

[21] The lower the number the more weight is attributed to the more recent data (*e.g.,* if the value is set to one, the exponentially weighted moving average becomes a simple average).

[22] The MRWG is responsible for assisting OCC's Management Committee in overseeing OCC's model-related risk and includes representatives from OCC's Financial Risk Management department, Quantitative Risk Management department, Model Validation Group, and Enterprise Risk Management department.

[23] The inconsistency arises from the assumption that call deltas are equivalent to put deltas plus one, which is not well justified.

[24] The arithmetic return of an implied volatility over a single period of any length of time is calculated by dividing the difference between final value and initial value by the initial value.

[25] Currently, the S&P 500 underlying price scenario generated from the Variance Futures Model is used as input data for variance futures. For volatility index futures, synthetic VIX futures time series generated by the Synthetic Futures Model are used as input data to calibrate model parameters, as discussed below.

[26] OCC also applies the Synthetic Futures Model to (i) futures on the American Interbank Offered Rate (''AMERIBOR'') disseminated by the American Financial Exchange, LLC, which is a transaction-based interest rate benchmark that represents market-based borrowing costs; (ii) futures products linked to indexes comprised of continuous yield based on the most recently issued (*i.e.,* ''on-the-run'') U.S. Treasury notes listed by Small Exchange Inc. (''Small Treasury Yield Index Futures''); and (iii) futures products linked to Light Sweet Crude Oil (WTI) listed by Small Exchange (''Small Crude Oil Futures''). *See* Exchange Act Release No. 89392 (July 24, 2020), 85 FR 45938 (July 30, 2020) (File No. SR–OCC–2020–007) (AMERIBOR futures); Exchange Act Release No. 90139 (Oct. 8, 2020), 85 FR 65886 (Oct. 16, 2020) (File No. SR–OCC–2020–012) (Small Treasury Yield Index Futures); Exchange Act Release No. 91833 (May 10, 2021), 86 FR 26586 (May 14, 2021) (File No. SR–OCC–2021–005) (Small Crude Oil Futures). Notwithstanding the proposed charges herein, OCC would continue to use the current Synthetic Futures Model to model prices for interest rate futures on AMERIBOR, Small Treasury Yield Index Futures and Small Crude Oil Futures.

[27] A ''synthetic'' futures time series relates to a uniform substitute for a time series of daily settlement prices for actual futures contracts, which persists over many expiration cycles and thus can be used as a basis for econometric analysis. One feature of futures contracts is that each contract may have a different expiration date, and at any one point in time there may be a variety of futures contracts on the same underlying interest, all with varying dates of expiration, so that there is no one continuous time series for those futures. Synthetic

Continued

Synthetic Futures Model uses synthetic time series of 500 daily proportional returns created from historical futures. Once futures mature, the synthetic time series roll from the nearer-term futures to the next further out futures on the day subsequent to the front-month maturity date. Thus, the front-month synthetic always contains returns of the front contract; the second synthetic corresponds to the next month out, and so on. While synthetic time series contain returns from different contracts, a return on any given date is constructed from prices of the same contract (*e.g.,* as the front-month futures contract ''rolls'' from the current month to the subsequent month, returns on the roll date are constructed by using the same contract and not by calculating returns across months). The econometric model currently used in STANS for purposes of modeling proportionate returns of the synthetic futures is an asymmetric GARCH(1,1) with an asymmetric Standardized Normal Reciprocal Inverse Gaussian (or ''NRIG'')-distributed logarithmic returns.[28] The correlation between S&P 500 options and VIX futures are controlled by a copula.

The current synthetic modeling approach suffers from limitations and issues similar to the current Implied Volatilities Scenarios Model. For one, the current synthetic model relies on the GARCH variance forecast, which, as described above, is prone to volatility shocks. To address this, the Synthetic Futures Model employs an anti-procyclical floor for variance estimates.[29] Secondly, the current synthetic model makes the rolling volatility futures contracts take on different variances from calibration at futures roll dates, which could translate to jumps in margin.

Current Model for Variance Futures

Variance futures are commodity futures for which the underlying interest is a variance.[30] Variance futures differ from volatility index futures in that the underlying variance is calculated using only historical daily closing values of the reference variable while an underlying volatility index represents the implied volatility component of bid and ask premium quotations for options on a reference variable. When a variance futures contract is listed, it defines the initial variance strike. This initial variance strike represents the estimated future variance at contract expiration. The final settlement value is determined based on a standardized formula for calculating the realized variance of the S&P 500 measured from the time of initial listing until expiration of the contract. At maturity, the buyer of the contract pays the amount of predefined strike to the seller and the seller pays the realized variances. Therefore, the buyer profits if the realized variance at maturity exceeds the predefined variance strike. S&P 500 variance futures are exchange-traded futures contracts based on the realized variance of the S&P 500.

OCC uses the current Variance Futures Model to calculate the theoretical value of variance futures for purposes of calculating margin for Clearing Member portfolios. OCC's current Variance Futures Model was introduced in 2007 and is an econometric model designed to capture long- and short-term conditional variance of the underlying S&P 500 to generate variance futures prices. OCC's current approach to modeling variance futures has several disadvantages. OCC currently models variance futures by simulating a final settlement price rather than a near-term variance futures price. This approach is not consistent with OCC's two-day liquidation horizon. In addition, the current Variance Futures Model is based on an econometric model that assumes the S&P 500 return variance can be described by the GARCH(1,1) model and that the long-term variation follows and Ornstein-Uhlenbeck process.[31] As with the use of GARCH for the Implied Volatilities Scenarios Model, this approach has several limitations, including (1) the current approach does not provide appropriate risk offsets with other instruments closely related to the S&P 500 implied volatility, such as VIX futures; and (2) the margin rates it generates are too conservative for short positions and too aggressive for long positions, which causes model backtesting to fail.

Proposed Change

OCC is proposing to replace the Implied Volatilities Scenarios Model for S&P 500-based products, the Synthetic Futures Model for volatility index-based products, and the Variance Future Model for variance futures with new models that would simplify the STANS methodology, control procyclicality in volatility modeling, provide natural offsets for volatility products with similar characteristics, and build the foundation for a single, consistent framework to model equity volatility products in margin and stress testing.

Proposed Changes to the Implied Volatilities Scenarios Model for S&P 500-Based Products

OCC proposes to replace the current Implied Volatilities Scenarios Model with the proposed S&P 500 Implied Volatility Simulation Model for the S&P 500 product group.[32] The purpose of the proposed S&P 500 Implied Volatility Simulation Model is to establish a consistent and robust framework for implied volatility simulation, provide appropriate control for procyclicality in S&P 500 implied volatility modeling, and provide natural offsets for volatility

futures can be used to generate a continuous time series of futures contract prices across multiple expirations. These synthetic futures price return histories are inputted into the existing Copula simulation process in STANS alongside the underlying interests of OCC's other cleared and cross-margin products and collateral. The purpose of this use of synthetic futures is to allow the margin system to better approximate correlations between futures contracts of different tenors by creating more price data points and their margin offsets.

[28] *See* Exchange Act Release No. 85873 (May 16, 2019), 84 FR 23620 (May 22, 2019) (File No. SR–OCC–2019–002); Exchange Act Release No. 85870 (May 15, 2019), 84 FR 23096 (May 21, 2019) (File No. SR–OCC–2019–801).

[29] In order to incorporate a variance level implied by a longer time series of data, OCC calculates a floor for variance estimates based on the underlying index (*e.g.,* VIX) which is expected to have a longer history that is more reflective of the long-run variance level that cannot be otherwise captured using the synthetic futures data. The floor therefore reduces the impact of a sudden increase in margin requirements from a low level and therefore mitigates procyclicality in the model.

[30] A variance is a statistical measure of the variability of price returns relative to an average (mean) price return. Accordingly, OCC believes that an underlying variance is a ''commodity'' within the definition of Section 1a(4) of the Commodity Exchange Act (''CEA''), which defines ''commodity'' to include ''all . . . rights, and interests in which contracts for future delivery are presently or in the future dealt in.'' 7 U.S.C. 1a(9). OCC believes a variance is neither a ''security'' nor a ''narrow-based security index'' as defined in Section 3(a)(10) and Section 3(a)(55)(A) of the Exchange Act, respectively, and therefore is within the exclusive jurisdiction of the CFTC. OCC clears this product in its capacity as a DCO registered under Section 5b of the CEA. *See* Exchange Act Release No. 49925 (June 28, 2004), 69 FR 40447 (July 2, 2004) (File No. SR–OCC–2004–08).

[31] See Uhlenbeck, G.E. and L.S. Ornstein, ''On the Theory of Brownian Motion,'' *Physical Review,* 36, 823–841 (1930) (explaining the Gaussian Ornstein-Uhlenbeck process).

[32] The S&P 500 Implied Volatility Model has been designed to model implied volatility dynamics for options written on the S&P 500 and related indexes, such as S&P 500 index options (''SPX'') and S&P 500 Exchange Traded Funds (''SPY'') options, options on S&P 500 futures, and related implied volatility derivatives such as VIX futures and Miax's SPIKES Volatility Index (''SPIKES''). While OCC would continue to use the current Implied Volatilities Scenarios Model for the products other than S&P 500-based products to which the model currently applies, the S&P 500 Implied Volatility Simulation Model is intended to provide a foundation upon which OCC can build a single consistent framework to model single-name and index/futures equity volatility products for margin and stress testing.

products with similar characteristics to S&P 500 implied volatility (*e.g.,* VIX futures and options). The output of the S&P 500 Implied Volatility Simulation Model would be used by OCC's options pricing model, as well as the proposed Volatility Index Futures Model and Variance Futures Model.

Proposed S&P 500 Implied Volatility Simulation Model Description

The proposed S&P 500 Implied Volatility Simulation Model is a Monte Carlo simulation model that captures the risk dynamics in S&P 500 implied volatility surface including its term structure and skew. This proposed model aims to provide enhanced treatment for simulating the dynamics of S&P 500 options and replace the nine-pivot approach in STANS, to provide appropriate control for procyclicality in S&P 500 implied volatility modeling, and to provide natural offsets for volatility products with similar characteristics of S&P 500 implied volatility (*e.g.,* VIX futures and options).

The proposed approach would model the implied volatility surface in the space of standardized log-moneyness and tenor. Based on the approximation of the Bergomi-Guyon expansion,[33] the dynamics of S&P 500 implied volatility surface would be characterized by an affine model. In the model, the dynamics of S&P 500 at-the-money (''ATM'') implied volatility would be specified precisely in the form of stochastic differential equations [34] for a fixed number of key tenors. The changes of S&P 500 ATM implied volatility across different tenors would be characterized by the volatility-of-volatility of the anchor tenor with a power law decay term structure and a residual term-specific random process. The power law decay parameter would be modeled as a function of S&P 500 1-month ATM implied volatility. For any arbitrary tenors within the key tenor range, the term-specific correlation structure would be given by a linear interpolation across the nearest two key tenors. For any arbitrary tenors outside the key tenor range, the term-specific correlation structure would be determined by the shortest or longest key tenor, respectively.

OCC assumes changes of skew (*i.e.,* skew shock) evolve proportionally across different standardized log-moneyness and also follow a power law decay term structure. OCC would model the S&P 500 1-month implied volatility skew shock via a linear regression approach conditional on the changes of S&P 500 1-month ATM implied volatility and an idiosyncratic term.

OCC would generate the simulated scenarios of S&P 500 implied volatility surface by first applying shocks across term structure and then skew shock across moneyness to the initial S&P 500 implied volatility surface (obtained through OCC's smoothing algorithm).[35] Along with other risk factors in STANS, the standard uniform draws of the S&P 500 1-month ATM implied volatility risk factor is generated from Copula. First, the log-return scenarios of S&P 500 1-month ATM implied volatility would be simulated from a Hansen's skewed t distribution with pre-determined degrees-of-freedom and skewness parameters. The forecasted volatility-of-volatility for S&P 500 1-month ATM implied volatility would be estimated based on the 30-day VVIX, Cboe's option-implied volatility-of-volatility index. An equal-weighted look-back moving average would be applied to smooth the daily 30-day VVIX. To control for procyclicality, a dynamic scaling factor would be applied to the smoothed 30-day VVIX. The log-return scenarios of S&P 500 ATM implied volatility for a given listed tenor would be generated based on the log-return scenarios of the 1-month ATM implied volatility with a power law decay and the term-specific residuals for tenors longer than 1 month. The random variables for the term-specific residual diffusion process would be drawn from a multivariate Student's t distribution with common degrees-of-freedom.

Secondly, OCC would simulate the S&P 500 1-month implied volatility skew shock conditional on the log-return scenarios of S&P 500 1-month ATM implied volatility and an idiosyncratic term. OCC would generate the skew shock scenarios for listed options with arbitrary tenors and standardized log-moneyness by applying the power law decay and scaling by the stylized standardized log-moneyness scenarios. Finally, OCC would add the skew shock scenario to the shocked S&P 500 ATM implied volatility scenario to obtain the final S&P 500 implied volatility scenario for an arbitrary tenor and standardized log-moneyness. OCC would use the simulated S&P 500 implied volatility scenarios to generate option prices used in margin estimation and stress testing.

Proposed S&P 500 Implied Volatility Simulation Model Performance

The proposed S&P 500 Implied Volatility Simulation Model simplifies the STANS methodology by minimizing the number of implied volatility risk factors. Under the current model, the nine implied volatility pivots used to simulate volatility scenarios have significantly increased the dimension of the Student's t copula by adding nine risk factors to every index or security that has listed options. The proposed S&P 500 Implied Volatility Simulation Model would employ a simpler approach to model the S&P 500 implied volatility surface so that key risk factors driving the implied volatility surface are explicitly modeled within the model itself. By modeling the implied volatility surface directly, instead of using the nine-pivot approach, the simulated implied volatility surface would be smooth and continuous in both term structure and moneyness dimensions. In addition, put and call options with the same tenors and strike prices would have the same implied volatility scenarios under the proposed model. Thus, the S&P 500 Implied Volatility Simulation Model would address issues with the current model's implied volatility surface and scenarios as discussed above.

To compensate for the procyclicality in the GARCH process, the current model employs an exponentially weighted moving average overlay to reduce and delay the impact of large implied volatility spikes. In the proposed S&P 500 Implied Volatility Simulation Model, the forecasted variance of the S&P 500 1-Month ATM implied volatility would be simulated using the smoothed 30-day VVIX, which is a proxy of the option-implied volatility-of-volatility, scaled by a dynamic factor to control for procyclicality. OCC believes the proposed model would be a better and sounder method to produce consistent and smooth simulated implied volatility scenarios in both term structure and skew dimensions for S&P 500 and to control the procyclicality in margin requirements. As borne out by observations on the performance of the proposed model discussed below, OCC believes that these proposed changes also reduce the oversensitivity observed with the GARCH process under the current Implied Volatilities Scenarios Model to large, sudden shocks in market volatility and produce margin

[33] *See* Bergomi, Lorenzo, and Julien Guyon, ''Stochastic volatility's orderly smiles,'' *Risk* 25.5 (2012): 60.

[34] A stochastic differential equation is a differential equation in which one or more of the terms is a stochastic process, resulting in a solution which is also a stochastic process.

[35] The smoothing algorithm is the process that OCC uses to estimate fair values for plain vanilla listed options based on closing bid and ask price quotes. *See* Exchange Act Release No. 86731 (Aug. 22, 2019), 84 FR 45188, 45189 (Aug. 28, 2019) (File No. SR–OCC–2019–005).

requirements that are more stable and that remain commensurate with the risks presented during stressed periods.

Based on its analysis of the S&P 500 Implied Volatility Simulation Model's performance, OCC concludes that the proposed model accurately recovers the correlation structure of the S&P 500 ATM implied volatilities as well as the VIX futures across different tenors, which benefits margin coverage of portfolios containing S&P 500 options, VIX futures, and S&P 500 options and VIX futures. Moreover, the proposed model provides adequate margin coverages for both upward and downward movements of implied volatility over the margin risk horizon. The margin coverage is stable across time and low, medium, and high volatility market conditions. The model parameters would periodically be recalibrated to incorporate more recent data and backtesting performance.

In addition, the implied volatility scenarios generated by the proposed model observed fewer arbitrage violations and tighter consistency between VIX and S&P 500 option price scenarios.[36] The proposed methodology's mitigation of arbitrage is sufficient to allow OCC to use S&P 500 Implied Volatility Simulation model in pricing volatility index futures and variance futures, which assume an arbitrage-free condition. In this way, the proposed changes support enhanced margin offsetting between S&P 500 options, VIX futures, and S&P 500 variance futures, which is naturally captured by the proposed models.

OCC has performed backtesting of the current models and proposed models, including the proposed Volatility Index Futures Model, to compare and evaluate the performance of each model from a margin coverage perspective. Overall, the proposed models, when tested along with other models in STANS, provided adequate margin coverage under different market conditions over the backtesting period. Moreover, compared to the current models, the margin coverage from the proposed model is more stable and less procyclical, especially under stressed market conditions.

[36] OCC believes that the proposed model's improvements to the number of arbitrage violations is explained by two factors: (i) Replacing the current model's approximate delta-based function for the volatility curve—which leads to arbitrage prices between call and put options of the same strike and expiration—with the proposed model's standardized log-moneyness approach, and (ii) replacing the current model's nine pivot points method with a methodology that produces an implied volatility surface that is continuous in strike and time space.

Proposed Changes to the Synthetic Futures Model for Volatility Index-Based Products

OCC proposes to use the Volatility Index Futures Model, rather than the current Synthetic Futures Model, to derive the theoretical fair values of volatility index futures.[37] OCC would also use the Volatility Index Futures Model to calculate the implied forward price for options on volatility indexes, including options on VIX and SPIKES.[38] The purpose of the proposed change is to replace the current method for pricing volatility index futures with an industry-standard method based on Cboe's option replication formula augmented with a convexity correction. As discussed below, OCC believes that the proposed model will produce more accurate and stable results than the current Synthetic Futures Model, which suffers from the limitations discussed above, including that (i) the Synthetic Futures Model produces results that are not strongly correlated with S&P 500 option prices and volatility and are more susceptible to volatility shocks due to the sensitivity of the GARCH process; and (ii) the Synthetic Futures Model depends on the historical calibration for various parameters, which can create artifacts due to the roll dates of VIX futures.

Proposed Volatility Index Futures Model Description

The proposed Volatility Index Futures Model would alleviate the issues observed with the current Synthetic Futures Model by adopting a parameter-free approach based on the replication of log-contract, which measures the expected realized volatility using S&P 500 options, as discussed in Cboe's VIX white paper.[39] The proposed model would derive the theoretical fair value of volatility index futures via replication through a portfolio of vanilla S&P 500 options[40] using the proposed S&P 500 Implied Volatility Simulation Model and convexity adjustments, which reflect the concavity of the square root function used to convert variance into volatility. A basis adjustment would be computed to reflect the difference between the market price and the theoretical value at the base level and then applied to the simulated volatility index futures prices at the scenario level to align the simulation to the market. The output from the Volatility Index Futures Model would be an input to the options pricing model, which treats the volatility index Futures as the underlying of the options contract. By providing a direct link between the volatility index futures price and the underlying S&P 500 options price, OCC believes that the Volatility Index Futures Model would result in more sensible margin charges compared to the current model.

Proposed Volatility Index Futures Model Performance

Based on its analysis of the Volatility Index Futures Model's performance,[41] OCC has concluded the proposed model would provide more consistent and better-behaved margin coverage across the term structure when compared to the current Synthetic Futures Model. The Volatility Index Futures Model demonstrates desirable anti-procyclicality properties, providing adequate margin coverage during periods of high volatility without being too conservative in periods of low volatility. Furthermore, the propose model generates adequate margin coverage for short-term futures which is manifested in the pronounced Samuelson effect.[42] OCC believes three reasons account for the improved performance of the Volatility Index Futures Model: (1) The proposed model provides a direct link between the futures price and the underlying option prices via replication; (2) the margin coverage of VIX futures is closely coupled with the S&P 500 Implied Volatility Simulation Model with procyclicality control, whereas the Synthetic Futures Model relies on the GARCH variance forecast process, which is prone to overreaction to shocks; and (3) unlike the Synthetic Futures Model, the Volatility Index Futures Model is not subject to the

[37] In addition to the VIX index, Cboe calculates several other volatility indexes including the Cboe Short Term Volatility Index (VXST), which reflects the 9-day expected volatility of the S&P 500, as well as the Cboe Nasdaq-100 Volatility Index (VXN), Cboe DJIA Volatility Index (VXD), Cboe Russell 2000 Volatility Index (RVX) and Cboe S&P 500 3-Month Volatility Index (VXV) and the Cboe S&P 500 6-Month Volatility Index (VXMT). The Volatility Index Futures Model may apply to futures contracts written on these and other volatility indexes if and when such futures contracts are listed, depending on OCC's assessment of whether those futures contracts meet the model assumptions and subject to OCC obtaining all necessary regulatory approval to apply the Volatility Index Futures Model to such futures contracts.

[38] OCC calculates the implied forward price for options on indexes using the basis futures price. *See* Exchange Act Release No. 86296 (July 3, 2019), 84 FR 32821 (July 9, 2019) (File No. SR–OCC–2019–005) (enhancing OCC's smoothing algorithm).

[39] *See* Cboe, *VIX White Paper* (2021), *available at https://cdn.cboe.com/resources/vix/vixwhite.pdf.*

[40] In some cases with limited listed strikes, additional strikes will be interpolated or extrapolated to provide more robust results.

[41] *See* Confidential Exhibit 3 to File No. SR–OCC–2022–801.

[42] The Samuelson effect refers to a decrease in volatility with increasing time to maturity.

calibration artifact due to the 500-day lookback window, nor does it require the rolling VIX futures contracts to take on different variances from calibration at futures roll dates, which translate to discontinuities in margin under the current method.

For VIX futures portfolios [43] hedged with S&P 500 options, the proposed models provide more efficient margin coverage.[44] The improvement in margin coverage can be attributed to the direct coupling between VIX futures and S&P 500 options, which gives rise to risk-offsetting effect from the volatility. This result demonstrates that the replication method in conjunction with the S&P 500 Implied Volatility Simulation Model is better able to capture the correlations between VIX futures and S&P 500 options and produce cross-hedging benefits for Clearing Members.

Proposed Changes to the Variance Futures Model

OCC proposes to replace the current Variance Futures Model in its entirety. As discussed above, OCC uses the current Variance Futures Model to derive the theoretical fair values of variance futures for calculating margin and clearing fund requirements based on Clearing Member portfolios. Like the proposed Volatility Index Futures Model, the proposed Variance Futures Model would employ an industry-standard fundamental replication technique using the log-contract to price variance futures.[45] OCC expects that this approach would not only provide more accurate prices, but also offer natural risk offsets with the options of the same underlying security. In addition, the proposed Variance Futures Model would no longer be reliant on a GARCH variance forecast process, thereby addressing the sensitivity and procyclicality of that process to volatility shocks observed with the current model. Furthermore, the proposed method would simulate a near-term variance futures price rather than a final settlement price, consistent with OCC's two-day liquidation assumption.

Proposed Variance Futures Model Description

The theoretical variances produced by the proposed Variance Futures Models would be comprised of two components. The first component, as under the current Variance Futures Model, would be the realized variance calculated by the realized daily returns of S&P 500 option prices.[46] The second component captures the unrealized variance, which OCC would approximate using a portfolio of out of the money (''OTM'') call and put European options. The proposed model would calculate the implied component of variance futures via replication through a portfolio of OTM option prices generated using the proposed S&P 500 Implied Volatility Simulation Model.

Proposed Variance Futures Model Performance

Based on its analysis of the current and proposed Variance Futures Model,[47] the proposed model shows significant improvement in margin coverage. The proposed model naturally captures the correlations between S&P 500 options, variance futures, and VIX. Compared to the current model, the proposed model provides adequate long and short coverage for periods of high volatility and reasonable levels for periods of low volatility. In particular, the proposed model significantly reduces long-side coverage exceedances. The proposed model produces higher correlation for neighboring variance futures and adequate coverage without being overly conservative on the short side. OCC expects that any changes to the overall margins of Clearing Member accounts would be limited; over the twelve-month period between May 2019 and April 2020, only four margin accounts held variance futures positions and the total risk from variance futures positions was less than one percent of the total risk of all the positions for each of those accounts.

Implementation Timeframe

OCC expects to operate the proposed model in parallel with the current model for a period of at least thirty (30) days before implementing the proposed model into production to give Clearing Members an opportunity to understand the practical effects of the proposed changes. OCC further expects to implement the proposed changes within sixty (60) days after the date that OCC receives all necessary regulatory approvals for the proposed changes. OCC will announce the implementation date of the proposed change by an Information Memorandum posted to its public website at least 2 weeks prior to implementation.

Anticipated Effect on and Management of Risk

OCC believes that the proposed changes would reduce the nature and level of risk presented by OCC because, as discussed above, by modeling implied volatility in a more direct, coherent manner, the resulting margin coverage will more accurately reflect the risk of positions dominated by S&P 500 products, volatility index futures and variance futures. Overall, the impact analysis shows that at the account level, margin coverage generated by the proposed models is comparable to that generated using OCC's existing models for accounts dominated by S&P 500 options. While margin charges resulting from the proposed changes may be higher or lower than under the current models due to compositions of positions in each account, OCC believes that margin coverage under the proposed models will be more commensurate with the risks presented by its members' activity because the proposed models employ a more consistent and sounder approach to modeling implied volatility, as discussed above. For accounts dominated by volatility index futures and variance futures, the proposed models are, in general, expected to produce more accurate margin requirement because by using S&P 500 options to calculate the price for such products, the proposed models provide natural offsets for volatility products with similar characteristics. As such, OCC believes the proposed changes would result in margin requirements commensurate with the vega risk presented by Clearing Members' portfolios.

In addition, the proposed changes are expected to produce margin coverage that is more stable and less procyclical than the current models, especially under stressed market conditions. As such, the proposed changes help to address the procyclical features of the current GARCH approach. The proposed changes would therefore reduce the likelihood that OCC's models would produce extreme, overreactive margin requirements that could strain the ability of certain Clearing Members to meet their daily margin requirements at OCC and ensuring more stable and appropriate changes in margin requirements across volatile market

[43] VIX futures are commonly incorporated into a large S&P 500 portfolio as hedging instruments for volatility risk. For example, one could gain pure exposure to underlying spot movements of the S&P 500 by buying/selling VIX futures to hedge the vega risk (*i.e.,* risk of changes in implied volatility) of S&P 500 options.

[44] *See* Confidential Exhibit 3 to File No. SR–OCC–2022–801.

[45] This approach is based on Cboe's published method for pricing S&P 500 variance futures. *See* Cboe, *S&P 500 Variance Futures Contract Specification* (Dec. 10, 2012), *available at http://www.cboe.com/products/futures/va-s-p-500-variance-futures/contract-specifications.*

[46] Additional strikes may be interpolated or extrapolated from listed strikes to provide more robust results.

[47] *See* Confidential Exhibit 3 to File No. SR–OCC–2022–801.

periods while continuing to capture changes in implied volatility and produce margin requirements that are commensurate with the risks presented.

Overall, OCC believes that the proposed model is sound, robust and performs consistently when compared to the current model. OCC plans to design a model performance monitoring program as part of its model risk governance to monitor residual limitations and model paraments after the models are put into production, including a plan to perform compensating controls, if necessary.

Consistency With Clearing Supervision Act

The stated purpose of the Clearing Supervision Act is to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities and strengthening the liquidity of systemically important financial market utilities.[48] Section 805(a)(2) of the Clearing Supervision Act[49] also authorizes the Commission to prescribe risk management standards for the payment, clearing and settlement activities of designated clearing entities, like OCC, for which the Commission is the supervisory agency. Section 805(b) of the Clearing Supervision Act[50] states that the objectives and principles for risk management standards prescribed under Section 805(a) shall be to promote robust risk management, promote safety and soundness, reduce systemic risks, and support the stability of the broader financial system. The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and the Exchange Act in furtherance of these objectives and principles.[51] Rule 17A–22 requires registered clearing agencies, like OCC, to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[52] Therefore, the Commission has stated[53] that it believes it is appropriate to review changes proposed in advance notices against Rule 17A–22[54] and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act.[55] For the following reasons, OCC believes the proposed changes are consistent with Section 805(b) of the Clearing Supervision Act and Rule 17A–22(e)(6).[56]

Consistency with Section 805 of the Clearing Supervision Act

OCC believes the proposed changes are consistent with the objectives and principles of Section 805(b) of the Clearing Supervision Act.[57] in that they would promote robust risk management and safety and soundness while reducing systemic risks and supporting the stability of the broader financial system. The proposed models would be used by OCC to calculate margin requirements, which are part of risk management processes designed to limit OCC's credit exposures to participants, thereby promoting safety and soundness. OCC uses the margin it collects from a defaulting Clearing Member to protect other Clearing Members and their customers from losses as a result of the default and ensure that OCC is able to continue the prompt and accurate clearance and settlement of its cleared products, thereby supporting the stability of the broader financial system and reducing systemic risks that such losses could present to its members of other market participants. For the following reasons, OCC believes that the proposed changes would improve OCC's risk management by addressing issues with the existing models while promoting safety and soundness, thereby reducing systemic risks and supporting the stability of the broader financial system.

As described above, the volatility changes forecasted by OCC's current Implied Volatilities Scenarios Model are sensitive to large, sudden spikes in volatility, which can at times result in overreactive margin requirements that OCC believes are unreasonable and procyclical (for the reasons set forth above). Such sudden, unreasonable increases in margin requirements may stress certain Clearing Members' ability to obtain liquidity to meet those requirements, particularly in periods of extreme volatility, and could result in a Clearing Member being delayed in meeting, or ultimately failing to meet, its daily settlement obligations to OCC. A Clearing Member's failure to meet its daily settlement obligations could, in turn, cause the suspension of such Clearing Member and the liquidation of its portfolio, which could harm investors and other Clearing Members. While the current Implied Volatilities Scenarios Model addresses this issue with an exponentially weighted moving average that reduces and delays the impact of large implied volatility spikes, it does so in an artificial way that does not target the primary issues with the GARCH process that OCC has identified. By modeling implied volatility in a more direct, coherent manner, the proposed S&P 500 Implied Volatility Simulation Model would therefore reduce the likelihood that OCC's models would produce extreme, overreactive margin requirements that could strain the ability of certain Clearing Members to meet their daily margin requirements at OCC by controlling procyclicality in OCC's margin methodology and ensuring more stable and appropriate changes in margin requirements across volatile market periods while continuing to capture changes in implied volatility and produce margin requirements that are commensurate with the risks presented. Accordingly, by better controlling procyclicality, OCC believes the proposed Implied Volatility Scenarios Model are consistent with Section 805(b) of the Clearing Supervision Act.[58]

In addition, OCC believes its proposed changes to establish the Volatility Index Futures Model and replace the Variance Futures Model are consistent with Section 805(b) of the Clearing Supervision Act.[59] Both the Volatility Index Futures Model and the Variance Futures Model exhibit procyclicality issues as a result of their reliance on the GARCH variance forecast process, which is prone to volatility shocks. The proposed Volatility Index Futures Model and Variance Futures Model would address these issues by adopting a fundamental replication technique to price Volatility Index Futures and Variance Futures. In addition to providing a consistent modeling approach to modeling equity volatility products that provides accurate prices, this approach also offers natural risk offsets with the options of the same underlying security. As discussed above, collecting margins that are commensurate with risk helps to avoid collection of excessive margin that may stress certain Clearing Members' ability to obtain liquidity to meet those requirements, particularly in periods of extreme volatility, and could

[48] 12 U.S.C. 5461(b).

[49] 12 U.S.C. 5464(a)(2).

[50] 12 U.S.C. 5464(b).

[51] 17 CFR 240.17A–22. *See* Exchange Act Release Nos. 68080 (October 22, 2012), 77 FR 66220 (November 2, 2012) (S7–08–11) (''Clearing Agency Standards''); 78961 (September 28, 2016), 81 FR 70786 (October 13, 2016) (S7–03–14) (''Standards for Covered Clearing Agencies'').

[52] 17 CFR 240.17A–22.

[53] *See, e.g.,* Exchange Act Release No. 86182 (June 24, 2019), 84 FR 31128, 31129 (June 28, 2019) (SR–OCC–2019–803).

[54] 17 CFR 240.17A–22.

[55] 12 U.S.C. 5464(b).

[56] 17 CFR 240.17A–2(e)(6).

[57] 12 U.S.C. 5464(b).

[58] 12 U.S.C. 5464(b).

[59] *Id.*

result in Clearing Member defaults that could harm investors and other Clearing Members. These changes would also provide natural offsets between S&P 500 options, Volatility Index Futures and Variance Futures. Accordingly, OCC believes the proposed Volatility Index Futures Model and Variance Futures Model are consistent with Section 805(b) of the Clearing Supervision Act.[60]

Consistency Rule 17Ad–22(e)(6)

OCC also believes that the proposed changes are consistent with Rule 17Ad–22(e)(6) under the Exchange Act.[61] In particular, paragraphs (i), (iii), and (v) of Rule 17Ad–22(e)(6)[62] require a covered clearing agency that provides central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that (1) considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market; (2) calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default; and (3) uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. As noted above, OCC's current models for implied volatility and pricing volatility index futures and variance futures demonstrate sensitivity to sudden spikes in volatility, which can at times result in overreactive margin requirements that OCC believes are unreasonable and procyclical. The proposed changes are designed to reduce the oversensitivity of the model and produce margin requirements that are commensurate with the risks presented during periods of sudden, extreme volatility. The proposed changes are designed to reduce procyclicality in OCC's margin methodology and ensure more stable changes in margin requirements across volatile market periods while continuing to capture changes in implied volatility and produce margin requirements that are commensurate with the risks presented by OCC's cleared options. As a result, OCC believes that the proposed changes are reasonably designed to consider, and produce margin levels commensurate with, the risk presented by the implied volatility of OCC's cleared options, as well as the risk presented by volatility index futures and variance futures; calculate margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default; and use an appropriate method for measuring credit exposure that accounts for this product risk factor (*i.e.,* implied volatility) and for these products (*i.e.,* volatility index futures and variance futures) in a manner consistent with Rules 17Ad–22(e)(6)(i), (iii) and (v).[63]

For the foregoing reasons, OCC believes that the proposed changes are consistent with Section 805(b) of the Clearing Supervision Act[64] and Rule 17Ad–22(e)(6)[65] under the Exchange Act.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The proposed change may be implemented if the Commission does not object to the proposed change within 60 days of the later of (i) the date the proposed change was filed with the Commission or (ii) the date any additional information requested by the Commission is received. OCC shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date the advance notice is filed, or the date further information requested by the Commission is received, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission.

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision 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–OCC–2022–801 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–OCC–2022–801. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice 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 OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules48T.*

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–OCC–2022–801 and should be submitted on or before March 4, 2022.

[60] *Id.*

[61] 17 CFR 240.17Ad–2(e)(6).

[62] 17 CFR 240.17Ad–2(e)(6)(i), (iii), (v).

[63] *Id.*

[64] 12 U.S.C. 5464(b).

[65] 17 CFR 240.17Ad–2(e)(6)(i), (iii), (v).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[66]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94165; File No. SR–OCC–2022–001]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Concerning the Options Clearing Corporation's Margin Methodology for Incorporating Variations in Implied Volatility

February 7, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 24, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

This proposed rule change would modify OCC's margin methodology, the System for Theoretical Analysis and Numerical Simulations (''STANS''), to simplify the methodology, control procyclicality in volatility modeling, provide natural offsets for volatility products with similar characteristics, and build the foundation for a single, consistent framework to model equity volatility products in margin and stress testing. Specifically, this proposed rule change would:

(1) Implement a new model for incorporating variations in implied volatility within STANS for products based on the S&P 500 Index (such index hereinafter referred to as ''S&P 500'' and such proposed model being the ''S&P 500 Implied Volatility Simulation Model'') to provide consistent and smooth simulated volatility scenarios;

(2) implement a new model to calculate the theoretical values of futures on indexes designed to measure volatilities implied by prices of options on a particular underlying index (such indexes being ''volatility indexes''; futures contracts on such volatility indexes being ''volatility index futures''; and such proposed model being the ''Volatility Index Futures Model'') to provide consistent and stable coverage across all maturities; and

(3) replace OCC's model to calculate the theoretical values of exchange-traded futures contracts based on the expected realized variance of an underlying interest (such contracts being ''variance futures,'' and such model being the ''Variance Futures Model'') with one that provides adequate margin coverage while providing offsets for hedged positions in the listed options market.

The proposed changes to OCC's STANS Methodology document are contained in confidential Exhibit 5 of filing SR–OCC–2022–001. Amendments to the existing text are marked by underlining and material proposed to be deleted is marked by strikethrough text. The proposed changes are described in detail in Item 3 below. New sections 2.1.4 (S&P 500 Implied Volatilities Scenarios) and 2.1.8 (Volatility Index Futures), and the replacement text for section 2.1.7 (Variance Futures), specific to the proposed models, are presented without marking. Existing Section 2.1.4 through 2.1.7 have been renumbered to reflect the addition of the new sections but are otherwise unchanged. The proposed rule change does not require any changes to the text of OCC's By-Laws or Rules. All terms with initial capitalization that are not otherwise defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[3]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Background

STANS Overview

STANS is OCC's proprietary risk management system for calculating Clearing Member margin requirements.[4] The STANS methodology utilizes large-scale Monte Carlo simulations to forecast price and volatility movements in determining a Clearing Member's margin requirement.[5] STANS margin requirements are calculated at the portfolio level of Clearing Member accounts with positions in marginable securities and consists of an estimate of two primary components: a base component and a concentration/dependence stress test add-on component. The base component is an estimate of a 99% expected shortfall[6] over a two-day time horizon. The concentration/dependence stress test add-on is obtained by considering increases in the expected margin shortfall for an account that would occur due to (i) market movements that are especially large and/or in which certain risk factors would exhibit perfect or zero correlations rather than correlations otherwise estimated using historical data or (ii) extreme and adverse idiosyncratic movements for individual risk factors to which the account is particularly exposed. OCC uses the STANS methodology to measure the exposure of portfolios of options and futures cleared by OCC and cash instruments in margin collateral, including volatility index futures and variance futures.[7]

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[66] 17 CFR 200.30–3(a)(91).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] OCC's By-Laws and Rules can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

[4] *See* Exchange Act Release No. 91079 (Feb. 8, 2021), 86 FR 9410 (Feb. 12, 2021) (File No. SR–OCC–2020–016). OCC makes its STANS Methodology description available to Clearing Members. An overview of the STANS methodology is on OCC's public website: *https://www.theocc.com/Risk-Management/Margin-Methodology.*

[5] *See* OCC Rule 601.

[6] The expected shortfall component is established as the estimated average of potential losses higher than the 99% value at risk threshold. The term ''value at risk'' or ''VaR'' refers to a statistical technique that, generally speaking, is used in risk management to measure the potential risk of loss for a given set of assets over a particular time horizon.

[7] Pursuant to OCC Rule 601(e)(1), OCC also calculates initial margin requirements for segregated futures accounts on a gross basis using the Standard Portfolio Analysis of Risk Margin Calculation System (''SPAN''). Commodity Futures Trading Commission (''CFTC'') Rule 39.13(g)(8), requires, in relevant part, that a derivatives clearing organization (''DCO'') collect initial margin for customer segregated futures accounts on a gross basis. While OCC uses SPAN to calculate initial margin requirements for segregated futures accounts on a gross basis, OCC believes that margin requirements calculated on a net basis (*i.e.,* permitting offsets between different customers' positions held by a Clearing Member in a segregated futures account using STANS) affords OCC additional protections at the clearinghouse level against risks associated with liquidating a Clearing Member's segregated futures account. As a result, OCC calculates margin requirements for segregated futures accounts using both SPAN on a gross basis and STANS on a net basis, and if at any time OCC staff observes a segregated futures account where initial margin calculated pursuant to STANS on a

The models in STANS currently incorporate a number of risk factors. A ''risk factor'' within OCC's margin system is defined as a product or attribute whose historical data is used to estimate and simulate the risk for an associated product. The majority of risk factors utilized in the STANS methodology are the returns on individual equity securities; however, a number of other risk factors may be considered, including, among other things, returns on implied volatility.

Current Implied Volatilities Scenarios Model

Generally speaking, the implied volatility of an option is a measure of the expected future volatility of the option's underlying security at expiration, which is reflected in the current option premium in the market. Using the Black-Scholes options pricing model, the implied volatility is the standard deviation of the underlying asset price necessary to arrive at the market price of an option of a given strike, time to maturity, underlying asset price and the current discount interest rate. In effect, the implied volatility is responsible for that portion of the premium that cannot be explained by the current intrinsic value of the option (*i.e.,* the difference between the price of the underlying and the exercise price of the option), discounted to reflect its time value. OCC considers variations in implied volatility within STANS to ensure that the anticipated cost of liquidating options positions in an account recognizes the possibility that the implied volatility could change during the two-business day liquidation time horizon and lead to corresponding changes in the market prices of the options.

Using its current Implied Volatilities Scenarios Model,[8] OCC models the variations in implied volatility used to re-price options within STANS for substantially all option contracts [9] available to be cleared by OCC that have a residual tenor [10] of less than three years (''Shorter Tenor Options'').[11] To address variations in implied volatility, OCC models a volatility surface [12] for Shorter Tenor Options by incorporating certain risk factors (*i.e.,* implied volatility pivot points) based on a range of tenors and option deltas [13] into the models in STANS. Currently, these implied volatility pivot points consist of three tenors of one month, three months and one year, and three deltas of 0.25, 0.5, and 0.75, resulting in nine implied volatility risk factors. These pivot points are chosen such that their combination allows the model to capture changes in level, skew (*i.e.,* strike price), convexity, and term structure of the implied volatility surface. OCC uses a GARCH model [14] to forecast the volatility for each implied volatility risk factor at the nine pivot points.[15] For each Shorter Tenor Option in the account of a Clearing Member, changes in its implied volatility are simulated using forecasts obtained from daily implied volatility market data according to the corresponding pivot point and the price of the option is computed to determine the amount of profit or loss in the account under the particular STANS price simulation. Additionally, OCC uses simulated closing prices for the assets underlying the options in the account of a Clearing Member that are scheduled to expire within the liquidation time horizon of two business days to compute the options' intrinsic value and uses those values to help calculate the profit or loss in the account.[16]

In January 2019,[17] OCC modified the Implied Volatilities Scenarios Model after OCC's analyses of the model demonstrated that the volatility changes forecasted by the GARCH model were extremely sensitive to sudden spikes in volatility, which at times resulted in overreactive margin requirements that OCC believed were unreasonable and procyclical.[18] To reduce the oversensitivity of the Implied Volatilities Scenarios Model to large, sudden shocks in market volatility and therefore result in margin requirements that are more stable and that remain commensurate with the risks presented during periods of sudden, extreme volatility, OCC modified the Implied Volatilities Scenarios Model to use an exponentially weighted moving average [19] of forecasted volatilities over a specified look-back period rather than using raw daily forecasted volatilities. The exponentially weighted moving average involves the selection of a look-back period over which the data would be averaged and a decay factor (or weighting factor), which is a positive number between zero and one, that represents the weighting factor for the

net basis exceeds the initial margin calculated pursuant to SPAN on a gross basis, OCC collateralizes this risk exposure by applying an additional margin charge in the amount of such difference to the account. *See* Exchange Act Release No. 72331 (June 5, 2014), 79 FR 33607 (June 11, 2014) (File No. SR–OCC–2014–13).

[8] In December 2015, the Commission approved a proposed rule change and issued a Notice of No Objection to an advance notice filed by OCC to modify its margin methodology by more broadly incorporating variations in implied volatility within STANS. *See* Exchange Act Release No. 76781 (Dec. 28, 2015), 81 FR 135 (Jan. 4, 2016) (File No. SR–OCC–2015–016); Exchange Act Release No. 76548 (Dec. 3, 2015), 80 FR 76602 (Dec. 9, 2015) (File No. SR–OCC–2015–804). Initially named the ''Implied Volatility Model,'' OCC re-titled the model the ''Implied Volatilities Scenarios Model'' in 2021 as part of the STANS Methodology's broader reorganization of OCC's Margin Methodology. *See* Exchange Act Release No. 90763 (Dec. 21, 2020), 85 FR 85788, 85792 (Dec. 29, 2020) (File No. SR–OCC–2020–016).

[9] OCC's Implied Volatilities Scenarios Model excludes (i) binary options, (ii) options on commodity futures, (iii) options on U.S. Treasury securities, and (iv) Asians and Cliquets.

[10] The ''tenor'' of an option is the amount of time remaining to its expiration.

[11] OCC currently incorporates variations in implied volatility as risk factors for certain options with residual tenors of at least three years (''Longer Tenor Options'') by a separate process. *See* Exchange Act Release No. 68434 (Dec. 14, 2012), 77 FR 57602 (Dec. 19, 2012) (File No. SR–OCC–2012–14); Exchange Act Release No. 70709 (Oct. 18, 2013), 78 FR 63267 (Oct. 23, 2013) (File No. SR–OCC–2013–16). Because all Longer Tenor Options are S&P 500-based products, the proposed S&P 500 Implied Volatility Simulation Model would eliminate the separate process for Longer Tenor Options with a single methodology for all S&P 500 options.

[12] The term ''volatility surface'' refers to a three-dimensional graphed surface that represents the implied volatility for possible tenors of the option and the implied volatility of the option over those tenors for the possible levels of ''moneyness'' of the option. The term ''moneyness'' refers to the relationship between the current market price of the underlying interest and the exercise price.

[13] The ''delta'' of an option represents the sensitivity of the option price with respect to the price of the underlying security.

[14] The acronym ''GARCH'' refers to an econometric model that can be used to estimate volatility based on historical data. *See generally* Tim Bollerslev, ''Generalized Autoregressive Conditional Heteroskedasticity,'' *Journal of Econometrics,* 31(3), 307–327 (1986).

[15] STANS relies on 10,000 price simulation scenarios that are based generally on a historical data period of 500 business days, which are updated daily to keep model results from becoming stale.

[16] For such Shorter Tenor Options that are scheduled to expire on the open of the market rather than the close, OCC uses the relevant opening price for the underlying assets.

[17] In December 2018, the Commission approved a proposed rule change and issued a Notice of No Objection to an advance notice filed by OCC to modify the Implied Volatilities Scenarios Model. *See* Exchange Act Release No. 84879 (Dec. 20, 2018), 83 FR 67392 (Dec. 29, 2018) (File No. SR–OCC–2018–014); Exchange Act Release No. 84838 (Dec. 19, 2018), 83 FR 66791 (Dec. 27, 2018) (File No. SR–OCC–2018–804).

[18] A quality that is positively correlated with the overall state of the market is deemed to be ''procyclical.'' While margin requirements from risk-based margin models normally fluctuate with market volatility, a margin model can be procyclical if it overreacts to market conditions, such as generating drastic spikes in margin requirements in response to jumps in market volatility. Anti-procyclical features in a model are measures intended to prevent risk-based models from fluctuating too drastically in response to changing market conditions.

[19] An exponentially weighted moving average is a statistical method that averages data in a way that gives more weight to the most recent observations using an exponential scheme.

most recent data point.[20] The look-back period and decay factor are model parameters subject to monthly review, along with other model parameters that are reviewed by OCC's Model Risk Working Group (''MRWG'') [21] in accordance with OCC's internal procedure for margin model parameter review and sensitivity analysis, and these parameters are subject to change upon approval of the MRWG.

The current Implied Volatilities Scenarios Model is subject to certain limitations and issues, which would be addressed by the proposed changes described herein. While the overlay of an exponentially weighted moving average reduces and delays the impact of large implied volatility spikes, it does so in an artificial way that does not target the primary issues that OCC identified with the GARCH model. Consequently, the 2019 modifications were intended to be a temporary solution.

The current model uses the ''nearest neighbor'' method to switch pivot points in the implied volatility surface, which introduces discontinuity in the implied volatility curve for a given tenor. In addition, the implied volatility scenarios for call and put options with the same tenor and strike price are not equal. These issues introduce inconsistencies in implied volatility scenarios.[22] Due to the use of arithmetic implied volatility returns in the current model,[23] it can produce near zero implied volatility, which is unrealistic, in a few simulated scenarios.

In addition, the current model does not impose constraints on the nine pivot points to ensure that simulated surfaces are arbitrage-free because the pivots are not modeled consistently. As a result, the simulated implied volatility surfaces often allow arbitrages across options. Because of the potential for arbitrage, the implied volatilities are not adequate inputs to price variance futures and volatility index futures accurately, both of which assume an arbitrage-free condition.[24] Furthermore, the current Implied Volatilities Scenarios Model may not provide natural offsetting of risks in accounts that contain combinations of S&P 500 options, variance futures, and/or volatility index futures because the copula utilized in the current model indirectly captures the correlation effect between S&P 500 options and volatility index futures or variance futures.

Current Synthetic Futures Model

Volatility indexes are indexes designed to measure the volatility that is implied by the prices of options on a particular reference index or asset. For example, Cboe's Volatility Index (''VIX'') is an index designed to measure the 30-day expected volatility of the S&P 500. Volatility index futures can consequently be viewed as an indication of the market's future expectations of the volatility of a given volatility index's underlying reference index (*e.g.,* in the case of the VIX, providing a snapshot of the expected market volatility of the S&P 500 over the term of the options making up the index). OCC clears futures contracts on such volatility indexes.

OCC currently uses the Synthetic Futures Model to calculate the theoretical value of volatility index futures, among other products,[25] for purposes of calculating margin for Clearing Member portfolios. OCC's current approach for projecting the potential final settlement prices of volatility index futures models the price distributions of ''synthetic'' futures on a daily basis based on the historical returns of futures contracts with approximately the same tenor.[26] The Synthetic Futures Model uses synthetic time series of 500 daily proportional returns created from historical futures. Once futures mature, the synthetic time series roll from the nearer-term futures to the next further out futures on the day subsequent to the front-month maturity date. Thus, the front-month synthetic always contains returns of the front contract; the second synthetic corresponds to the next month out, and so on. While synthetic time series contain returns from different contracts, a return on any given date is constructed from prices of the same contract (*e.g.,* as the front-month futures contract ''rolls'' from the current month to the subsequent month, returns on the roll date are constructed by using the same contract and not by calculating returns across months). The econometric model currently used in STANS for purposes of modeling proportionate returns of the synthetic futures is an asymmetric GARCH(1,1) with an asymmetric Standardized Normal Reciprocal Inverse Gaussian (or ''NRIG'')-distributed logarithmic returns.[27] The correlation between S&P 500 options and VIX futures are controlled by a copula.

The current synthetic modeling approach suffers from limitations and issues similar to the current Implied Volatilities Scenarios Model. For one, the current synthetic model relies on the GARCH variance forecast, which, as described above, is prone to volatility shocks. To address this, the Synthetic Futures Model employs an anti-procyclical floor for variance

[20] The lower the number the more weight is attributed to the more recent data (*e.g.,* if the value is set to one, the exponentially weighted moving average becomes a simple average).

[21] The MRWG is responsible for assisting OCC's Management Committee in overseeing OCC's model-related risk and includes representatives from OCC's Financial Risk Management department, Quantitative Risk Management department, Model Validation Group, and Enterprise Risk Management department.

[22] The inconsistency arises from the assumption that call deltas are equivalent to put deltas plus one, which is not well justified.

[23] The arithmetic return of an implied volatility over a single period of any length of time is calculated by dividing the difference between final value and initial value by the initial value.

[24] Currently, the S&P 500 underlying price scenario generated from the Variance Futures Model is used as input data for variance futures. For volatility index futures, synthetic VIX futures time series generated by the Synthetic Futures Model are used as input data to calibrate model parameters, as discussed below.

[25] OCC also applies the Synthetic Futures Model to (i) futures on the American Interbank Offered Rate (''AMERIBOR'') disseminated by the American Financial Exchange, LLC, which is a transaction-based interest rate benchmark that represents market-based borrowing costs; (ii) futures products linked to indexes comprised of continuous yield based on the most recently issued (*i.e.,* ''on-the-run'') U.S. Treasury notes listed by Small Exchange Inc. (''Small Treasury Yield Index Futures''); and (iii) futures products linked to Light Sweet Crude Oil (WTI) listed by Small Exchange (''Small Crude Oil Futures''). *See* Exchange Act Release No. 89392 (July 24, 2020), 85 FR 45938 (July 30, 2020) (File No. SR–OCC–2020–007) (AMERIBOR futures); Exchange Act Release No. 90139 (Oct. 8, 2020), 85 FR 65886 (Oct. 16, 2020) (File No. SR–OCC–2020–012) (Small Treasury Yield Index Futures); Exchange Act Release No. 91833 (May 10, 2021), 86 FR 26586 (May 14, 2021) (File No. SR–OCC–2021–005) (Small Crude Oil Futures). Notwithstanding the proposed charges herein, OCC would continue to use the current Synthetic Futures Model to model prices for interest rate futures on AMERIBOR, Small Treasury Yield Index Futures and Small Crude Oil Futures.

[26] A ''synthetic'' futures time series relates to a uniform substitute for a time series of daily settlement prices for actual futures contracts, which persists over many expiration cycles and thus can be used as a basis for econometric analysis. One feature of futures contracts is that each contract may have a different expiration date, and at any one point in time there may be a variety of futures contracts on the same underlying interest, all with varying dates of expiration, so that there is no one continuous time series for those futures. Synthetic futures can be used to generate a continuous time series of futures contract prices across multiple expirations. These synthetic futures price return histories are inputted into the existing Copula simulation process in STANS alongside the underlying interests of OCC's other cleared and cross-margin products and collateral. The purpose of this use of synthetic futures is to allow the margin system to better approximate correlations between futures contracts of different tenors by creating more price data points and their margin offsets.

[27] *See* Exchange Act Release No. 85873 (May 16, 2019), 84 FR 23620 (May 22, 2019) (File No. SR–OCC–2019–002); Exchange Act Release No. 85870 (May 15, 2019), 84 FR 23096 (May 21, 2019) (File No. SR–OCC–2019–801).

estimates.[28] Secondly, the current synthetic model makes the rolling volatility futures contracts take on different variances from calibration at futures roll dates, which could translate to jumps in margin.

Current Model for Variance Futures

Variance futures are commodity futures for which the underlying interest is a variance.[29] Variance futures differ from volatility index futures in that the underlying variance is calculated using only historical daily closing values of the reference variable while an underlying volatility index represents the implied volatility component of bid and ask premium quotations for options on a reference variable. When a variance futures contract is listed, it defines the initial variance strike. This initial variance strike represents the estimated future variance at contract expiration. The final settlement value is determined based on a standardized formula for calculating the realized variance of the S&P 500 measured from the time of initial listing until expiration of the contract. At maturity, the buyer of the contract pays the amount of predefined strike to the seller and the seller pays the realized variances. Therefore, the buyer profits if the realized variance at maturity exceeds the predefined variance strike. S&P 500 variance futures are exchange-traded futures contracts based on the realized variance of the S&P 500.

OCC uses the current Variance Futures Model to calculate the theoretical value of variance futures for purposes of calculating margin for Clearing Member portfolios. OCC's current Variance Futures Model was introduced in 2007 and is an econometric model designed to capture long- and short-term conditional variance of the underlying S&P 500 to generate variance futures prices. OCC's current approach to modeling variance futures has several disadvantages. OCC currently models variance futures by simulating a final settlement price rather than a near-term variance futures price. This approach is not consistent with OCC's two-day liquidation horizon. In addition, the current Variance Futures Model is based on an econometric model that assumes the S&P 500 return variance can be described by the GARCH(1,1) model and that the long-term variation follows and Ornstein-Uhlenbeck process.[30] As with the use of GARCH for the Implied Volatilities Scenarios Model, this approach has several limitations, including (1) the current approach does not provide appropriate risk offsets with other instruments closely related to the S&P 500 implied volatility, such as VIX futures; and (2) the margin rates it generates are too conservative for short positions and too aggressive for long positions, which causes model backtesting to fail.

Proposed Change

OCC is proposing to replace the Implied Volatilities Scenarios Model for S&P 500-based products, the Synthetic Futures Model for volatility index-based products, and the Variance Future Model for variance futures with new models that would simplify the STANS methodology, control procyclicality in volatility modeling, provide natural offsets for volatility products with similar characteristics, and build the foundation for a single, consistent framework to model equity volatility products in margin and stress testing.

Proposed Changes to the Implied Volatilities Scenarios Model for S&P 500-Based Products

OCC proposes to replace the current Implied Volatilities Scenarios Model with the proposed S&P 500 Implied Volatility Simulation Model for the S&P 500 product group.[31] The purpose of the proposed S&P 500 Implied Volatility Simulation Model is to establish a consistent and robust framework for implied volatility simulation, provide appropriate control for procyclicality in S&P 500 implied volatility modeling, and provide natural offsets for volatility products with similar characteristics to S&P 500 implied volatility (*e.g.,* VIX futures and options). The output of the S&P 500 Implied Volatility Simulation Model would be used by OCC's options pricing model, as well as the proposed Volatility Index Futures Model and Variance Futures Model.

Proposed S&P 500 Implied Volatility Simulation Model Description

The proposed S&P 500 Implied Volatility Simulation Model is a Monte Carlo simulation model that captures the risk dynamics in S&P 500 implied volatility surface including its term structure and skew. This proposed model aims to provide enhanced treatment for simulating the dynamics of S&P 500 options and replace the nine-pivot approach in STANS, to provide appropriate control for procyclicality in S&P 500 implied volatility modeling, and to provide natural offsets for volatility products with similar characteristics of S&P 500 implied volatility (*e.g.,* VIX futures and options).

The proposed approach would model the implied volatility surface in the space of standardized log-moneyness and tenor. Based on the approximation of the Bergomi-Guyon expansion,[32] the dynamics of S&P 500 implied volatility surface would be characterized by an affine model. In the model, the dynamics of S&P 500 at-the-money (''ATM'') implied volatility would be specified precisely in the form of stochastic differential equations [33] for a fixed number of key tenors. The changes of S&P 500 ATM implied volatility across different tenors would be characterized by the volatility-of-volatility of the anchor tenor with a power law decay term structure and a residual term-specific random process. The power law decay parameter would be modeled as a function of S&P 500

[28] In order to incorporate a variance level implied by a longer time series of data, OCC calculates a floor for variance estimates based on the underlying index (*e.g.,* VIX) which is expected to have a longer history that is more reflective of the long-run variance level that cannot be otherwise captured using the synthetic futures data. The floor therefore reduces the impact of a sudden increase in margin requirements from a low level and therefore mitigates procyclicality in the model.

[29] A variance is a statistical measure of the variability of price returns relative to an average (mean) price return. Accordingly, OCC believes that an underlying variance is a ''commodity'' within the definition of Section 1a(4) of the Commodity Exchange Act (''CEA''), which defines ''commodity'' to include ''all . . . rights, and interests in which contracts for future delivery are presently or in the future dealt in.'' 7 U.S.C. 1a(9). OCC believes a variance is neither a ''security'' nor a ''narrow-based security index'' as defined in Section 3(a)(10) and Section 3(a)(55)(A) of the Exchange Act, respectively, and therefore is within the exclusive jurisdiction of the CFTC. OCC clears this product in its capacity as a DCO registered under Section 5b of the CEA. *See* Exchange Act Release No. 49925 (June 28, 2004), 69 FR 40447 (July 2, 2004) (File No. SR–OCC–2004–08).

[30] See Uhlenbeck, G. E. and L.S. Ornstein, ''On the Theory of Brownian Motion,'' *Physical Review,* 36, 823–841 (1930) (explaining the Gaussian Ornstein-Uhlenbeck process).

[31] The S&P 500 Implied Volatility Model has been designed to model implied volatility dynamics for options written on the S&P 500 and related indexes, such as S&P 500 index options (''SPX'') and S&P 500 Exchange Traded Funds (''SPY'') options, options on S&P 500 futures, and related implied volatility derivatives such as VIX futures and Miax's SPIKES Volatility Index (''SPIKES''). While OCC would continue to use the current Implied Volatilities Scenarios Model for the products other than S&P 500-based products to which the model currently applies, the S&P 500 Implied Volatility Simulation Model is intended to provide a foundation upon which OCC can build a single consistent framework to model single-name and index/futures equity volatility products for margin and stress testing.

[32] *See* Bergomi, Lorenzo, and Julien Guyon, ''Stochastic volatility's orderly smiles,'' *Risk* 25.5 (2012): 60.

[33] A stochastic differential equation is a differential equation in which one or more of the terms is a stochastic process, resulting in a solution which is also a stochastic process.

1-month ATM implied volatility. For any arbitrary tenors within the key tenor range, the term-specific correlation structure would be given by a linear interpolation across the nearest two key tenors. For any arbitrary tenors outside the key tenor range, the term-specific correlation structure would be determined by the shortest or longest key tenor, respectively.

OCC assumes changes of skew (*i.e.,* skew shock) evolve proportionally across different standardized log-moneyness and also follow a power law decay term structure. OCC would model the S&P 500 1-month implied volatility skew shock via a linear regression approach conditional on the changes of S&P 500 1-month ATM implied volatility and an idiosyncratic term.

OCC would generate the simulated scenarios of S&P 500 implied volatility surface by first applying shocks across term structure and then skew shock across moneyness to the initial S&P 500 implied volatility surface (obtained through OCC's smoothing algorithm).[34] Along with other risk factors in STANS, the standard uniform draws of the S&P 500 1-month ATM implied volatility risk factor is generated from Copula. First, the log-return scenarios of S&P 500 1-month ATM implied volatility would be simulated from a Hansen's skewed t distribution with pre-determined degrees-of-freedom and skewness parameters. The forecasted volatility-of-volatility for S&P 500 1-month ATM implied volatility would be estimated based on the 30-day VVIX, Cboe's option-implied volatility-of-volatility index. An equal-weighted look-back moving average would be applied to smooth the daily 30-day VVIX. To control for procyclicality, a dynamic scaling factor would be applied to the smoothed 30-day VVIX. The log-return scenarios of S&P 500 ATM implied volatility for a given listed tenor would be generated based on the log-return scenarios of the 1-month ATM implied volatility with a power law decay and the term-specific residuals for tenors longer than 1 month. The random variables for the term-specific residual diffusion process would be drawn from a multivariate Student's t distribution with common degrees-of-freedom.

Secondly, OCC would simulate the S&P 500 1-month implied volatility skew shock conditional on the log-return scenarios of S&P 500 1-month ATM implied volatility and an idiosyncratic term. OCC would generate the skew shock scenarios for listed options with arbitrary tenors and standardized log-moneyness by applying the power law decay and scaling by the stylized standardized log-moneyness scenarios. Finally, OCC would add the skew shock scenario to the shocked S&P 500 ATM implied volatility scenario to obtain the final S&P 500 implied volatility scenario for an arbitrary tenor and standardized log-moneyness. OCC would use the simulated S&P 500 implied volatility scenarios to generate option prices used in margin estimation and stress testing.

Proposed S&P 500 Implied Volatility Simulation Model Performance

The proposed S&P 500 Implied Volatility Simulation Model simplifies the STANS methodology by minimizing the number of implied volatility risk factors. Under the current model, the nine implied volatility pivots used to simulate volatility scenarios have significantly increased the dimension of the Student's t copula by adding nine risk factors to every index or security that has listed options. The proposed S&P 500 Implied Volatility Simulation Model would employ a simpler approach to model the S&P 500 implied volatility surface so that key risk factors driving the implied volatility surface are explicitly modeled within the model itself. By modeling the implied volatility surface directly, instead of using the nine-pivot approach, the simulated implied volatility surface would be smooth and continuous in both term structure and moneyness dimensions. In addition, put and call options with the same tenors and strike prices would have the same implied volatility scenarios under the proposed model. Thus, the S&P 500 Implied Volatility Simulation Model would address issues with the current model's implied volatility surface and scenarios as discussed above.

To compensate for the procyclicality in the GARCH process, the current model employs an exponentially weighted moving average overlay to reduce and delay the impact of large implied volatility spikes. In the proposed S&P 500 Implied Volatility Simulation Model, the forecasted variance of the S&P 500 1-Month ATM implied volatility would be simulated using the smoothed 30-day VVIX, which is a proxy of the option-implied volatility-of-volatility, scaled by a dynamic factor to control for procyclicality. OCC believes the proposed model would be a better and sounder method to produce consistent and smooth simulated implied volatility scenarios in both term structure and skew dimensions for S&P 500 and to control the procyclicality in margin requirements. As borne out by observations on the performance of the proposed model discussed below, OCC believes that these proposed changes also reduce the oversensitivity observed with the GARCH process under the current Implied Volatilities Scenarios Model to large, sudden shocks in market volatility and produce margin requirements that are more stable and that remain commensurate with the risks presented during stressed periods.

Based on its analysis of the S&P 500 Implied Volatility Simulation Model's performance, OCC concludes that the proposed model accurately recovers the correlation structure of the S&P 500 ATM implied volatilities as well as the VIX futures across different tenors, which benefits margin coverage of portfolios containing S&P 500 options, VIX futures, and S&P 500 options and VIX futures. Moreover, the proposed model provides adequate margin coverages for both upward and downward movements of implied volatility over the margin risk horizon. The margin coverage is stable across time and low, medium, and high volatility market conditions. The model parameters would periodically be recalibrated to incorporate more recent data and backtesting performance.

In addition, the implied volatility scenarios generated by the proposed model observed fewer arbitrage violations and tighter consistency between VIX and S&P 500 option price scenarios.[35] The proposed methodology's mitigation of arbitrage is sufficient to allow OCC to use S&P 500 Implied Volatility Simulation model in pricing volatility index futures and variance futures, which assume an arbitrage-free condition. In this way, the proposed changes support enhanced margin offsetting between S&P 500 options, VIX futures, and S&P 500 variance futures, which is naturally captured by the proposed models.

OCC has performed backtesting of the current models and proposed models, including the proposed Volatility Index Futures Model, to compare and evaluate

[34] The smoothing algorithm is the process that OCC uses to estimate fair values for plain vanilla listed options based on closing bid and ask price quotes. *See* Exchange Act Release No. 86731 (Aug. 22, 2019), 84 FR 45188, 45189 (Aug. 28, 2019) (File No. SR–OCC–2019–005).

[35] OCC believes that the proposed model's improvements to the number of arbitrage violations is explained by two factors: (i) Replacing the current model's approximate delta-based function for the volatility curve—which leads to arbitrage prices between call and put options of the same strike and expiration—with the proposed model's standardized log-moneyness approach, and (ii) replacing the current model's nine pivot points method with a methodology that produces an implied volatility surface that is continuous in strike and time space.

the performance of each model from a margin coverage perspective. Overall, the proposed models, when tested along with other models in STANS, provided adequate margin coverage under different market conditions over the backtesting period. Moreover, compared to the current models, the margin coverage from the proposed model is more stable and less procyclical, especially under stressed market conditions.

Proposed Changes to the Synthetic Futures Model for Volatility Index-Based Products

OCC proposes to use the Volatility Index Futures Model, rather than the current Synthetic Futures Model, to derive the theoretical fair values of volatility index futures.[36] OCC would also use the Volatility Index Futures Model to calculate the implied forward price for options on volatility indexes, including options on VIX and SPIKES.[37] The purpose of the proposed change is to replace the current method for pricing volatility index futures with an industry-standard method based on Cboe's option replication formula augmented with a convexity correction. As discussed below, OCC believes that the proposed model will produce more accurate and stable results than the current Synthetic Futures Model, which suffers from the limitations discussed above, including that (i) the Synthetic Futures Model produces results that are not strongly correlated with S&P 500 option prices and volatility and are more susceptible to volatility shocks due to the sensitivity of the GARCH process; and (ii) the Synthetic Futures Model depends on the historical calibration for various parameters, which can create artifacts due to the roll dates of VIX futures.

[36] In addition to the VIX index, Cboe calculates several other volatility indexes including the Cboe Short Term Volatility Index (VXST), which reflects the 9-day expected volatility of the S&P 500, as well as the Cboe Nasdaq-100 Volatility Index (VXN), Cboe DJIA Volatility Index (VXD), Cboe Russell 2000 Volatility Index (RVX) and Cboe S&P 500 3-Month Volatility Index (VXV) and the Cboe S&P 500 6-Month Volatility Index (VXMT). The Volatility Index Futures Model may apply to futures contracts written on these and other volatility indexes if and when such futures contracts are listed, depending on OCC's assessment of whether those futures contracts meet the model assumptions and subject to OCC obtaining all necessary regulatory approval to apply the Volatility Index Futures Model to such futures contracts.

[37] OCC calculates the implied forward price for options on indexes using the basis futures price. *See* Exchange Act Release No. 86296 (July 3, 2019), 84 FR 32821 (July 9, 2019) (File No. SR–OCC–2019–005) (enhancing OCC's smoothing algorithm).

Proposed Volatility Index Futures Model Description

The proposed Volatility Index Futures Model would alleviate the issues observed with the current Synthetic Futures Model by adopting a parameter-free approach based on the replication of log-contract, which measures the expected realized volatility using S&P 500 options, as discussed in Cboe's VIX white paper.[38] The proposed model would derive the theoretical fair value of volatility index futures via replication through a portfolio of vanilla S&P 500 options [39] using the proposed S&P 500 Implied Volatility Simulation Model and convexity adjustments, which reflect the concavity of the square root function used to convert variance into volatility. A basis adjustment would be computed to reflect the difference between the market price and the theoretical value at the base level and then applied to the simulated volatility index futures prices at the scenario level to align the simulation to the market. The output from the Volatility Index Futures Model would be an input to the options pricing model, which treats the volatility index Futures as the underlying of the options contract. By providing a direct link between the volatility index futures price and the underlying S&P 500 options price, OCC believes that the Volatility Index Futures Model would result in more sensible margin charges compared to the current model.

Proposed Volatility Index Futures Model Performance

Based on its analysis of the Volatility Index Futures Model's performance,[40] OCC has concluded the proposed model would provide more consistent and better-behaved margin coverage across the term structure when compared to the current Synthetic Futures Model. The Volatility Index Futures Model demonstrates desirable anti-procyclicality properties, providing adequate margin coverage during periods of high volatility without being too conservative in periods of low volatility. Furthermore, the propose model generates adequate margin coverage for short-term futures which is manifested in the pronounced Samuelson effect.[41] OCC believes three reasons account for the improved performance of the Volatility Index Futures Model: (1) The proposed model provides a direct link between the futures price and the underlying option prices via replication; (2) the margin coverage of VIX futures is closely coupled with the S&P 500 Implied Volatility Simulation Model with procyclicality control, whereas the Synthetic Futures Model relies on the GARCH variance forecast process, which is prone to overreaction to shocks; and (3) unlike the Synthetic Futures Model, the Volatility Index Futures Model is not subject to the calibration artifact due to the 500-day lookback window, nor does it require the rolling VIX futures contracts to take on different variances from calibration at futures roll dates, which translate to discontinuities in margin under the current method.

For VIX futures portfolios [42] hedged with S&P 500 options, the proposed models provide more efficient margin coverage.[43] The improvement in margin coverage can be attributed to the direct coupling between VIX futures and S&P 500 options, which gives rise to risk-offsetting effect from the volatility. This result demonstrates that the replication method in conjunction with the S&P 500 Implied Volatility Simulation Model is better able to capture the correlations between VIX futures and S&P 500 options and produce cross-hedging benefits for Clearing Members.

Proposed Changes to the Variance Futures Model

OCC proposes to replace the current Variance Futures Model in its entirety. As discussed above, OCC uses the current Variance Futures Model to derive the theoretical fair values of variance futures for calculating margin and clearing fund requirements based on Clearing Member portfolios. Like the proposed Volatility Index Futures Model, the proposed Variance Futures Model would employ an industry-standard fundamental replication technique using the log-contract to price variance futures.[44] OCC expects that this approach would not only provide more

[38] *See* Cboe, *VIX White Paper* (2021), *available at https://cdn.cboe.com/resources/vix/vixwhite.pdf.*

[39] In some cases with limited listed strikes, additional strikes will be interpolated or extrapolated to provide more robust results.

[40] *See* Confidential Exhibit 3 to File No. SR–OCC–2022–001.

[41] The Samuelson effect refers to a decrease in volatility with increasing time to maturity.

[42] VIX futures are commonly incorporated into a large S&P 500 portfolio as hedging instruments for volatility risk. For example, one could gain pure exposure to underlying spot movements of the S&P 500 by buying/selling VIX futures to hedge the vega risk (*i.e.,* risk of changes in implied volatility) of S&P 500 options.

[43] *See* Confidential Exhibit 3 to File No. SR–OCC–2022–001.

[44] This approach is based on Cboe's published method for pricing S&P 500 variance futures. *See* Cboe, *S&P 500 Variance Futures Contract Specification* (Dec. 10, 2012), *available at http://www.cboe.com/products/futures/va-s-p-500-variance-futures/contract-specifications.*

accurate prices, but also offer natural risk offsets with the options of the same underlying security. In addition, the proposed Variance Futures Model would no longer be reliant on a GARCH variance forecast process, thereby addressing the sensitivity and procyclicality of that process to volatility shocks observed with the current model. Furthermore, the proposed method would simulate a near-term variance futures price rather than a final settlement price, consistent with OCC's two-day liquidation assumption.

Proposed Variance Futures Model Description

The theoretical variances produced by the proposed Variance Futures Models would be comprised of two components. The first component, as under the current Variance Futures Model, would be the realized variance calculated by the realized daily returns of S&P 500 option prices.[45] The second component captures the unrealized variance, which OCC would approximate using a portfolio of out of the money (''OTM'') call and put European options. The proposed model would calculate the implied component of variance futures via replication through a portfolio of OTM option prices generated using the proposed S&P 500 Implied Volatility Simulation Model.

Proposed Variance Futures Model Performance

Based on its analysis of the current and proposed Variance Futures Model,[46] the proposed model shows significant improvement in margin coverage. The proposed model naturally captures the correlations between S&P 500 options, variance futures, and VIX. Compared to the current model, the proposed model provides adequate long and short coverage for periods of high volatility and reasonable levels for periods of low volatility. In particular, the proposed model significantly reduces long-side coverage exceedances. The proposed model produces higher correlation for neighboring variance futures and adequate coverage without being overly conservative on the short side. OCC expects that any changes to the overall margins of Clearing Member accounts would be limited; over the twelve-month period between May 2019 and April 2020, only four margin accounts held variance futures positions and the total risk from variance futures positions was less than one percent of the total risk of all the positions for each of those accounts.

Implementation Timeframe

OCC expects to operate the proposed model in parallel with the current model for a period of at least thirty (30) days before implementing the proposed model into production to give Clearing Members an opportunity to understand the practical effects of the proposed changes. OCC further expects to implement the proposed changes within sixty (60) days after the date that OCC receives all necessary regulatory approvals for the proposed changes. OCC will announce the implementation date of the proposed change by an Information Memorandum posted to its public website at least 2 weeks prior to implementation.

(2) Statutory Basis

OCC believes that the proposed rule change is consistent with Section 17A of the Exchange Act[47] and the rules and regulations thereunder applicable to OCC. Section 17A(b)(3)(F) of the Act[48] requires, in part, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, and in general, to protect investors and the public interest. As described above, the volatility changes forecasted by OCC's current Implied Volatilities Scenarios Model are sensitive to large, sudden spikes in volatility, which can at times result in overreactive margin requirements that OCC believes are unreasonable and procyclical (for the reasons set forth above). Such sudden, unreasonable increases in margin requirements may stress certain Clearing Members' ability to obtain liquidity to meet those requirements, particularly in periods of extreme volatility, and could result in a Clearing Member being delayed in meeting, or ultimately failing to meet, its daily settlement obligations to OCC. A Clearing Member's failure to meet its daily settlement obligations could, in turn, cause the suspension of such Clearing Member and the liquidation of its portfolio, which could harm investors. While the current Implied Volatilities Scenarios Model addresses this issue with an exponentially weighted moving average that reduces and delays the impact of large implied volatility spikes, it does so in an artificial way that does not target the primary issues with the GARCH process that OCC has identified. By modeling implied volatility in a more direct, coherent manner, the proposed S&P 500 Implied Volatility Simulation Model would therefore reduce the likelihood that OCC's models would produce extreme, overreactive margin requirements that could strain the ability of certain Clearing Members to meet their daily margin requirements at OCC by controlling procyclicality in OCC's margin methodology and ensuring more stable and appropriate changes in margin requirements across volatile market periods while continuing to capture changes in implied volatility and produce margin requirements that are commensurate with the risks presented. The proposed model would be used by OCC to calculate margin requirements designed to limit its credit exposures to participants, and OCC uses the margin it collects from a defaulting Clearing Member to protect other Clearing Members and their customers from losses as a result of the default and ensure that OCC is able to continue the prompt and accurate clearance and settlement of its cleared products. As a result, OCC believes the S&P 500 Implied Volatility Simulation Model is designed to promote the prompt and accurate clearance and settlement of securities transactions, and, thereby, to protect investors and the public interest in accordance with Section 17A(b)(3)(F) of the Exchange Act.[49]

In addition, OCC believes the proposed changes to establish the Volatility Index Futures Model and replace the Variance Futures Model are consistent with Section 17A(b)(3)(F) of the Act.[50] Both the Volatility Index Futures Model and the Variance Futures Model exhibit procyclicality issues as a result of their reliance on the GARCH variance forecast process, which is prone to volatility shocks. The proposed Volatility Index Futures Model and Variance Futures Model would address these issues by adopting a fundamental replication technique using the log-contract to price volatility index futures and variance futures. In addition to providing a consistent modeling approach to modeling equity volatility products that provides accurate prices, this approach also offers natural risk offsets with the options of the same underlying security. This model is also expected to alleviate concerns around high margin requirements for S&P 500 variance futures generated by current STANS systems. As discussed above, collecting margins that are commensurate with risk helps to avoid

[45] Additional strikes may be interpolated or extrapolated from listed strikes to provide more robust results.

[46] *See* Confidential Exhibit 3 to File No. SR–OCC–2022–001.

[47] 15 U.S.C. 78q–1.

[48] 15 U.S.C. 78q–1(b)(3)(F).

[49] 15 U.S.C. 78q–1(b)(3)(F).

[50] *Id.*

collection of excessive margin that may stress certain Clearing Members' ability to obtain liquidity to meet those requirements, particularly in periods of extreme volatility, and could result in Clearing Member defaults that could harm investors and other Clearing Members. These changes would also provide natural offsets between S&P 500 options, volatility index Futures and variance futures. The proposed models would be used by OCC to calculate margin requirements designed to limit its credit exposures to participants. OCC uses the margin it collects from a defaulting Clearing Member to protect other Clearing Members from losses as a result of the default and ensure that OCC is able to continue the prompt and accurate clearance and settlement of its cleared products. Accordingly, OCC believes these proposed rule changes are designed to promote the prompt and accurate clearance and settlement of securities and derivatives transactions and to protect investors and the public interest in accordance in accordance with Section 17A(b)(3)(F) of the Exchange Act.[51]

OCC also believes that the proposed changes are consistent with Rule 17Ad–22(e)(6).[52] In particular, paragraphs (i), (iii), and (v) of Rule 17Ad–22(e)(6)[53] require a covered clearing agency that provides central counterparty services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that (1) considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market; (2) calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default; and (3) uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. As noted above, OCC's current models for implied volatility and pricing volatility index futures and variance futures demonstrate sensitivity to sudden spikes in volatility, which can at times result in overreactive margin requirements that OCC believes are unreasonable and procyclical. The proposed changes are designed to reduce the oversensitivity of the model and produce margin requirements that are commensurate with the risks presented during periods of sudden, extreme volatility. The proposed changes are designed to reduce procyclicality in OCC's margin methodology and ensure more stable changes in margin requirements across volatile market periods while continuing to capture changes in implied volatility and produce margin requirements that are commensurate with the risks presented by OCC's cleared options. As a result, OCC believes that the proposed changes are reasonably designed to consider, and produce margin levels commensurate with, the risk presented by the implied volatility of OCC's cleared options, as well as the risk presented by volatility index futures and variance futures; calculate margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default; and use an appropriate method for measuring credit exposure that accounts for this product risk factor (*i.e.,* implied volatility) and for these products (*i.e.,* volatility index futures and variance futures) in a manner consistent with Rules 17Ad–22(e)(6)(i), (iii) and (v).[54]

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) requires that the rules of a clearing agency do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of Act.[55] The proposed S&P 500 Implied Volatility Simulation Model would be used to incorporate variations in implied volatility within STANS for S&P 500-based products for all Clearing Members. The Volatility Index Futures Model and Variance Futures Model would be used to calculate the theoretical values of volatility index futures and variance futures, respectively, for all Clearing Members. Accordingly, OCC does not believe that the proposed rule change would unfairly inhibit access to OCC's services.

While the proposed rule change may impact different accounts to a greater or lesser degree depending on the composition of positions in each account, OCC does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As discussed above, OCC is obligated under the Exchange Act and the regulations thereunder to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that, among other things, considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[56] Overall, the impact analysis shows that at the account level, margin coverage generated by the proposed models is comparable to that generated using OCC's existing models for accounts dominated by S&P 500 options. While margin charges resulting from the proposed changes may be higher or lower than under the current models due to compositions of positions in each account, OCC believes that margin coverage under the proposed models will be more commensurate with the risks presented by its members' activity because the proposed models employ a more consistent and sounder approach to modeling implied volatility, as discussed above. For accounts dominated by volatility index futures and variance futures, the proposed models are, in general, expected to produce more accurate margin requirement because by using S&P 500 options to calculate the price for such products, the proposed models provide natural offsets for volatility products with similar characteristics. In addition, the proposed models are expected to produce margin requirements that are more stable across time, especially during stressed market conditions—thereby addressing known issues with the current GARCH-based models. As such, OCC believes the proposed changes would result in margin requirements commensurate with the vega risk presented by Clearing Members' portfolios, consistent with OCC's obligations under the Exchange Act and regulations thereunder. Accordingly, OCC believes that the proposed rule change would not impose any burden or impact on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

[51] *Id.*

[52] 17 CFR 240.17Ad–2(e)(6).

[53] 17 CFR 240.17Ad–2(e)(6)(i), (iii), (v).

[54] *Id.*

[55] 15 U.S.C. 78q–1(b)(3)(I).

[56] *See* 17 CFR 240.17Ad–2(e)(6)(i).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

OCC shall post notice on its website of proposed changes that are implemented. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.

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–OCC–2022–001 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–OCC–2022–001. 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 such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

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–OCC–2022–001 and should be submitted on or before March 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[57]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–02913 Filed 2–10–22; 8:45 am]

BILLING CODE 8011–01–P

[57] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 11365]

30-Day Notice of Proposed Information Collection: Employment Application for Locally Employed Staff or Family Member

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to March 14, 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.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Employment Application for Locally Employed Staff or Family member.
- *OMB Control Number:* 1405–0189.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Global Talent Management, Office of Overseas Employment (GTM/OE).
- *Form Number:* DS–0174.
- *Respondents:* The respondents are locals who live in 175 countries abroad and who are applying for a position at the U.S. Embassy, Consulate or Mission in their country. In addition, Family members who are accompanying their partners to assignments in the U.S. Embassies, Consulates or Mission abroad.
- *Estimated Number of Respondents:* 1,000,000.
- *Estimated Number of Responses:* 1,000,000.
- *Average Time per Response:* 15 minutes.
- *Total Estimated Burden Time:* 250,000.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain or retain a benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The information solicited is used to establish eligibility and qualifications at U.S. Embassies, Consulates, and Missions abroad. The respondents are locals who live in the 175 countries abroad and who are applying for a position at the U.S. Embassy, Consulate or Mission in their country. In addition, Family members who are accompanying

their partners to assignments in the U.S. Embassies, Consulates or Mission abroad. The authority is the Foreign Service Act of 1980, as amended, and 22 U.S.C. 2669(c).

Methodology

Candidates for employment use the DS–0174 to apply for Mission-advertised positions around the world. Mission recruitments generate approximately 1 million applications per year, the majority of which are collected electronically using an applicant management system, Electronic Recruitment Application (ERA). Data that HR and hiring officials extract from the DS–0174 determine employment eligibility and qualifications for the position, and selections according to Federal Policies.

Kevin E. Bryant,

Deputy Director, Office of Directives Management, Department of State.

[FR Doc. 2022–02941 Filed 2–10–22; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Performance Review Board Membership

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice announces the Office of the United States Trade Representative (USTR) staff members selected to serve on the Senior Executive Service (SES) and Senior Level (SL) Performance Review Board (PRB). This notice supersedes all previous PRB membership notices.

DATES: The staff members in this notice will begin serving as PRB members on February 11, 2022.

FOR FURTHER INFORMATION CONTACT: Cassie Ender, Human Capital Specialist, Office of Human Capital and Services, at (202) 395–7360 or *Cassie.L.Galla@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: USTR is required (*see* 5 U.S.C. 4314(c)) to establish a PRB to review and make recommendations to the U.S. Trade Representative for final approval of the performance rating, performance-based pay adjustment, and performance award for each incumbent SES and SL. The following staff members have been selected to serve on USTR's PRB:

Chair: Bill Jackson, Assistant U.S. Trade Representative for Textile Affairs

Member: Dawn Shackleford, Assistant U.S. Trade Representative for Southeast Asia and the Pacific

Member: Dan Mullaney, Assistant U.S. Trade Representative for Europe and the Middle East

Member: Julie Callahan, Assistant U.S. Trade Representative for Agricultural Affairs

Member: Juan Millan, Assistant U.S. Trade Representative for Monitoring and Investment

Fred Ames,

Assistant U.S. Trade Representative for Administration, Office of the United States Trade Representative.

[FR Doc. 2022–02999 Filed 2–10–22; 8:45 am]

BILLING CODE 3390–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Enhancing Highway Workforce Development Opportunities Contracting Initiative

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

ACTION: Notice.

SUMMARY: The recently enacted Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act, authorizes a recipient or subrecipient of a grant provided by the DOT Secretary under Title 23 or 49, United States Code, to implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project funded by the grant subject to any applicable State and local laws, policies, and procedures. Based on this statutory authorization, FHWA is announcing a transition from its initiative announced in May 2021, which permitted, on an experimental basis, recipients and subrecipients of Federal funds for Federal-aid highway projects to utilize geographic, economic, or other hiring preferences or innovative contracting approaches not otherwise authorized by law. The May 2021 initiative was carried out as a pilot program under FHWA's existing experimental contracting authority and the legal authority in the Section 199B of the Consolidated Appropriations Act, 2021, authorizing such hiring preferences ''not otherwise authorized by law.'' Now that BIL creates the legal authority for local or other geographical or economic hiring preferences, an experimental pilot program for such hiring preferences is no longer needed. In Addition, the use of such preferences going forward are subject to Section 25019 of the BIL, not Section 199B of the Consolidated Appropriations Act, 2021.

DATES: This action is applicable immediately.

FOR FURTHER INFORMATION CONTACT: For technical information: Mr. James DeSanto, Office of Preconstruction, Construction and Pavements, (614) 357–8515, *James.DeSanto@dot.gov,* or Mr. Patrick Smith, Office of Chief Counsel, (202) 366–1345, *Patrick.C.Smith@dot.gov,* Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the Office of the Federal Register's website at *www.FederalRegister.gov* and the Government Publishing Office's website at *www.GovInfo.gov.*

Bipartisan Infrastructure Law

The BIL, enacted as the Infrastructure Investment and Jobs Act, Public Law 117–58 (Nov. 15, 2021), authorizes a recipient or subrecipient of a grant provided by the DOT Secretary under Title 23 or 49, United States Code (U.S.C.), to implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project funded by the grant, including prehire agreements, subject to any applicable State and local laws, policies, and procedures. BIL, § 25019(a)(1). The BIL also provides that the use of a local or other geographical or economic hiring preference authorized by Section 25019(a)(1) in any bid for a contract for the construction of a project funded by a grant described in Section 25019(a)(1) shall not be considered to unduly limit competition. BIL, § 25019(a)(2).

Enhancing Highway Workforce Development Opportunities Contracting Initiative

On May 21, 2021, at 86 FR 27667, FHWA announced an initiative to permit and evaluate geographic, economic, or other hiring preferences or innovative contracting approaches not otherwise authorized by law that have the potential to enhance workforce development opportunities in the transportation construction industry, including for low-income communities. As discussed in the **Federal Register** notice for that initiative, FHWA historically disallowed such requirements out of concern for their potential impact on competition.

Generally, Federal law requires Federal-aid highway and roadway projects (apart from a few exceptions) to be awarded on the basis of competitive bidding.

The initiative announced in May 2021 was authorized under Section 199B of the Consolidated Appropriations Act, 2021, Public Law 116–260, Dec. 27, 2020, 134 Stat 1182, which allowed DOT-assisted contracts under Titles 49 and 23 of the U.S.C. to use geographic, economic, or any other hiring preference not otherwise authorized by law, with certain limitations including required certifications. The initiative was also based on FHWA's Special Experimental Project No. 14 (SEP–14) authority for special experimental projects set forth at 23 U.S.C. 502(b)(2) to allow FHWA to continue to gather data and evaluate experimental contracting practices.

Under the May 2021 initiative FHWA required State and local recipients and subrecipients to request prior approval from FHWA to use a specific contracting requirement under SEP–14 by submitting work plans to the appropriate FHWA Division Office.

Transition From Pilot Program

Based on the statutory authority for local or other geographical or economic hiring preferences in Section 25019(a) of the BIL, FHWA is transitioning from its initiative announced in May 2021. Since Section 25019 authorizes the use of certain hiring preferences, the use of such preferences going forward are subject to Section 25019 of the BIL, not Section 199B of the Consolidated Appropriations Act, 2021. Also, while local hiring preferences have traditionally been disallowed in accordance with 23 CFR 635.117(b) and 636.107, given the statutory authority for local or other geographical or economic hiring preferences under the BIL, an experimental pilot program is no longer needed for labor hiring preferences that fall within the legislatively authorized parameters. Innovative contracting approaches or requirements, including those related to workforce development, falling outside of the parameters authorized by Section 25019(a) of the BIL may still be considered by FHWA under its experimental SEP–14 authority on a case-by-case basis.

Upon publication of this notice, and based on Section 25019(a) of the BIL, FHWA approval is no longer needed for authorized labor hiring preferences. As discussed in the **Federal Register** notice announcing the May 2021 initiative, DOT generally exercises discretion under 23 U.S.C. 112 to evaluate whether a State or local law or policy is compatible with the competitive bidding requirement under the statute. The DOT has historically disallowed certain hiring preferences out of concern for their potential impact on competition. Based on the clear direction in Section 25019(a)(2) of the BIL that the use of a local or other geographical or economic hiring preference authorized by Section 25019(a)(1) shall not be considered to unduly limit competition, DOT will not engage in or have a role in evaluating the effects on competition, if any, of labor hiring preferences expressly authorized under the BIL. Although DOT evaluation is no longer required, State and local recipients and subrecipients remain responsible for ensuring that the establishment and implementation of a hiring preference is otherwise consistent with applicable Federal, State, and local laws as provided in Section 25019(a)(1).

State and local recipients and subrecipients may continue to administer any contracts authorized under the May 2021 initiative for the duration of these contracts per the requirements of their approved workplans. The FHWA may continue to use SEP–14 to authorize and evaluate contracting methods that are outside the scope of Section 25019(a) of the BIL.

Authority: Section 25019 of Pub. L. 117–58; 23 U.S.C. 502(b); Section 199B of the Consolidated Appropriation Act, 2021.

Stephanie Pollack,

Deputy Administrator, Federal Highway Administration.

[FR Doc. 2022–02974 Filed 2–10–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2022–0002–N–3]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified in the ICR.

DATES: Interested persons are invited to submit comments on or before April 12, 2022.

ADDRESSES: Written comments and recommendations for the proposed ICR should be submitted on regulations.gov to the docket, Docket No. FRA–2022–0002. All comments received will be posted without change to the docket, including any personal information provided. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, at email: *hodan.wells@dot.gov* or telephone: (202) 493–0440.

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days' notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. *See* 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations mandate. In summary, FRA reasons that comments received will advance three objectives: (1) Reduce reporting burdens; (2) organize information collection requirements in a ''user-friendly'' format to improve the use of such information; and (3) accurately assess the resources

expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: State Safety Participation Regulations and Reporting of Remedial Actions.

OMB Control Number: 2130–0509.

Abstract: The collection of information is set forth under 49 CFR part 212, and requires qualified State inspectors to provide various reports to FRA for monitoring and enforcement purposes concerning State investigative, inspection, and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations. Additionally, under 49 CFR part 209, subpart E, railroads are required to report to FRA actions taken to remedy certain alleged violations of law.

Type of Request: Extension without change (with changes in estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): FRA F 6180.33/61/67/96/96A/109/110/111/112/144.

Respondent Universe: States and railroads.

Frequency of Submission: On occasion.

Reporting Burden:

Section [1]	Respondent universe	Total annual responses (A)	Average time per response (B)	Total annual burden hours (C) = A * B	Total cost equivalent (D) = C * wage [2]
49 U.S.C. 20105—Railroad Safety State Participation Agreement—Annual updates or amendments including workplans, training plans and schedules to existing agreements.	32 States	32 updates	1 hour	32	$2,615
—Inspector travel planning and reimbursement	32 States	600 vouchers	1.5 hours	900	73,539
212.107—Certification—State to file annual certification in the event that FRA and the State agency do not agree on terms for the participation under § 212.105.	FRA anticipates zero submissions.				
212.109—Joint planning of inspections—Annual work plan for the conduct of investigative and surveillance activities by the State agency.	The burden associated with this requirement is covered above under 49 U.S.C. 20105.				
212.113—Program termination—30-day notice provided by State agency of its intent to terminate its participation.	FRA anticipates zero submissions.				
—Inspection Report (Form FRA F 6180.96)—All disciplines submitted by State inspectors.	32 States	19,400 forms	15 minutes	4,850	396,294
—Violation Report—Motive, Power, and Equipment Regulations (Form FRA F 6180.109).	19 States	360 reports	4 hours	1,440	117,662
—Violation Report—Operating Practices Regulations (Form FRA F 6180.67).	19 States	180 reports	4 hours	720	58,831
—Violation Report—Hazardous Materials Regulations (Form FRA F 6180.110).	17 States	420 reports	4 hours	1,680	137,273
—Violation Report—Hours of Service Law (F 6180.33)	19 States	2 reports	4 hours	8	654
—Violation Report—Accident/Incident Reporting Rules (Form FRA F 6180.61).	19 States	2 reports	4 hours	8	654
—Violation Report—Track Safety Regulations (Form FRA F 6180.111).	26 States	110 reports	4 hours	440	35,952
—Violation Report—Signal and Train Control Regulations (Form FRA F 6180.112).	14 States	80 reports	4 hours	320	26,147
209.405(a)—Reporting of remedial actions—Completion of Form FRA F 6180.96 including selection of railroad remedial action code.	754 railroads	2,400 reports	30 minutes	1,200 hours	92,928
—(b) Violation report challenge by the railroads—Remedial action reports.	754 railroads	240 challenges	45 minutes	180	13,939
209.407—Delayed reports	754 railroads	240 reports	45 minutes	180	13,939
Total	32 States and 754 railroads.	24,066 responses	N/A	11,958	970,427

[1] The current inventory exhibits a total burden of 9,346 hours while the total burden of this notice is 11,958 hours.

[2] For State respondents, the dollar equivalent cost is derived from the Bureau of Labor Statistics data for management occupations, NAICS 99920—State Government, excluding schools and hospitals, for State government employees. To calculate the mean hourly wage of $46.69 for this category of workers, FRA included a 75-percent charge for overhead costs. The calculation is $46.69 per hour * 1.75 = $81.71. The Web address for this data is: *https://www.bls.gov/oes/current/naics4_999200.htm#11-0000.* Additionally, for railroad respondents, the dollar equivalent cost is derived from the Surface Transportation Board's 2020 Full Year Wage A&B data series for railroad workers. The wage rate of $77.44 per hour includes a 75-percent overhead charge.

Total Estimated Annual Responses: 24,066.

Total Estimated Annual Burden: 11,958 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $970,427.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that a respondent is not required to respond to, conduct, or sponsor a collection of information that does not display a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2022–02937 Filed 2–10–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST Docket No. DOT–OST–2011–0022]

Notice of Submission of Proposed Information Collection to OMB Agency Request for Renewal of a Previously Approved Collection: Online Complaint/Comment Form for Service-Related Issues in Air Transportation

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the request for reinstatement of an OMB Control Number for the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comment. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on November 29, 2021.

DATES: Comments on this notice must be received by March 14, 2022.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503. Comments may also be sent via email to OMB at the following address: *oira_submissions@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Daeleen Chesley, Office of the Secretary, Office of Aviation Consumer Protection (C–70), Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202 366–6792 (voice) or at *Daeleen.Chesley@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0568.

Title: Reinstatement of the Office of Aviation Consumer Protection's web page Online Complaint/Comment Form.

Abstract: The Department of Transportation's (Department) Office of Aviation Consumer Protection (OACP, formerly the Office of Aviation Enforcement and Proceedings) has broad authority under 49 U.S.C., subtitle VII, to investigate and enforce consumer protection and civil rights laws and regulations related to air transportation.

Among other things, OACP is responsible for receiving and investigating service-related consumer complaints filed against airlines and other air travel-related companies. Once received, the complaints are reviewed by the office to determine the extent to which these entities are in compliance with federal aviation consumer protection and civil rights laws and what, if any, action should be taken regarding consumer complaints. Consumer complaints and comments are also used by the office to identify opportunities to help improve airline consumer satisfaction. The information submitted via the online form can also serve as a basis for rulemaking, legislation and research.

The key reason for this request is to enable consumers to continue to file their complaints and comments to the Department using an online form, whether via their personal computer or on a mobile/electronic device. If the online complaint form is not available, the Department may receive fewer complaints, comments, and inquiries from consumers. The lack of consumer input could inhibit OACP's ability to effectively investigate individual complaints against both airlines and other air travel-related companies. It would also impact OACP's ability to become aware of patterns and practices that may develop in violation of the Department's rules. The information collection continues to further the objective of 49 U.S.C. 41712 to protect consumers from unfair or deceptive practices, the objective of § 41705 and § 40127 to ensure the civil rights of air travelers are respected, and the objective of § 41702 to ensure safe and adequate service in air transportation.

Filing a complaint or comment using a web-based form is voluntary and minimizes the burden on respondents. Based on the table below, approximately ninety percent of the submissions (complaints, comments, and inquiries) received by OACP during calendar years (CYs) 2017 through 2019 were filed using the web-based form as shown in the table below.[1]

Calendar year	Total number of complaints filed	Total number of complaints filed online	Percentage of complaints filed online (%)
2017	18,155	16,067	89
2018	15,546	13,964	90
2019	15,342	14,107	92
Average Total per Year (above)	16,348	14,713	90

Most of the submissions are complaints that are filed using the electronic web-based form. At times, consumers may also choose to file a complaint with the Department using regular mail or by phone message. The type of information requested on the form includes complainant's name, address, phone number (including area code), email address, and name of the airline or company about which she/he is complaining, as well as the flight date and flight itinerary (where applicable) of a complainant's trip. In addition, a consumer may also use the form to give a description of a specific air-travel related problem or to ask for air-travel related information from the OACP. The Department has limited its informational request to that necessary to meet its aviation consumer protection responsibilities.

The Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On November 29, 2021, OST published a 60-day notice in the **Federal Register** soliciting comment on the ICR for which the agency is seeking reinstatement from OMB. 86 FR 67785. The comment period ended on January 28, 2022. OST received no comments after issuing this notice. Accordingly, the Department announces that this

[1] In CYs 2020/21, OACP received an unusually high number (100,613/48,015, respectively) of online submissions, primarily complaints, largely due to flight cancellations and refund issues that resulted from the COVID–19 pandemic. Using the average number of submissions from the three previous CYs more accurately reflects the annual number of online submissions received by OACP.

information collection activity has been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to reinstate this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983 (Aug. 29, 1995). The 30-day notice informs the regulated community to file relevant comments to OMB and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983 (Aug. 29, 1995). Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure their full consideration. 5 CFR 1320.12(c); *see also* 60 FR 44983 (Aug. 29, 1995).

Respondents: Consumers that Choose to File an Online Complaint/Comment with the Office of Aviation Consumer Protection.

Estimated Number of Respondents: 14,713 (based on averaging data from CYs 2017–19).

Estimated Total Burden on Respondents: 3,678.25 hours (220,695 minutes). The estimate was calculated by multiplying the average number of cases filed using the online form in CYs17–19 (14,713) by the time needed to fill out the online form (15 minutes).

The information collection is available for inspection in regulations.gov, as noted in the ''Addresses'' section of this document.

Comments are Invited on: (a) 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; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record on the docket.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC on February 4, 2022.

Kimberly Graber,

Deputy Assistant General Counsel, Office of Aviation Consumer Protection.

[FR Doc. 2022–02790 Filed 2–10–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting Applications for Financial Assistance (FA) awards or Technical Assistance (TA) grants under the Community Development Financial Institutions Program (CDFI Program) fiscal year (FY) 2022 Funding Round.

Announcement Type: Announcement of funding opportunity.

Funding Opportunity Number: CDFI–2022–FATA.

Catalog of Federal Domestic Assistance (CFDA) Number: 21.020.

Dates:

TABLE 1—FY 2022 CDFI PROGRAM FUNDING ROUND CRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (Eastern Time—ET)	Submission method
Last day to create an Awards Management Information Systems (AMIS) Account (all Applicants).	March 14, 2022	11:59 p.m. ET	AMIS.
Last day to enter EIN and DUNS numbers in AMIS (all Applicants).	March 14, 2022	11:59 p.m. ET	AMIS.
Last day to submit SF–424 Mandatory (Application for Federal Assistance).	March 14, 2022	11:59 p.m. ET	Electronically via *Grants.gov.*
Last day for Applicants that meet the SECA requirements, but wish to apply for CORE–FA, to request creation of a Core-FA Application (if requesting more than $700,000).	March 14, 2022	11:59 p.m. ET	Service Request [1] via AMIS.
Last day to contact CDFI Program staff	April 8, 2022	5:00 p.m. ET	Service Request via AMIS. Or CDFI Fund Helpdesk: 202–653–0421.
Last day to contact AMIS–IT Help Desk (regarding AMIS technical problems only).	April 12, 2022	5:00 p.m. ET	Service Request via AMIS. Or 202–653–0422. Or *AMIS@cdfi.treas.gov.*
Last day to submit CDFI Program Application for Financial Assistance (FA) or Technical Assistance (TA).	April 12, 2022	11:59 p.m. ET	AMIS.

Executive Summary: Through the CDFI Program, the CDFI Fund provides (i) FA awards of up to $1 million to Certified Community Development Financial Institutions (CDFIs) to build their financial capacity to lend to Eligible Markets and/or their Target Markets, and (ii) TA grants of up to $125,000 to build Certified, and Emerging CDFIs' organizational capacity to serve Eligible Markets and/or their Target Markets. All awards provided through this NOFA are subject to funding availability.

I. Program Description

A. History: The CDFI Fund was established by the Riegle Community Development Banking and Financial Institutions Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. The CDFI Program made its first awards in 1996 and the Native American CDFI Assistance (NACA) Program made its first awards in 2002.

B. Priorities: Through the CDFI Program's FA awards and TA grants, the CDFI Fund invests in and builds the

[1] Service Request shall mean a written inquiry or notification submitted to the CDFI Fund via AMIS.

capacity of for-profit and non-profit community based lending organizations known as CDFIs. These organizations, certified as CDFIs by the CDFI Fund, serve rural and urban Low-Income people, and communities across the nation that lack adequate access to affordable Financial Products and Financial Services.

C. Authorizing Statutes and Regulations: The CDFI Program is authorized by the Riegle Community Development Banking and Financial Institutions Act of 1994 (Pub. L. 103–325, 12 U.S.C. 4701 *et seq.*) (Authorizing Statute). The regulations governing the CDFI Program are found at 12 CFR parts 1805 and 1815 (the Regulations) and set forth evaluation criteria and other program requirements. The CDFI Fund encourages Applicants to review the Regulations; this NOFA; the CDFI Program Application for Financial Assistance or Technical Assistance (the Application); all related materials and guidance documents found on the CDFI Fund's website (Application materials); and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000), which is the Department of the Treasury's codification of the Office of Management and Budget (OMB) government-wide framework for grants management at 2 CFR part 200 (the Uniform Requirements) for a complete understanding of the program. Capitalized terms in this NOFA are defined in the Authorizing Statute, the Regulations, this NOFA, the Application, Application materials, or the Uniform Requirements. Details regarding Application content requirements are found in the Application and Application materials.

D. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000): The Uniform Requirements codify financial, administrative, procurement, and program management standards that Federal award agencies must follow. When evaluating Applications, awarding agencies must evaluate the risks posed by each Applicant, and each Applicant's merits and eligibility. These requirements are designed to ensure that Applicants for Federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, the soundness of its business plan, history of performance, ability to achieve measurable impacts through its products and services, and audit findings. In addition, the Uniform Requirements include guidance on audit requirements and other award compliance requirements for Recipients.

E. Funding limitations: The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA.

II. Federal Award Information

A. Funding Availability:

1. FY 2022 Funding Round: The CDFI Fund expects to award, through this NOFA, approximately $188 million as indicated in the following table:

TABLE 2—FY 2022 FUNDING ROUND ANTICIPATED CATEGORY AMOUNTS

Funding categories (see definition in Table 7 for TA or Table 8 for FA)	Estimated total amount to be awarded (millions)	Award Amount		Estimated number of awards for FY 2022	Estimate average amount awarded in FY 2022	Average amount awarded in FY 2021
		Minimum [2]	Maximum			
Base-FA: Category I/Small and/or Emerging CDFI Assistance (SECA).	$20	$125,000	$700,000	68	$294,000	$292,000
Base-FA: Category II/Core	100	500,000, or if portfolio outstanding is less than $1,666,700 as of the most recent historic fiscal year end, then 30% of portfolio outstanding.	1,000,000	180	555,000	552,000
Persistent Poverty Counties—Financial Assistance (PPC–FA).	19	100,000	300,000	125	152,000	149,000
Disability Funds—Financial Assistance (DF–FA)*.	6	100,000	500,000	14	429,000	429,000
TA	20	10,000	125,000	160	125,000	125,000
Healthy Food Financing Initiative—Financial Assistance (HFFI–FA)*.	23	500,000	5,000,000	10	2,300,000	2,300,000
Total	188			571		

*DF–FA and HFFI–FA appropriation will be allocated in one competitive round between the NACA and CDFI Program NOFAs.

The CDFI Fund reserves the right to award more or less than the amounts cited above in each category, based upon available funding and other factors, as appropriate.

2. Funding Availability for the FY 2022 Funding Round: Funds for the FY 2022 Funding Round are subject to change based on passage of a final FY 2022 budget; if Congress does not appropriate funds for the CDFI Program there will not be an FY 2022 Funding Round. If funds are appropriated, the amount of such funds may be greater or less than the amounts set forth above. The CDFI Fund reserves the right to contact applicants to seek additional information in the event that final FY 2022 appropriations for the CDFI Program change any of the requirements of this NOFA. As of the date of this NOFA, the CDFI Fund is operating under a continuing funding resolution as enacted by the Further Extending Government Funding Act (Pub. L. 117–70).

3. Anticipated Start Date and Period of Performance: The Period of Performance for TA grants begins with the date of the award announcement and includes either (i) an Emerging CDFI Recipient's three full consecutive fiscal years after the date of the award announcement, or (ii) a Certified CDFI Recipient's two full consecutive fiscal years after the date of the award announcement, during which the Recipient must meet the Performance Goals and Measures (PG&Ms) set forth in the Assistance Agreement. The Period of Performance for FA awards begins with the date of the award announcement and includes a Recipient's three full consecutive fiscal years after the date of the award announcement, during which time the Recipient must meet the PG&Ms set forth in the Assistance Agreement.

[2] The FA Application Guidance defines ''the most recent historic fiscal year'' based on an Applicant's fiscal year end.

B. Types of Awards: Through the CDFI Program, the CDFI Fund provides two types of awards: Financial Assistance (FA) and Technical Assistance (TA) awards. An Applicant may submit an Application for a TA grant or an FA award under the CDFI Program, but not both. FA Awards include the Base Financial Assistance (Base–FA) award and the following awards that are provided as a supplement to the Base–FA award: Healthy Food Financing Initiative-Financial Assistance (HFFI–FA), Persistent Poverty Counties-Financial Assistance (PPC–FA), and Disability Funds-Financial Assistance (DF–FA). The HFFI–FA, PPC–FA, and DF–FA Applications will be evaluated independently from the Base–FA Application, and will not affect the Base-FA Application evaluation or Base–FA award amount.

However, Applicants that qualify for the NACA Program may submit two Applications: One Application (either for a TA grant or an FA award, but not both) through the CDFI Program, and one Application (either for a TA grant or an FA award, but not both) through the NACA Program. NACA qualified Applicants that choose to apply for awards through both the CDFI Program and the NACA Program may either apply for the same type of award under each Program or for a different type of award under each Program. NACA qualified FA Applicants that choose to apply for an FA award under both the NACA Program and CDFI Program and are selected for an award under both Programs will be provided the FA award under the CDFI Program. NACA qualified TA Applicants that choose to apply for a TA award under both the NACA Program and CDFI Program and are selected for an award under both Programs will be provided the TA award under the NACA Program. NACA qualified Applicants that choose to apply for a TA award and a FA award under separate programs and are selected for an award under both Programs will be provided the larger of the two awards. NACA Applicants cannot receive an award under both Programs within the same funding round.

Category II (Core) FA Applicants applying for Base–FA, PPC–FA, and/or DF–FA must provide evidence of acceptable Matching Funds [3] (see Table 9 for more information), except Native American CDFIs [4] applying under this NOFA, which are exempt from the Matching Funds requirement.[5] Native American CDFIs that qualify as a Category II (Core) FA Applicant are not required to submit Matching Funds for their award requests. Additionally, the Matching Funds requirement for HFFI–FA and SECA FA Applicants was waived in the enacted FY 2021 Consolidated Appropriations Act, and the final FY 2022 appropriations are still pending for this funding round. Therefore, HFFI–FA and SECA FA Applicants are not required to submit Matching Funds for their award requests at the time of Application. However, the CDFI Fund reserves the right to request Matching Funds from SECA FA Applicants and/or HFFI–FA Applicants if Matching Funds are not waived in the final FY 2022 CDFI Program appropriations. TA Applicants are not required to provide Matching Funds.

1. Base–FA Awards: Base–FA awards can be in the form of loans, grants, Equity Investments, deposits and credit union shares. The form of the Base–FA award is based on the form of the Matching Funds that the Applicant includes in its Application, unless Congress waived the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, the Base–FA award will be in the form of a grant for Native American CDFI Applicants. Matching Funds are required at the time of Application submission for Category II (Core) Applicants (except Native American CDFIs) applying for Base–FA awards, and the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) Applicants applying for Base FA awards if Matching Funds are not waived in the final FY 2022 appropriations for these Applicants. Matching Funds must be from non-Federal sources, and cannot have been used as Matching Funds for any other Federal award. The CDFI Fund reserves the right, in its sole discretion, to provide a Base–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

2. Persistent Poverty Counties—Financial Assistance (PPC–FA) Awards: PPC–FA awards will be provided as a supplement to Base–FA awards; therefore, only those Applicants that are selected to receive a Base–FA award through the CDFI Program FY 2022 Funding Round will be eligible to receive a PPC–FA award. PPC–FA awards can be in the form of loans, grants, Equity Investment, deposits and credit union shares. The form of the PPC–FA award is based on the form of the Matching Funds that the Applicant includes in its Application, unless Congress waived the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, the PPC–FA award will be in the form of a grant for Native American CDFI Applicants. Matching Funds are required at the time of Application submission for Category II (Core) Applicants (except Native American CDFIs) applying for PPC–FA awards, and the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) Applicants applying for PPC–FA awards if Matching Funds are not waived in the final FY 2022 appropriations for these Applicants. Matching Funds must be from non-Federal sources, and cannot have been used as Matching Funds for any other Federal award. The CDFI Fund reserves the right, in its sole discretion, to provide a PPC–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

3. Disability Funds—Financial Assistance (DF–FA) Awards: DF–FA awards will be provided as a supplement to Base–FA awards; therefore, only those Applicants that have been selected to receive a Base–FA award through the CDFI Program FY 2022 Funding Round will be eligible to receive a DF–FA award. DF–FA awards can be in the form of loans, grants, Equity Investments, deposits and credit union shares. The form of the DF–FA award is based on the form of the Matching Funds that the Applicant includes in its Application, unless Congress waived the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, the DF–FA award will be in the form of a grant for Native American CDFI Applicants. Matching Funds are required for Category II (Core) Applicants (except Native American

[3] Matching Funds shall mean funds from sources other than the Federal government as defined in accordance with the CDFI Program Regulations at 12 CFR 1805.500.

[4] A Native American CDFI (Native CDFI) is one that Primarily Serves a Native Community. Primarily Serves is defined as 50% or more of an Applicant's activities being directed to a Native Community. For purposes of this NOFA, a Native Community is defined as Native American, Alaska Native, or Native Hawaiian populations or Native American areas defined as Federally-designated reservations, Hawaiian homelands, Alaska Native Villages and U.S. Census Bureau-designated Tribal Statistical Areas.

[5] The Indian Community Economic Enhancement Act of 2020 (Pub. L. 116–261) permanently waives the Matching Funds requirement for Native American CDFIs that receive Assistance from the CDFI Fund.

CDFIs) applying for DF–FA awards, and the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) Applicants applying for PPC–FA awards if Matching Funds are not waived in the final FY 2022 appropriations for these Applicants. Matching Funds must be from non-Federal sources, and cannot have been used as Matching Funds for any other Federal award. The CDFI Fund reserves the right, in its sole discretion, to provide a DF–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

4. Healthy Food Financing Initiative—Financial Assistance (HFFI–FA) Awards: HFFI–FA awards will be provided as a supplement to Base–FA awards; therefore, only those Applicants that have been selected to receive a Base–FA award through the CDFI Program FY 2022 Funding Round will be eligible to receive an HFFI–FA award. HFFI–FA awards can be in the form of loans, grants, Equity Investments, deposits and credit union shares. The form of the HFFI–FA award is based on the form of the Matching Funds that the Applicant includes in its Application, unless Congress waived the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, HFFI–FA awards will be in the form of a grant for Native American CDFI Applicants. The Matching Funds requirement for HFFI–FA Applicants was waived in the final appropriations bill for FY 2021, and the final appropriations are still pending for this funding round. As a result, HFFI–FA Applicants are not required to submit Matching Funds for their award requests at the time of Application. However, the CDFI Fund reserves the right to request Matching Funds from HFFI–FA Applicants if Matching Funds are not waived in the final FY 2022 CDFI Program appropriations. The CDFI Fund reserves the right, in its sole discretion, to provide an HFFI–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

5. TA Grants: TA is provided in the form of grants. The CDFI Fund reserves the right, in its sole discretion, to provide a TA grant in an amount other than that which the Applicant requests; however, the TA grant amount will not exceed the Applicant's request as stated in its Application.

C. Eligible Activities:

1. FA Awards: Base–FA, PPC–FA, DF–FA, and HFFI–FA award funds may be expended for activities serving Commercial Real Estate, Small Business, Microenterprise, Community Facilities, Consumer Financial Products, Consumer Financial Services, Commercial Financial Products, Commercial Financial Services, Affordable Housing, Intermediary Lending to Non-Profits and CDFIs, and other lines of business as deemed appropriate by the CDFI Fund in the following five categories: (i) Financial Products; (ii) Financial Services; (iii) Loan Loss Reserves; (iv) Development Services; and (v) Capital Reserves. The FA Budget is the amount of the award and must be expended in the five eligible activity categories prior to the end of the Budget Period.[6] None of the eligible activity categories will be authorized for Indirect Costs or an associated Indirect Cost Rate. Base–FA Recipients must meet PG&Ms, which will be derived from projections and attestations provided by the Applicant in its Application, to achieve one or more of the following FA Objectives: (i) Increase Volume of Financial Products in an Eligible Market(s) and/or in the Applicant's approved Target Market and/or Increase Volume of Financial Services in an Eligible Market(s) and/or in the Applicant's approved Target Market; (ii) Serve Eligible Market(s) or the Applicant's approved Target Market in New Geographic Area or Areas; (iii) Provide New Financial Products in an Eligible Market(s) and/or in the Applicant's approved Target Market, Provide New Financial Services in an Eligible Market(s) and/or in the Applicant's approved Target Market, or Provide New Development Services in an Eligible Market(s) and/or in the Applicant's approved Target Market; and (iv) Serve New Targeted Population or Populations. FA awards may only be used for Direct Costs associated with an eligible activity; no indirect expenses are allowed. Up to 15% of the FA award may be used for Direct Administrative Expenses associated with an eligible FA activity. ''Direct Administrative Expenses'' shall mean Direct Costs, as described in section 2 CFR 200.413 of the Uniform Requirements, which are incurred by the Recipient to carry out the Financial Assistance. Direct Costs incurred to provide Development Services or Financial Services do not constitute Direct Administrative Expenses.

The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements,[7] with respect to any Direct Costs. For purposes of this NOFA, the five eligible activity categories are defined below:

TABLE 3—BASE–FA, PPC–FA, DF–FA, AND HFFI–FA ELIGIBLE ACTIVITY CATEGORIES

FA eligible activity	FA eligible activity definition *	Eligible CDFI institution types
i. Financial Products	FA expended as loans, Equity Investments and similar financing activities (as determined by the CDFI Fund) including the purchase of loans originated by Certified CDFIs and the provision of loan guarantees. In the case of CDFI Intermediaries, Financial Products may also include loans to CDFIs and/or Emerging CDFIs, and deposits in Insured Credit Union CDFIs, Emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs. For HFFI–FA, however, the purchase of loans originated by Certified CDFIs, loan refinancing, or any type of financing for prepared food outlets are not eligible activities.	All.

[6] Budget Period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which Recipients are authorized to expend the funds awarded.

[7] § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and Subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any Subsidiary or Affiliate of such entities).

TABLE 3—BASE–FA, PPC–FA, DF–FA, AND HFFI–FA ELIGIBLE ACTIVITY CATEGORIES—Continued

FA eligible activity	FA eligible activity definition *	Eligible CDFI institution types
ii. Financial Services	FA expended for providing checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services.	Regulated Institutions [8] only. Not applicable for HFFI–FA Recipients.
iii. Loan Loss Reserves ...	FA set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable or for related purposes that the CDFI Fund deems appropriate.	All.
iv. Development Services	FA expended for activities undertaken by a CDFI, its Affiliate or contractor that (i) promote community development and (ii) prepare or assist current or potential borrowers or investees to use the CDFI's Financial Products or Financial Services. For example, such activities include financial or credit counseling; homeownership counseling; business planning; and management assistance.	All.
v. Capital Reserves	FA set aside as reserves to support the Applicant's ability to leverage other capital, for such purposes as increasing its net assets or providing financing, or for related purposes as the CDFI Fund deems appropriate.	Regulated Institutions only. Not applicable for DF–FA.

* All FA eligible activities must be in an Eligible Market or the Applicant's approved Target Market. Eligible Market is defined as (i) a geographic area meeting the requirements set forth in 12 CFR 1805.201(b)(3)(ii), or (ii) individuals that are Low-Income, African American, Hispanic, Native American, Native Hawaiians residing in Hawaii, Alaska Natives residing in Alaska, or Other Pacific Islanders residing in American Samoa, Guam or the Northern Mariana Islands.

2. DF–FA Award: DF–FA award funds may only be expended for eligible FA activities (referenced in Table 3) to directly or indirectly benefit individuals with disabilities. The DF–FA Recipient must close Financial Products for the primary purpose of directly or indirectly benefiting people with disabilities, where the majority of the DF–FA supported loans or investments benefit individuals with disabilities, in an amount equal to or greater than 85% of the total DF–FA provided. Eligible DF–FA financing activities may include, among other activities, loans to develop or purchase affordable, accessible, and safe housing; loans to provide or facilitate employment opportunities; and loans to purchase assistive technology.

For the purposes of DF–FA, a person with a Disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment, as defined by the American Disabilities Act (ADA) at *https://www.ada.gov/cguide.htm.*

3. TA Grants: TA grant funds may be expended for the following seven eligible activity categories: (i) Compensation—Personal Services; (ii) Compensation—Fringe Benefits; (iii) Professional Service Costs; (iv) Travel Costs; (v) Training and Education Costs; (vi) Equipment; and (vii) Supplies. The TA Budget is the amount of the award and must be expended in the eight eligible activity categories before the end of the Budget Period. None of the eligible activity categories will be authorized for Indirect Costs or an associated Indirect Cost Rate. Any expenses that are prohibited by the Uniform Requirements are unallowable and are generally found in Subpart E—Cost Principles. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs. For purposes of this NOFA, the eight eligible activity categories are defined below:

TABLE 4—TA ELIGIBLE ACTIVITY CATEGORIES, SUBJECT TO THE APPLICABLE PROVISIONS OF THE UNIFORM REQUIREMENTS

(i) Compensation—Personal Services	TA paid to cover all remuneration, paid currently or accrued, for services of Applicant's employees rendered during the Period of Performance under the TA grant in accordance with section 2 CFR 200.430 of the Uniform Requirements. Any work performed directly but unrelated to the purposes of the TA grant may not be paid as Compensation through a TA grant. For example, the salaries for building maintenance would not carry out the purpose of a TA grant and would be deemed unallowable.
(ii) Compensation—Fringe Benefits	TA paid to cover allowances and services provided by the Applicant to its employees as Compensation in addition to regular salaries and wages, in accordance with section 2. CFR 200.431 of the Uniform Requirements. Such expenditures are allowable as long as they are made under formally established and consistently applied organizational policies of the Applicant.
(iii) Professional Service Costs	TA used to pay for professional and consultant services (*e.g.,* such as strategic and marketing plan development), rendered by persons who are members of a particular profession or possess a special skill (*e.g.,* credit analysis, portfolio management), and who are not officers or employees of the Applicant, in accordance with section 2 CFR 200.459 of the Uniform Requirements. Payment for a consultant's services may not exceed the current maximum of the daily equivalent rate paid to an Executive Schedule Level IV Federal employee. Professional and consultant services must build the capacity of the CDFI. For example, professional services that provide direct Development Services to the customers does not build the capacity of the CDFI to provide those services and would not be eligible. The Applicant must comply, as applicable, with section 2 CFR 200.216 of the Uniform Requirements, with respect to payment of Professional Service Costs.

[8] Regulated Institutions include Insured Credit Unions, Insured Depository Institutions, State-Insured Credit Unions and Depository Institution Holding Companies.

TABLE 4—TA ELIGIBLE ACTIVITY CATEGORIES, SUBJECT TO THE APPLICABLE PROVISIONS OF THE UNIFORM REQUIREMENTS—Continued

(iv) Travel Costs	TA used to pay costs of transportation, lodging, subsistence, and related items incurred by the Applicant's personnel who are on travel status on business related to the TA award, in accordance with section 2 CFR 200.475 of the Uniform Requirements. Travel Costs do not include costs incurred by the Applicant's consultants who are on travel status. Any payments for travel expenses incurred by the Applicant's personnel but unrelated to carrying out the purpose of the TA grant would be deemed unallowable. As such, documentation must be maintained that justifies the travel as necessary to the TA grant.
(v) Training and Education Costs	TA used to pay the cost of training and education provided by the Applicant for employees' development in accordance with section 2 CFR 200.473 of the Uniform Requirements. TA can only be used to pay for training costs incurred by the Applicant's employees. Training and Education Costs may not be incurred by the Applicant's consultants.
(vi) Equipment	TA used to pay for tangible personal property, having a useful life of more than one year and a per-unit acquisition cost of at least $5,000, in accordance with section 2 CFR 200.1 of the Uniform Requirements. For example, items such as office furnishings and information technology systems are allowable as Equipment costs. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to the purchase of Equipment.
(vii) Supplies	TA used to pay for tangible personal property with a per unit acquisition cost of less than $5,000, in accordance with section 2 CFR 200.1 of the Uniform Requirements. For example, a desktop computer costing $1,000 is allowable as a Supply cost. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to the purchase of Supplies.

4. HFFI–FA Award: HFFI–FA award funds may only be expended for eligible FA activities referenced in Table 3. The HFFI–FA investments must comply with the following guidelines:

a. Recipient must close Financial Products for Healthy Food Retail Outlets and Healthy Food Non-Retail Outlets in its approved Target Market in an amount equal to or greater than 100% of the total HFFI Financial Assistance provided. Eligible financing activities to Healthy Food Retail Outlets and Healthy Food Non-Retail Outlets require that the majority of the loan or investment be devoted to offering a range of Healthy Food choices, which may include, among other activities, investments supporting an existing retail store or wholesale operation upgrade to offer an expanded range of Healthy Food choices, or supporting a nonprofit organization that expands the availability of Healthy Foods in underserved areas.

b. Recipient must demonstrate that it has closed Financial Products to Healthy Food Retail Outlets located in Food Deserts in the Recipient's approved Target Market in an amount equal to 75% of the total HFFI Financial Assistance provided.

Definitions:

Healthy Foods: Healthy Foods include unprepared nutrient-dense foods and beverages as set forth in the USDA Dietary Guidelines for Americans 2020–2025 including whole fruits and vegetables, whole grains, fat free or low-fat dairy foods, lean meats and poultry (fresh, refrigerated, frozen or canned). Healthy Foods should have low or no added sugars, and be low-sodium, reduced sodium, or no-salt-added. (See USDA Dietary Guidelines: *http://www.dietaryguidelines.gov*).

Healthy Food Retail Outlets: Commercial sellers of Healthy Foods including, but not limited to, grocery stores, mobile food retailers, farmers markets, retail cooperatives, corner stores, bodegas, stores that sell other food and non-food items along with a range of Healthy Foods.

Healthy Food Non-Retail Outlets: Wholesalers of Healthy Foods including, but not limited to, wholesale food outlets, wholesale cooperatives, or other non-retail food producers that supply for sale a range of Healthy Food options; entities that produce or distribute Healthy Foods for eventual retail sale, and entities that provide consumer education regarding the consumption of Healthy Foods.

Food Deserts: Distressed geographic areas where either a substantial number or share of residents has low access to a supermarket or large grocery store. For the purpose of satisfying this requirement, a Food Desert must either: (1) Be a census tract determined to be a Food Desert by the U.S. Department of Agriculture (USDA), in its USDA Food Access Research Atlas; (2) be a census tract adjacent to a census tract determined to be a Food Desert by the USDA, in its USDA Food Access Research Atlas; which has a median family income less than or equal to 120% of the applicable Area Median Family Income; or (3) be a Geographic Unit as defined in 12 CFR part 1805.201(b)(3)(ii)(B), which (i) individually meets at least one of the criteria in 12 CFR part 1805.201(b)(3)(ii)(D), and (ii) has been identified as having low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative.

5. PPC–FA Award: PPC–FA award funds may only be expended for eligible FA activities referenced in Table 3. The PPC–FA Recipient must close Financial Products in PPC in an Eligible Market or in the Applicant's approved Target Market in an amount equal to or greater than 100% of the total PPC Financial Assistance provided. The specific counties that meet the criteria for ''persistent poverty'' can be found at: *https://www.cdfifund.gov/sites/cdfi/files/documents/cdfi-ppc-feb19-2020.xls.*

III. Eligibility Information

A. Eligible Applicants: For the purposes of this NOFA, the following tables set forth the eligibility criteria to receive an award from the CDFI Fund, along with certain definitions of terms. There are four categories of Applicant eligibility criteria: (1) CDFI certification criteria (Table 5); (2) requirements that apply to all Applicants (Table 6); (3) requirements that apply to TA Applicants (Table 7); and (4) requirements that apply to FA Applicants (Table 8).

TABLE 5—CDFI CERTIFICATION CRITERIA DEFINITIONS

Certified CDFI	An entity that the CDFI Fund has officially notified that it meets all CDFI certification requirements.
Emerging CDFI (TA Applicants)	• A non-Certified entity that demonstrates to the CDFI Fund in its Application that it has an acceptable plan to meet CDFI certification requirements by the end of its Period of Performance, or another date that the CDFI Fund selects. • An Emerging CDFI that has prior award(s) must comply with CDFI certification PG&M(s) stated in its prior Assistance Agreement(s).

TABLE 5—CDFI CERTIFICATION CRITERIA DEFINITIONS—Continued

	An Emerging CDFI selected to receive a TA grant will be required to become a Certified CDFI by a date specified in the Assistance Agreement.

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS

Applicant	• Only the entity that will carry out the proposed award activities may apply for an award (other than Depository Institution Holding Companies (DIHC) [9]—see below). Recipients may not create a new legal entity to carry out the proposed award activities. • The information in the Application should only reflect the activities of the Applicant, including the presentation of financial and portfolio information. Do not include financial or portfolio information from parent companies, Affiliates, or Subsidiaries in the Application unless it relates to the provision of Development Services. • An Applicant that applies on behalf of another organization will be rejected without further consideration, other than Depository Institution Holding Companies (see below).
Application type and submission overview through *Grants.gov* and Awards Management Information System (AMIS).	• Applicants must submit the Required Application Documents listed in Table 10. • The CDFI Fund will only accept Applications that use the official Application templates provided on the *Grants.gov* and AMIS websites. Applications submitted with alternative or altered templates will not be considered. • Applicants undergo a two-step process that requires the submission of Application documents by two separate deadlines in two different locations: (1) The SF–424 in *Grants.gov* and (2) all other Required Application Documents in AMIS. • *Grants.gov* and the SF–424: ○ *Grants.gov:* Applicants must submit the Standard Form (SF) SF–424, Application for Federal Assistance. ○ All Applicants must register in the *Grants.gov* system to successfully submit an Application. The *Grants.gov* registration process can take 30 days or more to complete. The CDFI Fund strongly encourages Applicants to register as early as possible. ○ The CDFI Fund will not extend the SF–424 application deadline for any Applicant that started the *Grants.gov* registration process on, before, or after the date of the publication of this NOFA, but did not complete it by the deadline except in the case of a Federal government administrative or technological error that directly resulted in a late submission of the SF–424. ○ The SF–424 must be submitted in *Grants.gov* on or before the deadline listed in Table 1 and Table 12. Applicants are strongly encouraged to submit their SF–424 as early as possible in the *Grants.gov* portal. ○ The deadline for the *Grants.gov* submission is before the AMIS submission deadline. ○ The SF–424 must be submitted under the CDFI Program Funding Opportunity Number for the CDFI Program Application. CDFI Program Applicants should be careful to not select the NACA Program Funding Opportunity Number when submitting their SF–424 for the CDFI Program. CDFI Program Applicants that submit their SF–424 for the CDFI Program Application under the NACA Program Funding Opportunity Number will be deemed ineligible for the CDFI Program Application. ○ If the SF–424 is not accepted by *Grants.gov* by the deadline, the CDFI Fund will not review any material submitted in AMIS and the Application will be deemed ineligible. • AMIS and all other Required Application Documents listed in Table 10: ○ AMIS is an enterprise-wide information technology system. Applicants will use AMIS to submit and store organization and Application information with the CDFI Fund. ○ Applicants are only allowed one CDFI Program Application submission in AMIS. ○ Each Application in AMIS must be signed by an Authorized Representative. ○ Applicants must ensure that the Authorized Representative is an employee or officer of the Applicant, authorized to sign legal documents on behalf of the organization. *Consultants working on behalf of the organization may not be designated as Authorized Representatives.* ○ Only the Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. ○ All Required Application Documents must be submitted in AMIS on or before the deadline specified in Tables 1 and 12. ○ The CDFI Fund will not extend the deadline for any Applicant except in the case of a Federal government administrative or technological error that directly resulted in the late submission of the Application in AMIS.
Employer Identification Number (EIN)	• Applicants must have a unique EIN assigned by the Internal Revenue Service (IRS). • The CDFI Fund will reject an Application submitted with the EIN of a parent or Affiliate organization. • The EIN in the Applicant's AMIS account must match the EIN in the Applicant's System for Award Management (SAM) account. The CDFI Fund reserves the right to reject an Application if the EIN in the Applicant's AMIS account does not match the EIN in its SAM account. • Applicants must enter their EIN into their AMIS profile on or before the deadline specified in Tables 1 and 12.
Dun & Bradstreet, (DUNS) number	• Pursuant to OMB guidance (68 FR 38402), an Applicant must apply using its unique DUNS number in *Grants.gov*. • The CDFI Fund will reject an Application submitted with the DUNS number of a parent or Affiliate organization. • The DUNS number in the Applicant's AMIS account must match the DUNS number in the Applicant's *Grants.gov* and SAM accounts. The CDFI Fund will reject an Application if the DUNS number in the Applicant's AMIS account does not match the DUNS number in its *Grants.gov* and SAM accounts. • Applicants must enter their DUNS number into their AMIS profile on or before the deadline specified in Tables 1 and 12.
System for Award Management (SAM)	• SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract awards, grants, and electronic payment processes. • Applicants must register in SAM as part of the *Grants.gov* registration process. • Applicants must have a DUNS number and an EIN number in order to register in SAM. • Applicants must be registered in SAM in order to submit an SF–424 in *Grants.gov*. • The CDFI Fund reserves the right to deem an Application ineligible if the Applicant's SAM account expires during the Application evaluation period, or is set to expire before September 30, 2022, and the Applicant does not re-activate, or renew, as applicable, the account within the deadlines that the CDFI Fund communicates to affected Applicants during the Application evaluation period.
AMIS Account	• Each Applicant must register as an organization in AMIS and submit all Required Application Documents listed in Table 10 through the AMIS portal. • The Application of any organization that does not properly register in AMIS by the deadline set forth in Table 1—FY 2022 CDFI Program Funding Round Critical Deadlines for Applicants—will be rejected without further consideration. • The Authorized Representative and/or Application Point of Contact must be included as "users" in the Applicant's AMIS account. • An Applicant that fails to properly register and update its AMIS account may miss important communication from the CDFI Fund and/or may not be able to successfully submit an Application.

TABLE 6—ELIGIBILITY REQUIREMENTS FOR ALL APPLICANTS—Continued

501(c)(4) status	• Pursuant to 2 U.S.C. 1611, any 501(c)(4) organization that engages in lobbying activities is not eligible to receive a CDFI or NACA Program award.
Compliance with Nondiscrimination and Equal Opportunity Statutes, Regulations, and Executive Orders.	• An Applicant may not be eligible to receive an award if proceedings have been instituted against it in, by, or before any court, governmental agency, or administrative body, and a final determination within the last three years indicates the Applicant has violated any of the following laws, including but not limited to: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107), and Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and Title IX of the Education Amendments of 1972.
Depository Institution Holding Company Applicant.	• In the case where a CDFI Depository Institution Holding Company Applicant intends to carry out the activities of an award through its Subsidiary CDFI Insured Depository Institution, the Application must be submitted by the CDFI Depository Institution Holding Company and reflect the activities and financial performance of the Subsidiary CDFI Insured Depository Institution. • If a Depository Institution Holding Company and its Certified CDFI Subsidiary Insured Depository Institution (through which it will carry out the activities of the award) both apply for an award under this NOFA, only the Depository Institution Holding Company will receive an award, not both. In such instances, the Subsidiary Insured Depository Institution will be deemed ineligible. • Authorized Representatives of both the Depository Institution Holding Company and the Subsidiary CDFI Insured Depository Institution must certify that the information included in the Application represents that of the Subsidiary CDFI Insured Depository Institution, and that the award funds will be used to support the Subsidiary CDFI Insured Depository Institution for the eligible activities outlined in the Application.
Use of award	• All awards made through this NOFA must be used to support the Applicant's activities in at least one of the FA or TA Eligible Activity Categories (see Section II. (C)). • With the exception of Depository Institution Holding Company Applicants, awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent. The Recipient of any award made through this NOFA must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.
Requested award amount	• An Applicant must state its requested award amount in the Application in AMIS. An Applicant that does not include this amount will not be allowed to submit an Application.
Pending resolution of noncompliance	• The CDFI Fund will consider an Application submitted by an Applicant that has pending noncompliance issues on any of its previously executed Award Agreement(s), Allocation Agreement(s), and/or Assistance Agreement(s) if the CDFI Fund has not yet made a final compliance determination.
Noncompliance or default status	• The CDFI Fund will not consider an Application submitted by an Applicant that has a previously executed Award Agreement(s), Allocation Agreement(s), and/or Assistance Agreement(s) if, as of the date of the Application, (i) the CDFI Fund has made a final determination that such entity is noncompliant or found in default with a previously executed Award Agreement, Allocation Agreement and/or Assistance Agreement and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for or receive any future CDFI Fund awards or allocations. Such entities will be ineligible to submit an Application for such time period as specified by the CDFI Fund in writing. • The CDFI Fund will not consider any Applicant that has defaulted on a loan from the CDFI Fund within five years of the Application deadline.
Debarment/Do Not Pay Verification	• The CDFI Fund will conduct a debarment check and will not consider an Application submitted by an Applicant (or Affiliate of an Applicant) if the Applicant is delinquent on any Federal debt. • The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. The Do Not Pay Business Center provides delinquency information to the CDFI Fund to assist with the debarment check.

TABLE 7—ELIGIBILITY REQUIREMENTS FOR TA APPLICANTS

CDFI certification status	(1) Emerging CDFIs (see definition in Table 5), or (2) Certified CDFIs (see Table 5) that meet the following SECA Applicant criteria: (1) Have total assets as of the end of the Applicant's most recent historic fiscal year[10] in accordance with the FA Application Guidance (as stated in the Applicant's AMIS account and verified by internally prepared financial statements and/or audits) in the following amounts: • Insured Depository Institutions and Depository Institution Holding Companies: Up to $250 million; • Insured Credit Unions and State-Insured Credit Unions: Up to $100 million; • Venture Capital Funds**: Up to $5 million; • Other CDFIs: Up to $5 million; OR (2) Have begun operations (as indicated by the financing activity start date field in the Applicant's AMIS account) on or after January 1, 2018.
Matching Funds	• Matching Funds documentation is not required for TA awards.
Limitation on Awards	• An Emerging CDFI may not receive more than three TA awards as an uncertified CDFI.
Proposed Activities	• Applicants must propose to directly undertake eligible activities with TA awards. For example, an uncertified CDFI Applicant must propose to become certified as part of its Application and a Certified CDFI Applicant must propose activities that build its capacity to serve its Target Market or an Eligible Market. • Applicants may not propose to use a TA award to create a separate legal entity to become a Certified CDFI or otherwise carry out the TA award activities.
Regulated Institution	• Each Regulated Institution TA Applicant must have a CAMELS/CAMEL rating (rating for Insured Depository Institutions and Credit Unions, respectively) or equivalent type of rating by its regulator (collectively referred to as ''CAMELS/CAMEL rating'') of at least ''4''. • TA Applicants with CAMELS/CAMEL ratings of ''5'' will not be eligible for awards. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CAMELS/CAMEL rating eligibility requirements noted above apply to both the Depository Institution Holding Company Applicant as well as the Subsidiary Insured Depository Institution.

[9] Depository Institution Holding Company or DIHC means a Bank Holding Company or a Savings and Loan Holding Company.

TABLE 7—ELIGIBILITY REQUIREMENTS FOR TA APPLICANTS—Continued

	• The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.

** A Venture Capital Fund is an organization that predominantly invests funds in businesses, typically in the form of either Equity Investments or subordinated debt with equity features such as a revenue participation or warrants, and generally seeks to participate in the upside returns of such businesses in an effort to at least partially offset the risk of its investments.

TABLE 8—ELIGIBILITY REQUIREMENTS FOR FA APPLICANTS

CDFI certification status	• Each FA Applicant must be a Certified CDFI as of the publication date of this NOFA in the **Federal Register**. • The CDFI Fund will consider an Application submitted by an Applicant that has pending noncompliance issues with its Annual Certification Report if the CDFI Fund has not yet made a final compliance determination. • If a Certified CDFI loses its certification at any point prior to the award announcement, the Application will be deemed ineligible and no longer be considered by the CDFI Fund.
Matching Funds documentation	• Native American CDFIs are not required to provide Matching Funds. • Applicants must submit acceptable documentation attesting that they have received or will receive Matching Funds. Applicants that do not complete the Matching Funds section in the FA Application in AMIS, documenting the source(s) of their Matching Funds, will not be evaluated. See Table 9 for additional information on Matching Funds requirements for FY 2022 Funding Round. The Matching Funds requirement for Category I (SECA) FA Applicants and HFFI–FA Applicants was waived in the final FY 2021 appropriations, and the final FY 2022 appropriations are still pending. Therefore HFFI–FA and SECA FA applicants are not required to submit Matching Funds for their award requests at the time of Application. However, the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) FA and HFFI–FA Applicants if Matching Funds are not waived in the final FY 2022 CDFI Program appropriations. Category II (Core) FA Applicants must document their Matching Funds in the Matching Funds section in the FA Application in AMIS. Matching Funds information provided in another format will not be considered. • Unless Congress waived the Matching Funds requirement, awards will be limited to no more than two times the amount of In-Hand or Committed Matching Funds documentation provided at the time of Application (or for Category I (SECA) FA and HFFI–FA Applicants, upon request if applicable). See Table 9 for the definitions of Committed and In-Hand. • Unless Congress waived the Matching Funds requirement, awards will be obligated in like form to the Matching Funds provided at time of Application (or for Category I (SECA) FA and HFFI–FA Applicants, upon request if applicable). See Table 9. Matching Funds ''Determination of Award Form'' for additional guidance. • Unless Congress waived the Matching Funds requirement, award payments from the CDFI Fund will require eligible dollar-for-dollar In-Hand Matching Funds for the total payment amount. Recipients will not receive a payment until 100% of their Matching Funds are In-Hand. • Unless Congress waived the Matching Funds requirement, the CDFI Fund will reduce and de-obligate the remaining balance of any award that does not demonstrate full dollar-for-dollar Matching Funds equal to the announced award amount by the end of the Matching Funds Window.
Consideration as a Native American CDFI.	• The Indian Community Economic Enhancement Act of 2020 (Pub. L. 116–261) permanently waived the Matching Funds requirements for Native American CDFIs. For consideration as a Native American CDFI under this NOFA, an FA Applicant must Primarily Serve a Native Community. Primarily Serves is defined as 50% or more of an Applicant's activities being directed to a Native Community. • For purposes of this NOFA, a Native Community is defined as Native American, Alaska Native, or Native Hawaiian populations or Native American areas defined as Federally-designated reservations, Hawaiian homelands, Alaska Native Villages and U.S. Census Bureau-designated Tribal Statistical Areas. • Applicants that do not meet the above conditions will not be considered as a Native American CDFI under this NOFA. • Native American CDFI FA Applicants are not required to provide Matching Funds. Therefore, if the CDFI Fund determines that a Category II (Core) FA Applicant that attests in its Application to meeting the above conditions does not meet the criteria to be considered a Native American CDFI, the Application will be deemed ineligible for failure to provide Matching Funds.
$5 Million funding cap	• The CDFI Fund is prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period from the Announcement Date. • For TA Applicants, for purposes of this NOFA and per final FY 2022 appropriations language, the CDFI Fund will include CDFI and NACA Program final awards in the cap calculation that were provided to an Applicant (and/or its Subsidiaries or Affiliates) under the FY 2020, and 2021 funding rounds, as well as the requested FY 2022 award, excluding DF–FA and HFFI–FA awards. • For FA Applicants, for purposes of this NOFA and per final FY 2022 appropriations language, the CDFI Fund will include CDFI and NACA Program final awards in the cap calculation that were provided to an Applicant (and/or its Subsidiaries or Affiliates) under the FY 2020 and 2021 funding rounds, as well as the requested FY 2022 award, excluding DF–FA and HFFI–FA awards.
FA Category I (SECA)	• To be an eligible SECA Applicant, an Applicant must meet the following criteria: (1) Be a Certified CDFI; (2) Request $700,000 or less in Base-FA funds; AND EITHER (3) Have total assets as of the end of the Applicant's most recent historic fiscal year in accordance with the FA Application Guidance (as stated in the Applicant's AMIS account and verified by internally prepared financial statements and/or audits) in the following amounts: • Insured Depository Institutions and Depository Institution Holding Companies: Up to $250 million; • Insured Credit Unions and State-Insured Credit Unions: Up to $100 million; • Venture Capital Funds: Up to $5 million; • Other CDFIs: Up to $5 million; OR

[10] For the purposes of this NOFA, an Applicant's most recent historic fiscal year end is determined as follows:

(A) Applicants with a 3/31 fiscal year end date will treat FY 2021 as their most recent historic fiscal year and FY 2022 as their current year.

(B) Applicants with a 6/30 fiscal year end date will treat FY 2021 as their most recent historic fiscal year and FY 2022 as their current year.

(C) Applicants with a 9/30 fiscal year end date and a completed FY 2021 audit will treat FY 2021 as their most recent historic fiscal year and FY 2022 as their current year.

(D) Applicants with a 9/30 fiscal year end date but without a completed FY 2021 audit will treat FY 2020 as their most recent historic fiscal year and FY 2021 as their current year.

(E) Applicants with a 12/31 fiscal year end date, with or without a completed FY 2021 audit, will treat FY 2020 as their most recent historic fiscal year and FY 2021 as their current year.

TABLE 8—ELIGIBILITY REQUIREMENTS FOR FA APPLICANTS—Continued

	• Have begun operations (as indicated by the financing activity start date field in the Applicant's AMIS account) on or after January 1, 2018.
FA Category II (Core)	• A Core Applicant must be a Certified CDFI as defined in Table 5. • An Applicant that meets the SECA requirements stated above, and that requests more than $700,000 in Base-FA award funds is categorized as an FA Category II (Core) Applicant, regardless of its total assets and/or years in operation. • Such Applicants who meet SECA requirements but wish to apply as a Core FA Applicant, by requesting more than $700,000, must submit a Service Request in AMIS to request that a Core-FA Application be created by the dates specified in Tables 1 and 12. The CDFI Fund will not change an Application back to a SECA FA Application after a request to create a Core FA Application has been submitted to the CDFI Fund.
FA Applicants with Community Partners	• A CDFI Applicant can apply for assistance jointly with a Community Partner. The CDFI Applicant must complete the CDFI Program Application and address the Community Partnership in its business plan and other sections of the Application as specified in the Application materials. • The CDFI Applicant must be a Certified CDFI as defined in Table 5. • An Application with a Community Partner must: ○ Describe how the CDFI Applicant and Community Partner will each participate in the partnership and how the partnership will enhance eligible activities serving the Investment Area and/or Targeted Population. ○ Demonstrate that the Community Partnership activities are consistent with the strategic plan submitted by the CDFI Applicant. • Assistance provided upon approval of an Application with a Community Partner shall only be entrusted to the CDFI Applicant and shall not be used to fund any activity carried out directly by the Community Partner or an Affiliate or Subsidiary thereof.
Regulated Institution	• Each Regulated Institution FA Applicant must have a CAMELS/CAMEL rating (rating for Insured Depository Institutions and Credit Unions, respectively) or equivalent type of rating by its regulator (collectively referred to as ''CAMELS/CAMEL rating'') of at least ''3''. • FA Applicants with CAMELS/CAMEL ratings of ''4 or 5'' will not be eligible for awards. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CAMELS/CAMEL rating eligibility requirements noted above apply to both the Depository Institution Holding Company Applicant as well as the Subsidiary Insured Depository Institution. • The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.
PPC–FA	• All PPC–FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all FA award eligibility requirements; and ○ Provide a PPC–FA award request amount in AMIS.
DF–FA	• All DF–FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all FA award eligibility requirements; ○ Submit the DF–FA Application; and ○ Provide a DF–FA award request amount in AMIS.
HFFI–FA	• All HFFI–FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all FA award eligibility requirements; ○ Submit the HFFI–FA Application; and ○ Provide a HFFI–FA award request amount in AMIS.

B. Matching Funds Requirements: In order to receive a Base–FA, PPC–FA, or DF–FA award, an Applicant must provide evidence of eligible dollar-for-dollar Matching Funds and attest that it can provide acceptable documentation upon the CDFI Fund's request as part of the Application, unless Congress waived the Matching Funds requirement. The Matching Funds requirement was permanently waived for Native American CDFIs. Therefore, Native American CDFI Applicants are not required to submit Matching Funds for their award requests. The Matching Funds requirement was waived for Category I (SECA) FA Applicants and HFFI–FA Applicants in the final appropriations bill for FY 2021, and the final FY 2022 appropriations are still pending for this funding round. As a result, Category I (SECA) FA Applicants and HFFI–FA Applicants are not required to submit Matching Funds for their award requests at the time of Application. However, the CDFI Fund reserves the right to request Matching Funds from Category I (SECA) FA Applicants and HFFI–FA Applicants if Matching Funds are not waived in the final FY 2022 CDFI Program appropriations. An Applicant that represents that it has Equity Investments and/or deposits Matching Funds In-Hand at the time of Application submission must provide documentation of such as part of the Application (or for Category I (SECA) FA and HFFI–FA Applicants, upon request if applicable). An Applicant that uses retained earnings as Matching Funds must provide supporting documentation of In-Hand and/or Committed Matching Funds at the time of Application submission. The CDFI Fund will review Matching Funds information, attestations, and supporting Matching Funds documentation, if applicable, prior to award payment and will disburse funds based upon eligible In-Hand Matching Funds. The CDFI Fund encourages Applicants to review the Regulations, the Uniform Requirements, and the Matching Funds guidance materials available on the CDFI Fund's website. Table 9 provides a summary of the Matching Funds requirements for Applicants for whom Matching Funds are required. The Matching Funds requirement for Native American CDFIs is permanently waived. Additional details are set forth in the Application materials.

TABLE 9—MATCHING FUNDS REQUIREMENTS *

In-Hand Matching Funds definition	• Matching Funds are In-Hand when the Applicant receives payment for the Matching Funds from the Matching Funds source and has acceptable documentation that can be provided to the CDFI Fund upon request. Acceptable In-Hand documentation must show the source, form (*e.g.*, grant, loan, deposit, and Equity Investment), amount received, and the date the funds came into physical possession of the Applicant.

TABLE 9—MATCHING FUNDS REQUIREMENTS *—Continued

	• The following documentation, depending on the Matching Funds type, must be available to be provided to the CDFI Fund upon request: • Loan—the loan agreement and/or promissory note; • grant—the grant letter or agreement; • Equity Investment—the stock certificate, documentation of total equity outstanding, and shareholder agreement; • retained earnings—Retained Earnings Calculator and audited financial statements or call reports from regulating entity for each fiscal year reported in the Retained Earnings Calculator; • third party in-kind contribution—evidence of receipt of contribution and valuation; • deposits—certificates of deposit agreement; • secondary capital—secondary capital agreement and disclosure and acknowledgement statement; AND • clearly legible documentation that demonstrates actual receipt of the Matching Funds including the date of the transaction and the amount, such as a copy of a check or a wire transfer statement. • Unless Congress waived the Matching Funds requirement, Applicants must provide information on their In-Hand Matching Funds in the Matching Funds section of the FA Application in AMIS (refer to Table 10—Required Application Documents) at the time of Application submission. • Although Applicants are not required to provide further documentation for In-Hand Matching Funds at the time of Application submission (other than supporting documentation for retained earnings, deposits, and Equity Investments, which must be provided at the time of Application submission), they must be able to provide documentation to the CDFI Fund upon request.
Matching Funds requirements by Application type.	The following Applicants must provide evidence of acceptable Matching Funds at the time of Application: • Category II/Core FA Applicants, with the exception of Native American CDFIs, applying for Base–FA, PPC–FA, and DF–FA The CDFI Fund reserves the right to request Matching Funds from Category I (SECA) FA Applicants and HFFI–FA Applicants if Matching Funds are not waived in the final FY 2022 CDFI Program appropriations. TA Applicants and Native American CDFI FA Applicants are not required to provide Matching Funds.
Amount of required match	Unless waived by Congress, Applicants must provide evidence of eligible, In-Hand, dollar-for-dollar, non-Federal Matching Funds for every award dollar to be paid by the CDFI Fund. If awarded, Applicants that do not demonstrate 100% In-Hand Matching Funds at the time of Application submission may experience a longer payment timeline.
Determination of award form	Unless the Matching Funds requirement is waived by Congress, awards will be made in comparable form and value to the eligible In-Hand and/or Committed Matching Funds submitted by the Applicant. For awards where Congress has waived the Matching Funds requirement, the form of the award will be a grant. • For example, if an Applicant provides documentation of eligible loan Matching Funds for $200,000 and eligible grant Matching Funds of $400,000, the CDFI Fund will obligate $200,000 of the FA award as a loan and $400,000 as a grant. • The CDFI Fund will not permit a Recipient to change the form of a loan award. For awards where Congress waives the Matching Funds requirement, the form of the award will be a grant.
Matching Funds Window definition	• The Applicant must receive eligible In-Hand Matching Funds between January 1, 2020 and January 15, 2023. • A Recipient must provide the CDFI Fund with all documentation demonstrating the receipt of In-Hand Matching Funds by January 31, 2023.
Matching Funds and form of award	• Recipients will be approved for a maximum award size of two times the total amount of eligible In-Hand and/or Committed Matching Funds included in the Application (or for Category I (SECA) FA and HFFI–FA Applicants, upon request if applicable), so long as they do not exceed the requested award amount. • The form of the Matching Funds documented in the Application determines the form of the award.
Committed Matching Funds definition	• Matching Funds are Committed when the Applicant has entered into or received a legally binding commitment from the Matching Funds source showing that the Matching Funds will be disbursed to the Applicant at a future date. • The Applicant must provide information on their Committed Matching Funds in the Matching Funds section of the FA Application in AMIS (refer to Table 10—Required Application Documents) at the time of Application submission. • Although the Applicant is not required to provide further documentation for Committed Matching Funds at the time of Application submission (other than supporting documentation for retained earnings, deposits, and Equity Investments, which must be provided at the time of Application submission), it must be able to provide the CDFI Fund, upon request, acceptable written documentation showing the source, form, and amount of the Committed Matching Funds (including, in the case of a loan, the terms thereof), as well as the anticipated payment date of the Committed Matching Funds.
Limitations on Matching Funds	• Matching Funds must be from non-Federal sources. • Applicants cannot proffer Matching Funds that were accepted as Matching Funds for a prior award that required Matching Funds under the CDFI Program, NACA Program, or under another Federal grant or award program. • Matching Funds must comply with the Regulations. • Matching Funds must be attributable to at least one of the five eligible FA activities (see Section II (C) of this NOFA).
Rights of the CDFI Fund	• The CDFI Fund reserves the right to contact the Matching Funds source to discuss the Matching Funds and the documentation that the Applicant provided. • The CDFI Fund may grant an extension of the Matching Funds Window (defined in Table 9), on a case-by-case basis, if the CDFI Fund deems it appropriate. • The CDFI Fund reserves the right to rescind all or a portion of an award requiring Matching Funds and re-allocate the rescinded award amount to other qualified Applicant(s) if a Recipient fails to provide evidence of In-Hand Matching Funds obtained during the Matching Funds Window totaling its award amount.
Matching Funds in the form of third-party in-kind contributions.	• Third party in-kind contributions are non-cash contributions (i.e., property or services) provided by non-Federal third parties to the Applicant. • Third party in-kind contributions will be considered to be in the form of a grant for Matching Funds purposes. • Third party in-kind contributions may be in the form of real property, equipment, supplies, and other expendable property. The value of goods and services must directly benefit the eligible FA activities. • For third party in-kind contributions, the fair market value of goods and services must be documented as the grant match. • Applicants will be responsible for documenting the value of all in-kind contributions pursuant to the Uniform Requirements.
Matching Funds in the form of a loan	• An award made in the form of a loan will have the following standardized terms: i. A 13-year term with semi-annual interest-only payments due in years 1 through 10, and fully amortizing payments due each year in years 11 through 13; and ii. A fixed interest rate of 1.39%, which was calculated by the CDFI Fund based on the U.S. Department of the Treasury's 10-year Treasury note. • The Applicant's Matching Funds loan(s) must: i. Have a minimum of a 3-year term (loans presented as Matching Funds with less than a 3-year term will not qualify as eligible match); and ii. be from a non-Federal source.

TABLE 9—MATCHING FUNDS REQUIREMENTS *—Continued

Matching Funds in the form of Equity Investments.	• An Equity Investment source must meet the terms outlined in 12 CFR 1805.401(a): Equity: The CDFI Fund may make non-voting equity investments in a Recipient, including, without limitation, the purchase of non-voting stock. Such stock shall be transferable and, in the discretion of the CDFI Fund, may provide for convertibility to voting stock upon transfer. The CDFI Fund shall not own more than 50 percent of the equity of a Recipient and shall not control its operations. • The CDFI Fund's ownership of equity is calculated by dividing the shares owned by the CDFI Fund by the total number of shares issued by the Recipient. • The CDFI Fund reserves the right, in its sole discretion, to perform its own valuation of Equity Investment source(s) and to determine if the equity value is acceptable to the CDFI Fund.
Severe Constraints Waiver	• In the case of an Applicant demonstrating severe constraints on available sources of Matching Funds, the CDFI Fund, in its sole discretion, may provide a Severe Constraints Waiver, which permits such Applicant to comply with the Matching Funds requirements by reducing such requirements by up to 50%. • In order to be considered eligible for a Severe Constraints Waiver, an Applicant must meet all of the SECA eligibility criteria described in Table 8. Instructions for requesting a Severe Constraints Waiver will be made available if required. • No more than 25% of the total funds available for obligation under this funding round may qualify for a Severe Constraints Waiver.
Ineligible Matching Funds	• Applicants will not be given the opportunity to correct or amend the Matching Funds information included in the FA Application after Application submission if the CDFI Fund determines that any portion of the Applicant's Matching Funds is ineligible.
Use of Matching Funds from a prior CDFI Program Recipient.	If an Applicant offers Matching Funds documentation from an organization that was a prior Recipient under the CDFI Program or NACA Program, the Applicant must be able to prove to the CDFI Fund's satisfaction that such funds do not consist, in whole or in part, of CDFI Program funds, NACA Program funds, or other Federal funds.
Matching Funds in the form of retained earnings.	• Retained earnings are eligible for use as Matching Funds in an amount equal to the CDFI Fund's calculation of: i. the increase in retained earnings that occurred over any one of the Applicant's fiscal years within the Matching Funds Window, adjusted to remove revenue and expenses derived from Federal sources and Matching Funds used for an award; or ii. the annual average of such increases that occurred over any three consecutive fiscal years of the Applicant with at least one of the fiscal years occurring within the Matching Funds Window, adjusted to remove revenue and expenses derived from Federal sources and Matching Funds used for an award; or iii. any combination of (i) and (ii) above that does not include Matching Funds used for an award. • Retained earnings will be matched in the form of a grant. • Depository Institution Holding Company Applicants must provide call reports for the Depository Institution Holding Company in order to verify their retained earnings, even if the requested award will support its Subsidiary CDFI Insured Depository Institution.
Special rule for Regulated Institutions	• A Regulated Institution's retained earnings are eligible for use as Matching Funds in an amount equal to the CDFI Fund's calculation of: i. The increase in retained earnings that occurred over any one of the Applicant's fiscal years within the Matching Funds Window, adjusted to remove revenue from Federal sources and Matching Funds used for an award; or ii. the annual average of such increases that occurred over any three consecutive fiscal years of the Applicant with at least one of the fiscal years occurring within the Matching Funds Window, adjusted to remove revenue and expenses derived from Federal sources and Matching Funds used for an award; or iii. the entire retained earnings that have been accumulated since the inception of the Applicant, as provided in the Regulations. • If option (iii) is used for Insured Credit Unions or State-Insured Credit Unions, the Applicant must increase its member and/or non-member shares and/or total loans outstanding by an amount equal to the amount of retained earnings committed as Matching Funds. • This increase (1) will be measured on a quarterly basis from March 31, 2022; (2) must occur by December 31, 2023; and (3) will be based on amounts reported in the Applicant's National Credit Union Administration (NCUA) form 5300 Call Report, or equivalent. • The CDFI Fund will assess the likelihood of this increase during the Application review process. • An award will not be made to any Applicant that has not demonstrated in the relevant NCUA form 5300 call reports or equivalent that it has increased shares and/or total loans outstanding by at least 25% of the requested FA award amount (including all awards requiring Matching Funds) between December 31, 2020, and December 31, 2021. • The Matching Funds are not In-Hand until the Recipient has increased its member and/or non-member shares, deposits and/or total loans outstanding by the amount of retained earnings since inception that are being used as Matching Funds. • If option (iii) is used for Insured Depository Institutions or Depository Institution Holding Companies, the Applicant or its Subsidiary CDFI Insured Depository Institution (in the case of a Depository Institution Holding Company) must increase deposits and/or total loans outstanding by an amount equal to the amount of retained earnings committed as Matching Funds. Depository Institution Holding Company Applicants must use the call reports of the Subsidiary CDFI Insured Depository Institution that the requested the FA award will support. • This increase (1) will be measured on a quarterly basis from March 31, 2022; (2) must occur by December 31, 2023; and (3) will be based on amounts reported in the call report. • The CDFI Fund will assess the likelihood of this increase during the Application review process. • An award will not be made to any Applicant that has not demonstrated in the relevant call reports that it has increased deposits and/or total loans outstanding by at least 25% of the requested FA award amount (including all awards requiring Matching Funds) between December 31, 2020, and December 31, 2021. • The Matching Funds are not In-Hand until the Recipient has increased its deposits and/or total loans outstanding by the amount of retained earnings since inception that are being used as Matching Funds. • All regulated Applicants utilizing the option (iii) should refer to the Retained Earnings Guidance included in the Retained Earnings Calculator Excel Workbook found on the CDFI Fund's website.

*The requirements set forth in Table 9 are applicable to Category II (Core) FA Applicants, with the exception of Native American CDFIs, applying for Base-FA, PPC–FA, and DF–FA. The Matching Funds requirements were permanently waived for Native American CDFIs. Therefore, the requirements set forth in Table 9 are not applicable to Native American CDFI Applicants for the FY 2022 Funding Round. Category I (SECA) FA Applicants and HFFI–FA Applicants are not required to submit Matching Funds at the time of Applications submission but the CDFI Fund reserves the right to request Matching Funds from these Applicants if the Matching Funds requirement is not waived in the final FY 2022 CDFI Program appropriations.

IV. Application and Submission Information

A. Address to Request an Application Package: Application materials can be found on the CDFI Fund's website at *www.cdfifund.gov/cdfi.* Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk at *cdfihelp@cdfi.treas.gov.* Paper versions of Application materials will only be provided if an Applicant cannot access the CDFI Fund's website.

B. Content and Form of Application Submission: All Applications must be prepared using the English language, and calculations must be computed in U.S. dollars. The following table lists the Required Application Documents for the FY 2022 Funding Round. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application. Information submitted by the Applicant that the CDFI Fund has not specifically requested will not be reviewed or considered as part of the Application. Financial data, portfolio, and activity information provided in the Application should only include the Applicant's activities. Information submitted must accurately reflect the Applicant's activities.

TABLE 10—REQUIRED APPLICATION DOCUMENTS

Application documents	Applicant type	Submission format
Active AMIS Account	All Applicants	AMIS.
SF–424	All Applicants	Fillable PDF in *Grants.gov.*
CDFI Program Application Components: • Funding Application Detail. • Data, Charts, and Narrative sections as listed in AMIS and outlined in Application materials. • Matching Funds (FA Core Applicants, with the exception of Native American CDFIs).	All Applicants	AMIS.
PPC–FA Application Components: • Funding Application Detail. • Narratives. • AMIS Charts.	PPC–FA Applicants	AMIS.
DF–FA Application Components: • Funding Application Detail. • Narratives. • AMIS Charts.	DF–FA Applicants	AMIS.
HFFI–FA Application Components: • Funding Application Detail. • Narratives. • AMIS charts.	HFFI–FA Applicants	AMIS.
ATTACHMENTS TO THE APPLICATION		
Key Staff Resumes	All Applicants	PDF or Word document in AMIS.
Organizational Chart	All Applicants	PDF in AMIS.
Completed, final Audited financial statements for the Applicant's Three Most Recent Historic Fiscal Years.	FA Applicants and TA Applicants, if available: loan funds, Venture Capital Funds, and other non-Regulated Institutions.	PDF in AMIS.
Management Letter for the Applicant's Most Recent Historic Fiscal Year. The Management Letter is prepared by the Applicant's auditor and is a communication on internal control over financial reporting, compliance, and other matters. The Management Letter contains the auditor's findings regarding the Applicant's accounting policies and procedures, internal controls, and operating policies, including any material weaknesses, significant deficiencies, and other matters identified during auditing. The Management Letter may include suggestions for improving on identified weaknesses and deficiencies and/or best practice suggestions for items that may not be considered to be weaknesses or deficiencies. The Management Letter may also include items that are not required to be disclosed in the annual audited financial statements. The Management Letter is distinct from the auditor's Opinion Letter, which is required by Generally Accepted Accounting Principles (GAAP). Management Letters are not required by GAAP, and are sometimes provided by the auditor as a separate letter from the audit itself.	FA Applicants and TA Applicants, if available: loan funds, Venture Capital Funds, and other non-Regulated Institutions.	PDF in AMIS.
Statement(s) in Lieu of Management Letter for Applicant's Most Recent Historic Fiscal Year using the template available as part of the Application in AMIS and attested to by an Authorized Representative of the Applicant. (required only if Management Letters are not available for audited financial statements).	FA Applicants: Loan funds, Venture Capital Funds, and other non-Regulated Institutions, TA Applicants, if audited financial statements ARE available but the Management Letters are NOT available: Loan funds, Venture Capital Funds, and other non-Regulated Institutions.	AMIS.

TABLE 10—REQUIRED APPLICATION DOCUMENTS—Continued

Application documents	Applicant type	Submission format
Unaudited financial statements for Applicant's Three Most Recent Historic Years (required if available, and only if audited financial statements are not available).	FA and TA Applicants, if available: Loan funds, Venture Capital Funds, and other non-Regulated Institutions.	PDF in AMIS.
Current Year to Date—December 31, 2021 Unaudited financial statements	FA and TA Applicants: Loan funds, Venture Capital Funds, and other non-Regulated Institutions.	PDF in AMIS.
Community Partnership Agreement	FA Applicants, if applicable	PDF or Word document in AMIS.
Retained Earnings Calculator Excel Workbook (required only if using retained earnings as Matching Funds).	FA Core Applicants, if applicable.	Excel in AMIS.
Call reports for each fiscal year reported in the Retained Earnings Calculator	FA Core Applicants: Regulated Institutions that are using retained earnings as Matching Funds.	PDF in AMIS.
Equity Investment Matching Funds Documentation	FA Core Applicants: For-profit CDFIs that are using In-Hand Equity Investment(s) as Matching Funds.	PDF or Word document in AMIS.
Deposits Matching Funds Documentation	FA Core Applicants: Regulated Institutions that are using In-Hand Deposits as Matching Funds.	PDF or Word document in AMIS.

C. Application Submission: The CDFI Fund has a two-step process that requires the submission of Required Application Documents (listed in Table 10) on separate deadlines and locations. The SF–424 must be submitted through *Grants.gov* and all other Required Application Documents through the AMIS portal. The CDFI Fund will not accept Applications via email, mail, facsimile, or other forms of communication, except in extremely rare circumstances that have been pre-approved in writing by the CDFI Fund. The deadline for submitting the SF–424 is listed in Tables 1 and 12.

All Applicants must register in the *Grants.gov* system to successfully submit the SF–424. The *Grants.gov* registration process can take 45 days or longer to complete and the CDFI Fund strongly encourages Applicants to start the *Grants.gov* registration process as early as possible (refer to the following link: *http://www.grants.gov/web/grants/register.html*). Since the *Grants.gov* registration process requires Applicants to have DUNS and EIN numbers, Applicants without these required numbers should allow for additional time to complete the *Grants.gov* registration process. Further, as described in Section IV. (E) of this NOFA, new requirements for registration in the System for Awards Management (SAM), which is required as part of the *Grants.gov* registration process, may take more time than in recent years. The CDFI Fund will not extend the Application deadline for any Applicant that started the *Grants.gov* registration process but did not complete it by the deadline. An Applicant that has previously registered with *Grants.gov* must verify that its registration is current and active. Applicants should contact *Grants.gov* directly with questions related to the registration or submission process as the CDFI Fund does not maintain the *Grants.gov* system.

Each Application must be signed by a designated Authorized Representative in AMIS before it can be submitted. Applicants must ensure that an Authorized Representative is an employee or officer and is authorized to sign legal documents on behalf of the Applicant. Consultants working on behalf of the Applicant may not be designated as Authorized Representatives. Only a designated Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. If an Authorized Representative or Application Point of Contact does not submit the Application, the Application will be deemed ineligible.

D. Dun & Bradstreet Universal Numbering System: Pursuant to the Uniform Requirements, each Applicant must provide as part of its Application submission, a Dun and Bradstreet Universal Numbering System (DUNS) number. Applicants without a DUNS number will not be able to register and submit an Application in the *Grants.gov* system. Allow sufficient time for Dun & Bradstreet to respond to inquiries and/or requests for DUNS numbers.

E. System for Award Management (SAM): Any entity applying for Federal grants or other forms of Federal financial assistance through *Grants.gov* must be registered in SAM before submitting its Application. Registration in SAM is required as part of the *Grants.gov* registration process. The SAM registration process may take one month or longer to complete. A signed notarized letter identifying the SAM authorized entity administrator for the entity associated with the DUNS number is required. This requirement is applicable to new entities registering in SAM, as well as to existing entities with registrations being updated or renewed in SAM. Applicants without DUNS and/or EIN numbers should allow for additional time as an Applicant cannot register in SAM without those required numbers. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Each Applicant must continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an Application under consideration by a Federal awarding agency. The CDFI Fund will deem ineligible any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to

submit the SF–424 in *Grants.gov* or Application in AMIS by the applicable Application deadlines. These restrictions also apply to organizations that have not yet received a DUNS or EIN number. Applicants must contact SAM directly with questions related to registration or SAM account changes as the CDFI Fund does not maintain this system and has no ability to make changes or correct errors of any kind. For more information about SAM, visit *https://www.sam.gov.*

TABLE 11—GRANTS.GOV REGISTRATION TIMELINE SUMMARY

Step	Agency	Estimated minimum time to complete
Obtain a DUNS number	Dun & Bradstreet	One (1) Week.*
Obtain an EIN Number	Internal Revenue Service (IRS)	Two (2) Weeks.*
Register in *SAM.gov*	System for Award Management (*SAM.gov*)	Four (4) Weeks.*
Register in *Grants.gov*	*Grants.gov*	One (1) Week.**

* Applicants are advised that the stated durations are estimates only and represent minimum timeframes. Actual timeframes may take longer. The CDFI Fund will deem ineligible any Applicant that fails to properly register or activate its SAM account, has not yet received a DUNS or EIN number, and/or fails to properly register in *Grants.gov*.

** This estimate assumes an Applicant has a DUNS number, an EIN number, and is already registered in SAM.gov.

F. Submission Dates and Times:

1. Submission Deadlines: The following table provides the critical deadlines for the FY 2022 Funding Round.

TABLE 12—FY 2022 CDFI PROGRAM FUNDING ROUND CRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (eastern Time—ET)	Submission method
Last day to create an Awards Management Information Systems (AMIS) Account (all Applicants).	March 14, 2022	11:59 p.m. ET	AMIS.
Last day to enter EIN and DUNS numbers in AMIS (all Applicants).	March 14, 2022	11:59 p.m. ET	AMIS.
Last day to submit SF–424 (Application for Federal Assistance).	March 14, 2022	11:59 p.m. ET	Electronically via *Grants.gov.*
Last day for SECA FA Applicants to request creation of a Core-FA Application (if requesting more than $700,000).	March 14, 2022	11:59 p.m. ET	Service Request via AMIS.
Last day to contact CDFI Program staff	April 8, 2022	5:00 p.m. ET	Service Request via AMIS. Or CDFI Fund Helpdesk: 202–653–0421.
Last day to contact AMIS–IT Help Desk (regarding AMIS technical problems only).	April 12, 2022	5:00 p.m. ET	Service Request via AMIS. Or 202–653–0422. Or *AMIS@cdfi.treas.gov.*
Last day to submit CDFI Program Application for Financial Assistance (FA) or Technical Assistance (TA).	April 12, 2022	11:59 p.m. ET	AMIS.

2. Confirmation of Application Submission in Grants.gov and AMIS: Applicants are required to submit the SF–424, Application for Federal Assistance through the *Grants.gov* system, under the CDFI Program Funding Opportunity Number by the applicable deadline. All other Required Application Documents (listed in Table 10) must be submitted through the AMIS website by the applicable deadline. Applicants must submit the SF–424 prior to submitting the Application in AMIS. If the SF–424 is not successfully accepted by *Grants.gov* by the deadline, the CDFI Fund will not review the Application submitted in AMIS, and the Application will be deemed ineligible.

a. *Grants.gov Submission Information:* Each Applicant will receive an email from *Grants.gov* immediately after submitting the SF–424 confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number for the submitted SF–424. Within 48 hours, the Applicant will receive a second email, which will indicate if the submitted SF–424 was either successfully validated or rejected with errors. However, Applicants should not rely on the email notification from *Grants.gov* to confirm that their SF–424 was validated. Applicants are strongly encouraged to use the tracking number provided in the first email to closely monitor the status of their SF–424 by contacting the helpdesk at *Grants.gov* directly. The Application material submitted in AMIS is not officially accepted by the CDFI Fund until *Grants.gov* has validated the SF–424.

b. *AMIS Submission Information:* AMIS is a web-based portal where Applicants will directly enter their Application information and add the required attachments listed in Table 10. AMIS will verify that the Applicant provided the minimum information required to submit an Application. Applicants are responsible for the quality and accuracy of the information and attachments included in the Application submitted in AMIS. The CDFI Fund strongly encourages Applicants to allow for sufficient time to review and complete all Required Application Documents listed in Table 10, and remedy any issues prior to the Application deadline. Each Application must be signed by an Authorized Representative in AMIS before it can be submitted. Applicants must ensure that the Authorized Representative is an employee or officer and is authorized to sign legal documents on behalf of the Applicant. Consultants working on behalf of the Applicant may not be

designated as Authorized Representatives. Only an Authorized Representative or an Application Point of Contact may submit an Application. If an Authorized Representative or Application Point of Contact does not submit the Application, the Application will be deemed ineligible. Applicants may only submit one Base-FA or TA Application under the CDFI Program. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not unlock or allow multiple Application submissions.

3. Late Submission or AMIS Account Creation: The CDFI Fund will not accept an Application if the SF–424 is not submitted and accepted by *Grants.gov* by the SF–424 deadline listed in Table 1 and Table 12. Additionally, the CDFI Fund will not accept an Application if it is not signed by an Authorized Representative and submitted in AMIS by the Application deadline listed in Table 1 and Table 12. The CDFI Fund will also not accept an Application from an Applicant that failed to create an AMIS account by the deadlines specified in Table 1 and Table 12. In these cases, the CDFI Fund will not review any material submitted, and the Application will be deemed ineligible. However, in cases where a Federal government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424, the Application, or creating an AMIS account by the deadlines stated in this NOFA, Applicants are provided the opportunity to submit a written request for acceptance of late submissions. The CDFI Fund will not consider the late submission of the SF–424, the Application, or the late creation of an AMIS account that was a direct result of a delay in a Federal Government process, unless such delay was the result of a Federal government administrative or technological error.

a. *Creation of AMIS Account:* In cases where a Federal government administrative or technological error directly resulted in precluding an Applicant from creating an AMIS account by the required deadline, the Applicant must submit a written request for approval to create its AMIS account after the deadline, and include documentation of the error, no later than two business days after the AMIS account creation deadline. The CDFI Fund will not respond to requests for creating an AMIS account after that time. Applicants must submit such request via an AMIS Service Request to the CDFI Program or an email to *cdfihelp@cdfi.treas.gov* with a subject line of ''AMIS Account Creation Deadline Extension Request.''

b. *SF–424 Late Submission:* In cases where a Federal government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424 by the required deadline, the Applicant must submit a written request for acceptance of the late SF–424 submission and include documentation of the error no later than two business days after the SF–424 deadline. The CDFI Fund will not respond to requests for acceptance of late SF–424 submissions after that time period. Applicants must submit late SF–424 submission requests to the CDFI Fund via an AMIS Service Request to the CDFI Program with a subject line of ''Late SF–424 Submission Request.''

c. *Application Late Submission:* In cases where a Federal government administrative or technological error directly resulted in precluding an Applicant from submitting the Application in AMIS by the required deadline, the Applicant must submit a written request for acceptance of the late Application submission and include documentation of the error no later than two business days after the Application deadline. The CDFI Fund will not respond to requests for acceptance of late Application submissions after that time period. Applicants must submit late Application submission requests to the CDFI Fund via an AMIS Service Request to the CDFI Program with a subject line of ''Late Application Submission Request.''

G. Funding Restrictions: Base-FA, PPC–FA, DF–FA, HFFI–FA and TA awards are limited by the following:

1. Base-FA Awards:

a. A Recipient shall use Base-FA funds only for the eligible activities described in Section II. (C)(1) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, Base-FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. Base-FA funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay Base-FA funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

2. PPC–FA Awards:

a. A Recipient shall use PPC–FA funds only for the eligible activities described in Section II. (C)(5) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, PPC–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. PPC–FA funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay PPC–FA funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

3. DF–FA Awards:

a. A Recipient shall use DF–FA funds only for the eligible activities described in Section II. (C)(2) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, DF–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. DF–FA funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay DF–FA funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

4. HFFI–FA Awards:

a. A Recipient shall use HFFI–FA funds only for the eligible activities described in Section II. (C)(4) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company

Applicants, HFFI–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. HFFI–FA funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay HFFI–FA funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

5. TA Grants:

a. A Recipient shall use TA funds only for the eligible activities described in Section II. (C) (3) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, TA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. TA funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay TA funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

V. Application Review Information

A. Criteria: If the Applicant has submitted an eligible Application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, the Application guidance, and the Uniform Requirements. The CDFI Fund reserves the right to contact the Applicant by telephone, email, or mail for the purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or risk that its Application will be rejected. The CDFI Fund will review the Base-FA, DF–FA, PPC–FA, HFFI–FA, and TA Applications in accordance with the process below. All internal and external reviewers will complete the CDFI Fund's conflict of interest process. The CDFI Fund's Application conflict of interest policy is located on the CDFI Fund's website.

1. Base-FA Application Scoring, Award Selection, Review, and Selection Process: The CDFI Fund will evaluate each Application using a five-step review process illustrated in the sections below. Applicants that meet the minimum criteria will advance to the next step in the review process. Applicants applying as a Community Partnership must describe the partnership in the Application pursuant to the requirements set forth in Table 8, and will be evaluated in accordance with the review process described below.

a. Step 1: Eligibility Review: The CDFI Fund will evaluate each Application to determine its eligibility status pursuant to Section III of this NOFA.

b. Step 2: Financial Analysis and Compliance Risk Evaluation:

i. Step 2: Financial Analysis: For Regulated Institutions, the CDFI Fund will consider financial safety and soundness information from the Appropriate Federal or State Banking Agency. As detailed in Table 8, each Regulated Institution FA Applicant (including a subsidiary Depository Institution that will expend and carry out the activities of an award on behalf of a Depository Institution Holding Company Applicant) must have a CAMELS/CAMEL rating of at least ''3'' and/or no significant material concerns from its regulator.

For non-regulated Applicants, the CDFI Fund will evaluate the financial health and viability of each non-regulated Applicant using financial information provided by the Applicant. For the Financial Analysis, each non-regulated Applicant will receive a Total Financial Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. The Total Financial Composite Score is based on the analysis of twenty-three (23) financial indicators. Applications will be grouped based on the Total Financial Composite Score. Applicants must receive a Total Financial Composite Score of one (1), two (2), or three (3) to advance to Step 3. Applicants that receive an initial Total Financial Composite Score of four (4) or five (5) will be re-evaluated and re-scored by CDFI Fund staff. If the Total Financial Composite Score remains four (4) or five (5) after CDFI Fund staff review, the Applicant will not advance to Step 3.

ii. Step 2: Compliance Risk Evaluation: For the compliance analysis, the CDFI Fund will evaluate the compliance risk of each Applicant using information provided in the Application as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to the CDFI Fund's PG&Ms. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. Applicants that receive an initial Total Compliance Composite Score of four (4) or five (5) will be re-evaluated by CDFI Fund staff. If the Applicant is deemed a high compliance risk after CDFI Fund staff review, the Applicant will not advance to Step 3.

c. Step 3: Business Plan Review: Applicants that proceed to Step 3 will be evaluated on the soundness of their comprehensive business plan. Two external non-CDFI Fund Reviewers will conduct the Step 3 evaluation. Reviewers will evaluate the Application sections listed in Table 13. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applications will be ranked based on Total Business Plan Scores, in descending order. In order to advance to Step 4, Applicants must receive a Total Business Plan Score that is either (1) equal to receiving a point score equivalent to a ''Good'' out of a ranking scale in descending order of Excellent, Good, Fair, Limited or Poor, in each section listed in Table 13, or (2) within the top 60% of the Core Applicant pool for Core Applicants or within the top 70% of the SECA Applicant pool for SECA Applicants, whichever is greater. In the case of tied Total Business Plan Scores that would prevent an Applicant from moving to Step 4, all Applicants with the same score will progress to Step 4. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when determining the Step 4 Applicant pool.

TABLE 13—STEP 3: BASE–FA BUSINESS PLAN REVIEW SCORING CRITERIA

Base–FA application sections	Possible score	Score needed to advance
Executive Summary	Not Scored	N/A.

TABLE 13—STEP 3: BASE–FA BUSINESS PLAN REVIEW SCORING CRITERIA—Continued

Base–FA application sections	Possible score	Score needed to advance
Business Strategy	12	N/A.
Market and Competitive Analysis	7	N/A.
Products and Services	12	N/A.
Management and Track Record	12	N/A.
Growth and Projections	7	N/A.
Total Business Plan Score	50	*Core Applicants:* Top 60% of all Core Applicant Step 3 Scores. *SECA Applicants:* Top 70% of all SECA Applicant Step 3 Scores.

d. Step 4: Policy Objective Review: The CDFI Fund internal reviewers will evaluate each Application to determine its ability to meet policy objectives of the CDFI Fund. Each Applicant will be evaluated in each of the categories listed in Table 14 below, and will receive a Total Policy Objective Review Composite Score on a scale of one (1) to five (5), with one (1) being the highest score. Applicants are then grouped according to Total Policy Objective Review Scores.

The CDFI Fund also conducts a due diligence review for Applications that includes an analysis of programmatic risk factors including, but not limited to: History of performance in managing Federal awards (including timeliness of reporting and compliance); ability to meet FA Objective(s) selected by Base–FA Applicants in their Applications; reports and findings from audits; and the Applicant's ability to effectively implement Federal requirements, each of which could impact the Total Policy Objective Review Score.

TABLE 14—STEP 4: BASE–FA POLICY REVIEW SCORING CRITERIA

Section	Possible scores	High score	Score needed to advance
Economic Distress	1, 2, 3, 4, or 5	1	N/A.
Economic Opportunities	1, 2, 3, 4, or 5	1	N/A.
Community Collaboration	1, 2, 3, 4, or 5	1	N/A.
Total Policy Objective Review Composite Score	1, 2, 3, 4, or 5	1	All Scores Advance.

e. Step 5: Award Amount Determination: The CDFI Fund determines an award amount for each Application based on the Step 4 Total Policy Objective Review Score, the Applicant's request amount, and on certain other factors, including but not limited to, the Applicant's deployment track record, minimum award size, and funding availability. Applicants may have Award amounts reduced from the requested award amount or not funded as a result of this analysis. Based on funding availability for Core, SECA, and/or NACA Base–FA Applicant types, the CDFI Fund reserves the right to not award all Applicants that advance to Step 5. In cases where funding availability is not sufficient to award all Applications, priority will be given to Applicants that score highest on the Step 4 Policy Objective review in each Applicant type Category (Core, SECA and/or NACA). For Core FA Applicants, the award cannot exceed 30% of the Applicant's total portfolio outstanding as of the Applicant's most recent historic fiscal year end. For SECA FA Applicants, the award cannot exceed 75% of the Applicant's total portfolio outstanding as of the Applicant's most recent historic fiscal year end, or the minimum award size as noted in Table 2, whichever is greater.

2. Healthy Food Financing Initiative-FA (HFFI–FA) Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each HFFI–FA Application associated with a Base–FA Application that progresses to Step 4 of the FA Application review process. The reviewer will evaluate the Application sections listed in Table 15 and assign a Total HFFI–FA Score up to 60 points. The CDFI Fund will make awards to the highest scoring Applicants first. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that fail to receive a Base–FA award will not be considered for a HFFI–FA award.

The CDFI Fund conducts additional levels of due diligence for Applications that are under consideration for an HFFI–FA award. Award amounts may be reduced from the requested award amount as a result of this analysis. The CDFI Fund may reduce awards sizes from requested amounts based on certain variables, including but not limited to, an Applicant's loan disbursement activity, total portfolio outstanding, or compliance with prior HFFI–FA awards. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when making its funding decisions.

TABLE 15—STEP 4 HFFI–FA APPLICATION SCORING CRITERIA

Sections	Possible score (points)
Target Market Profile	10
Healthy Food Financial Products	10
Projected HFFI–FA Activities	15

TABLE 15—STEP 4 HFFI–FA APPLICATION SCORING CRITERIA—Continued

Sections	Possible score (points)
HFFI Track Record	20
Management Capacity for Providing Healthy Food Financing	5
Total HFFI–FA Possible Score	60

3. Persistent Poverty Counties—Financial Assistance (PPC–FA) Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate the PPC–FA request of each associated Base–FA Application that progresses to Step 4 of the FA Application review process. PPC–FA requests are not scored. PPC–FA award amounts will be determined based on the total number of eligible Applicants and funding availability, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's overall portfolio size, historical track record of deployment in PPC, pipeline of projects in PPC, minimum award size, and funding availability. Applicants that fail to receive a Base–FA award will not be considered for a PPC–FA award.

4. Disability Funds-Financial Assistance (DF–FA) Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each DF–FA Application associated with a Base–FA Application that progresses to Step 4 of the FA Application review process. The reviewer will evaluate the Application and assign a Total DF–FA Score on a scale of one (1) to three (3), with one (1) being the highest score. Applicants are then grouped according to Total DF–FA Score. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that fail to receive a Base–FA award will not be considered for a DF–FA award. Award amounts will be determined on the basis of the Total DF–FA Score, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's deployment track record, minimum award size, and funding availability. Award amounts may be reduced from the requested award amount as a result of this analysis. The CDFI Fund will make awards to the highest scoring Applicants first.

TABLE 16—STEP 3 DF–FA APPLICATION SCORING CRITERIA

Section	Possible scores	High score
DF–FA Narrative Questions	1, 2, or 3	1
Total DF–FA Score	1, 2, or 3	1

5. Technical Assistance (TA) Application Scoring, Award Selection, Review, and Selection Process: The CDFI Fund will evaluate each Application to determine its eligibility pursuant to Section III of this NOFA. If the Application satisfies the eligibility criteria, the CDFI Fund will evaluate the TA Application. Emerging CDFI Applicants must receive a rating of Low Risk or Medium Risk in Section I of the TA Business Plan Review to progress to Section II of the TA Business Plan Review. Emerging CDFI Applicants that receive a rating of High Risk in Section I of the TA Business Plan Review will not be considered for an award. Section I of the TA Business Plan Review is not applicable for Certified CDFI Applicants. Emerging CDFI and Certified CDFI Applicants must receive a rating of Low Risk or Medium Risk in Section II of the TA Business Plan Review to be considered for an award. Applicants that receive a rating of High Risk in Section II of the TA Business Plan Review will not be considered for an award. An Applicant that is a Certified CDFI will be evaluated on the demonstrated need for TA funding to build the CDFI's capacity, further the Applicant's strategic goals, and achieve impact within the Applicant's Target Market. An Applicant that is an Emerging CDFI will be evaluated on the Applicant's demonstrated capability and plan to achieve CDFI certification within three years, or if a prior Recipient, the certification PG&M stated in its prior Assistance Agreement. An Applicant that is an Emerging CDFI will also be evaluated on its demonstrated need for TA funding to build the CDFI's capacity and further its strategic goals. The CDFI Fund will rate each part of the TA Business Plan Review as indicated in Table 17.

TABLE 17—A BUSINESS PLAN REVIEW

Business plan review component	Applicant type	Ratings
Section I:		
Primary Mission	Emerging CDFI Applicants	Low Risk, Medium Risk, or High Risk.
Financing Entity	Emerging CDFI Applicants.	
Target Market	Emerging CDFI Applicants.	
Accountability	Emerging CDFI Applicants.	
Development Services	Emerging CDFI Applicants.	
Section II:		
Target Market Needs & Strategy	Emerging and Certified CDFI Applicants	Low Risk, Medium Risk, or High Risk.
Organizational Capacity	Emerging and Certified CDFI Applicants.	

TABLE 17—A BUSINESS PLAN REVIEW—Continued

Business plan review component	Applicant type	Ratings
Management Capacity	Emerging and Certified CDFI Applicants.	

Each TA Application will be evaluated by one internal CDFI Fund reviewer. All Applications will be reviewed in accordance with CDFI Fund standard reviewer evaluation materials for the Business Plan Review.

The CDFI Fund conducts additional levels of due diligence for Applications that are under consideration for an award. This due diligence includes an analysis of programmatic and financial risk factors including, but not limited to, financial stability, history of performance in managing Federal awards (including timeliness of reporting and compliance), reports and findings from audits, and the Applicant's ability to effectively implement Federal requirements. The CDFI Fund will also evaluate the compliance risk of each Applicant using information provided in the Application as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to the CDFI Fund's PG&Ms. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. Applicants that receive an initial Total Compliance Composite Score of four (4) or five (5) will be re-evaluated by CDFI Fund staff. If the Applicant is deemed a high compliance risk after CDFI staff review, the Applicant will not be considered for an award. The CDFI Fund will also evaluate the Applicant's ability to meet certification criteria of being a legal entity and a non-government entity. Award amounts may be reduced as a result of the due diligence analysis in addition to consideration of the Applicant's funding request and similar factors. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when making its funding decisions.

6. Regulated Institutions: The CDFI Fund will consider safety and soundness information from the Appropriate Federal or State Banking Agency. If the Applicant is a CDFI Depository Institution Holding Company, the CDFI Fund will consider information provided by the Appropriate Federal or State Banking Agencies about both the CDFI Depository Institution Holding Company and the Certified CDFI Subsidiary Insured Depository Institution that will expend and carry out the award. If the Appropriate Federal or State Banking Agency identifies safety and soundness concerns (including any concerns for Subsidiary Depository Institutions carrying out the activities of an award on behalf of a CDFI Depository Institution Holding Company), the CDFI Fund will assess whether such concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested.

7. Non-Regulated Institutions: The CDFI Fund must ensure, to the maximum extent practicable, that Recipients which are non-regulated CDFIs are financially and managerially sound, and maintain appropriate internal controls (12 U.S.C. 4707(f)(1)(A) and 12 CFR 1805.800(b)). Further, the CDFI Fund must determine that an Applicant's capacity to operate as a CDFI and its continued viability will not be dependent upon assistance from the CDFI Fund (12 U.S.C. 4704(b)(2)(A)). If it is determined that the Applicant is incapable of meeting these requirements, the CDFI Fund reserves the right to deem the Applicant ineligible or terminate the award.

B. Anticipated Award Announcement: The CDFI Fund anticipates making CDFI Program award announcement before September 30, 2022. However, the anticipated award Announcement Date is subject to change without notice.

C. Application Rejection: The CDFI Fund reserves the right to reject an Application if information (including administrative errors) comes to the CDFI Fund's attention that: Adversely affects an Applicant's eligibility for an award; adversely affects the Recipient's certification as a CDFI (to the extent that the award is conditional upon CDFI certification); adversely affects the CDFI Fund's evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If the changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information about the changes through its website. The CDFI Fund's award decisions are final, and there is no right to appeal decisions.

D. External Non-CDFI Fund Reviewers: All external non-CDFI Fund reviewers are selected based on criteria that includes a professional background in community and economic development finance, and experience reviewing the financial statements of all CDFI institution types. Reviewers must complete the CDFI Fund's conflict of interest process and be approved by the CDFI Fund. The CDFI Fund's Application reader conflict of interest policy is located on the CDFI Fund's website.

VI. Federal Award Administration Information

A. Award Notification: Each successful Applicant will receive an email ''notice of award'' notification from the CDFI Fund stating that its Application has been approved for an award. Each Applicant not selected for an award will receive an email stating that a debriefing notice has been provided in its AMIS account.

B. Assistance Agreement: Each Applicant selected to receive an award must enter into an Assistance Agreement with the CDFI Fund in order to receive a payment(s). The Assistance Agreement will set forth the award's terms and conditions, including but not be limited to the: (i) Award amount; (ii) award type; (iii) award uses; (iv) eligible use of funds; (v) PG&Ms; and (vi) reporting requirements. FA Assistance Agreements have three-year Periods of Performance. TA Assistance Agreements have two-year Period of Performance for Certified CDFIs and three-year Periods of Performance for Emerging CDFIs.

1. Certificate of Good Standing: All FA and TA Recipients that are not Regulated Institutions will be required to provide the CDFI Fund with a certificate of good standing from the secretary of state for the Recipient's jurisdiction of formation prior to closing. This certificate can often be acquired online on the secretary of state website for the Recipient's jurisdiction of formation and must generally be dated within 180 days prior to the Federal Award Date of the Assistance Agreement. Due to potential backlogs in state government offices, Applicants are advised to submit requests for certificates of good standing no later

than 60 days after they submit their Applications.

2. Closing: Pursuant to the Assistance Agreement, there will be an initial closing at which point the Assistance Agreement and related documents will be properly executed and delivered, and an initial payment of FA or TA may be made. FA Recipients that are subject to the Matching Funds requirement will not receive a payment until 100% of their Matching Funds are In-Hand. The first payment is the estimated amount of the award that the Recipient states in its Application that it will use for eligible FA or TA activities in the first 12 months after the award announcement. The CDFI Fund reserves the right to increase the first payment amount on any award to ensure that any subsequent payments are at least $25,000 for FA and $5,000 for TA awards.

The CDFI Fund will minimize the time between the Recipient incurring costs for eligible activities and award payment(s) in accordance with the Uniform Requirements. Advanced payments for eligible activities will occur no more than one year in advance of the Recipient incurring costs for the eligible activities. Following the initial closing, there may be subsequent closings involving additional award payments. Any documentation in addition to the Assistance Agreement that is connected with such subsequent closings and payments shall be properly executed and timely delivered by the Recipient to the CDFI Fund.

3. Requirements Prior to Entering into an Assistance Agreement: If, prior to entering into an Assistance Agreement, information (including administrative errors) comes to the CDFI Fund's attention that: Adversely affects the Recipient's eligibility for an award; adversely affects the Recipient's certification as a CDFI (to the extent that the award is conditional upon CDFI certification); adversely affects the CDFI Fund's evaluation of the Application; indicates that the Recipient is not in compliance with any requirement listed in the Uniform Requirements; indicates that the Recipient is not in compliance with a term or condition of any prior award from the CDFI Fund; indicates the Recipient has failed to execute and return a prior round Assistance Agreement to the CDFI Fund within the CDFI Fund's deadlines; or indicates fraud or mismanagement on the Recipient's part, the CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the award or take such other actions as it deems appropriate. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient fails to return the Assistance Agreement, signed by the Authorized Representative of the Recipient, and/or provide the CDFI Fund with any requested documentation, within the CDFI Fund's deadlines.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA pending the criteria described in the following table:

TABLE 18—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT

Requirement	Criteria
Failure to meet reporting requirements.	• If a Recipient received a prior award under any CDFI Fund program and is not in compliance with the reporting requirements of the previously executed Award Agreement(s), Allocation Agreement(s), and/or Assistance Agreement(s), the CDFI Fund may delay entering into an Assistance Agreement or disbursing an award until such reporting requirements are met. If the Recipient is unable to meet the requirement(s) within the timeframe specified by the CDFI Fund, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA. • The automated systems the CDFI Fund uses only acknowledge a report's receipt and are not a determination of meeting reporting requirements.
Failure to maintain CDFI certification.	• An FA Recipient must be a Certified CDFI. • If an FA Recipient fails to maintain CDFI certification, the CDFI Fund will terminate and rescind the Assistance Agreement and the award made under this NOFA. • If a TA Recipient is a Certified CDFI at the time of award announcement, it must maintain CDFI certification. • If a Certified CDFI TA Recipient fails to maintain CDFI certification, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA.
Pending resolution of noncompliance.	• The CDFI Fund will delay entering into an Assistance Agreement with a Recipient that has pending noncompliance issues with any of its previously executed CDFI Award Agreement(s), Allocation Agreement(s), and/or Assistance Agreement(s) if the CDFI Fund has not yet made a final compliance determination. • If the Recipient is unable to satisfactorily resolve the compliance issues, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA.
Noncompliance or default status	• If, at any time prior to entering into an Assistance Agreement, the CDFI Fund determines that a Recipient is noncompliant or found in default with any previously executed Award Agreement(s), Allocation Agreement(s), and/or Assistance Agreement(s), and the CDFI Fund has provided written notification that the Recipient is ineligible to apply for or receive any future awards or allocations for a time period specified by the CDFI Fund in writing, the CDFI Fund may delay entering into an Assistance Agreement until the Recipient has cured the noncompliance by taking actions the CDFI Fund has specified within such specified timeframe. If the Recipient is unable to cure the noncompliance within the specified timeframe, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA.
Compliance with Federal civil rights requirements.	• If, prior to entering into an Assistance Agreement under this NOFA, the Recipient receives a final determination, made within the last three years, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Recipient has violated the following laws: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.§2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975, (42 U.S.C. 6101–6107), Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and Title IX of the Education Amendments of 1972, the CDFI Fund will terminate and rescind the Assistance Agreement and the award made under this NOFA.
Do Not Pay	• The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government.

TABLE 18—REQUIREMENTS PRIOR TO EXECUTING AN ASSISTANCE AGREEMENT—Continued

Requirement	Criteria
Safety and soundness	• The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient (or Affiliate of a Recipient) is determined to be ineligible based on data in the Do Not Pay database. • If it is determined the Recipient is, or will be, incapable of meeting its award obligations, the CDFI Fund will deem the Recipient to be ineligible, or require it to improve its safety and soundness prior to entering into an Assistance Agreement.

C. Reporting

1. Reporting requirements: On an annual basis during the Period of Performance, the CDFI Fund may collect information from each Recipient including, but not limited to, an Annual Report with the following components (Annual Reporting Requirements):

TABLE 19—ANNUAL REPORTING REQUIREMENTS *

Financial Statement Audit Report (Non-profit Recipient including Insured Credit Unions and State-Insured Credit Unions).	A Non-profit Recipient (including Insured Credit Unions and State-Insured Credit Unions) must submit a Financial Statement Audit (FSA) Report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant, if any are prepared. Under no circumstances should this be construed as the CDFI Fund requiring the Recipient to conduct or arrange for additional audits not otherwise required under Uniform Requirements or otherwise prepared at the request of the Recipient or parties other than the CDFI Fund.
Financial Statement Audit Report (For-Profit Recipient).	For-profit Recipients must submit a FSA Report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant.
Financial Statement Audit Report (Depository Institution Holding Company and Insured Depository Institution).	If the Recipient is a Depository Institution Holding Company or an Insured Depository Institution, it must submit a FSA Report in AMIS.
Single Audit Report (Non-Profit Recipients, if applicable).	A non-profit Recipient must complete an annual Single Audit pursuant to the Uniform Requirements (see 2 CFR Subpart F—Audit Requirements) if it expends $750,000 or more in Federal awards in its fiscal year, or such other dollar threshold established by OMB pursuant to 2 CFR 200.501. If a Single Audit is required, it must be submitted electronically to the Federal Audit Clearinghouse (FAC) (see 2 CFR Subpart F—Audit Requirements in the Uniform Requirements) and optionally through AMIS.
Transaction Level Report (TLR)	The Recipient must submit a TLR to the CDFI Fund through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a TLR. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the Financial Assistance, the Depository Institution Holding Company must submit a TLR. The TLR is not required for TA Recipients.
Uses of Award Report	The Recipient must submit the Uses of Award Report to the CDFI Fund in AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a Uses of Award Report. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the Financial Assistance, the Depository Institution Holding Company must submit a Uses of Award Report.
Shareholders Report	If the Assistance is in the form of an Equity Investment, the Recipient must submit shareholder information to the CDFI Fund showing the class, series, number of shares and valuation of capital stock held or to be held by each shareholder. The Shareholder Report must be submitted for as long as the CDFI Fund is an equity holder. The Shareholders Report is submitted through AMIS.
Performance Progress Report	The Recipient must submit the Performance Progress Report through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a Performance Progress Report. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the Financial Assistance, the Depository Institution Holding Company must submit a Performance Progress Report.

* Personally Identifiable Information (PII) is information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Although Applicants are required to enter addresses of individual borrowers/residents of Distressed Communities in AMIS, Applicants should not include the following PII for the individuals who received the Financial Products or Financial Services in AMIS or in the supporting documentation (*i.e.,* name of the individual, Social Security Number, driver's license or state identification number, passport number, Alien Registration Number, etc.). This information should be redacted from all supporting documentation.

Each Recipient is responsible for the timely and complete submission of the Annual Reporting Requirements. The CDFI Fund reserves the right to contact the Recipient and additional entities or signatories to the Assistance Agreement to request additional information and/or documentation. The CDFI Fund will use such information to monitor each Recipient's compliance with the requirements of the Assistance Agreement and to assess the impact of the CDFI Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements, including increasing the scope and frequency of reporting, if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Recipients.

2. Financial Management and Accounting: The CDFI Fund will require Recipients to maintain financial management and accounting systems that comply with Federal statutes, regulations, and the terms and conditions of the Federal award. These systems must be sufficient to permit the preparation of reports required by the CDFI Fund to ensure compliance with the terms and conditions of the CDFI Program, including the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award.

The cost principles used by Recipients must be consistent with Federal cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the CDFI Program award. In addition, the CDFI Fund will require Recipients to: Maintain effective internal controls; comply with applicable statutes, regulations, and the Assistance Agreement; evaluate and monitor compliance; take appropriate action when not in compliance; and safeguard personally identifiable information.

VII. Agency Contacts

A. The CDFI Fund will respond to questions concerning this NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that the NOFA is published through the date listed in Table 1 and Table 12. The CDFI Fund strongly recommends Applicants submit questions to the CDFI Fund via an AMIS Service Request to the CDFI Program, Office of Compliance Monitoring and Evaluation, Office of Certification Policy and Evaluation, or IT Help Desk. The CDFI Fund will post on its website responses to reoccurring questions received about the NOFA and Application. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *http://www.cdfifund.gov.* Table 20 lists CDFI Fund contact information:

TABLE 20—CONTACT INFORMATION

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
CDFI Program	Service Request via AMIS	202–653–0421, option 1	*cdfihelp@cdfi.treas.gov*
CME	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov*
CPE	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov*
AMIS—IT Help Desk	Service Request via AMIS	202–653–0422	*AMIS@cdfi.treas.gov*

B. Information Technology Support: For IT assistance, the preferred method of contact is to submit a Service Request within AMIS. For the Service Request, select ''Technical Issues'' from the Program dropdown menu of the Service Request. People who have visual or mobility impairments that prevent them from using the CDFI Fund's website should call (202) 653–0422 for assistance (this is not a toll free number).

C. Communication with the CDFI Fund: The CDFI Fund will use the contact information in AMIS to communicate with Applicants and Recipients. It is imperative, therefore, that Applicants, Recipients, Subsidiaries, Affiliates, and signatories maintain accurate contact information in their accounts. This includes information such as contact names (especially for the Authorized Representative), email addresses, fax and phone numbers, and office locations.

D. Civil Rights and Diversity: Any person who is eligible to receive benefits or services from the CDFI Fund or Recipients under any of its programs is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Diversity enforces various Federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of membership in a protected group, s/he may file a complaint with: Associate Chief Human Capital Officer, Office of Civil Rights, and Diversity, 1500 Pennsylvania Ave. NW, Washington, DC 20220 or (202) 622–1160 (not a toll-free number).

E. Statutory and National Policy Requirements: The CDFI Fund will manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, statutory, and public policy requirements: Including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

VIII. Other Information

A. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. If applicable, the CDFI Fund may inform Applicants that they do not need to provide certain Application information otherwise required. Pursuant to the Paperwork Reduction Act, the CDFI Program, and NACA Program Application has been assigned the following control number: 1559–0021, inclusive of PPC–FA, DF–FA, and HFFI–FA.

B. Application Information Sessions: The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, visit the CDFI Fund's website at *http://www.cdfifund.gov.*

Authority: 12 U.S.C. 4701, *et seq.;* 12 CFR parts 1805 and 1815; 2 CFR part 200.

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability

Funding Opportunity Title: Notice of Funds Availability (NOFA) inviting Applications for Financial Assistance (FA) awards or Technical Assistance (TA) grants under the Native American CDFI Assistance (NACA Program) fiscal year (FY) 2022 Funding Round.

Announcement Type: Announcement of funding opportunity.

Funding Opportunity Number: CDFI–2022–NACA.

Catalog of Federal Domestic Assistance (Cfda) Number: 21.012.

Dates:

TABLE 1—FY 2022 NACA PROGRAM FUNDING ROUND CRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (eastern time—ET)	Submission method
Last day to create an Awards Management Information Systems (AMIS) Account (all Applicants)	March 14, 2022.	11:59 p.m. ET.	AMIS.
Last day to enter EIN and DUNS numbers in AMIS (all Applicants)	March 14, 2022.	11:59 p.m. ET.	AMIS.
Last day to submit SF–424 Mandatory (Application for Federal Assistance)	March 14, 2022.	11:59 p.m. ET.	Electronically via *Grants.gov*.
Last day to contact NACA Program staff	April 8, 2022.	5:00 p.m. ET.	Service Request [1] via AMIS or CDFI Fund Helpdesk: 202–653–0421.
Last day to contact AMIS–IT Help Desk (regarding AMIS technical problems only)	April 12, 2022.	5:00 p.m. ET.	Service Request via AMIS or 202–653–0422 or *AMIS@cdfi.treas.gov*.
Last day to submit NACA Program Application for Financial Assistance (FA) or Technical Assistance (TA)	April 12, 2022.	11:59 p.m. ET.	AMIS.

[1] Service Request shall mean a written inquiry or notification submitted to the CDFI Fund via AMIS.

Executive Summary: Through the NACA Program, the Community Development Financial Institutions (CDFI) Fund provides (i) FA awards of up to $1 million to Certified Community Development Financial Institutions (CDFIs) serving Native American, Alaska Native, or Native Hawaiian populations or Native American areas defined as Federally-designated reservations, Hawaiian homelands, Alaska Native Villages and U.S. Census Bureau-designated Tribal Statistical Areas (collectively, ''Native Communities'') to build their financial capacity to lend to Eligible Markets and/or their Target Markets, and (ii) TA grants of up to $150,000 to build Certified, and Emerging CDFIs' organizational capacity to serve Eligible Markets and/or their Target Markets, and Sponsoring Entities' ability to create Certified CDFIs that serve Native Communities. All awards provided through this NOFA are subject to funding availability.

I. Program Description

A. History: The CDFI Fund was established by the Riegle Community Development Banking and Financial Institutions Act of 1994 to promote economic revitalization and community development through investment in and assistance to CDFIs. The Native American CDFI Assistance (NACA) Program made its first awards in 2002, after the CDFI Program began making awards in 1996.

B. Priorities: Through the NACA Program's FA awards and TA grants, the CDFI Fund invests in and builds the capacity of for-profit and non-profit community based lending organizations known as CDFIs. These organizations, certified as CDFIs by the CDFI Fund, serve Native Communities.

C. Authorizing Statutes and Regulations: The CDFI Program is authorized by the Riegle Community Development Banking and Financial Institutions Act of 1994 (Pub. L. 103–325, 12 U.S.C. 4701 *et seq.*) (Authorizing Statute). The regulations governing the NACA Program are found at 12 CFR parts 1805 and 1815 (the Regulations) and are used by the CDFI Fund to govern, in general, the NACA Program, setting forth evaluation criteria and other program requirements. The CDFI Fund encourages Applicants to review the Regulations; this NOFA; the NACA Program Application for Financial Assistance or Technical Assistance (the Application); all related materials and guidance documents found on the CDFI Fund's website (Application materials); and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000), which is the Department of the Treasury's codification of the Office of Management and Budget (OMB) government-wide framework for grants management at 2 CFR part 200 (the Uniform Requirements) for a complete understanding of the NACA Program. Capitalized terms in this NOFA are defined in the Authorizing Statute, the Regulations, this NOFA, the Application, Application materials, or the Uniform Requirements. Details regarding Application content requirements are found in the Application and Application materials.

D. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR part 1000): The Uniform Requirements codify financial, administrative, procurement, and program management standards that Federal award agencies must follow. When evaluating Applications, awarding agencies must evaluate the risks posed by each Applicant, and each Applicant's merits and eligibility. These requirements are designed to ensure that Applicants for Federal assistance receive a fair and consistent review prior to an award decision. This review will assess items such as the Applicant's financial stability, quality of management systems, the soundness of its business plan, history of performance, ability to achieve measurable impacts through its products and services, and audit findings. In addition, the Uniform Requirements include guidance on audit requirements and other award compliance requirements for Recipients.

E. Funding limitations: The CDFI Fund reserves the right to fund, in whole or in part, any, all, or none of the Applications submitted in response to this NOFA. The CDFI Fund also reserves the right to reallocate funds from the amount that is anticipated to be available through this NOFA to other CDFI Fund initiatives that are designed to benefit Native Communities, particularly if the CDFI Fund determines that the number of awards

made through this NOFA is fewer than projected.

II. Federal Award Information

A. Funding Availability

1. FY 2022 Funding Round: The CDFI Fund expects to award, through this NOFA, approximately $16 million as indicated in the following table:

TABLE 2—FY 2022 FUNDING ROUND ANTICIPATED CATEGORY AMOUNTS

Funding categories (see definition in Table 7 for TA or Table 8 for FA)	Estimated total amount to be awarded (millions)	Award amount		Estimated number of awards for FY 2022	Estimated average amount awarded in FY 2022	Average amount awarded in FY 2021
		Minimum	Maximum			
Base-FA	$11.8	$150,000	$1,000,000	17	$694,000	$694,000
Persistent Poverty Counties—Financial Assistance (PPC–FA)	1.7	100,000	300,000	8	213,000	206,000
TA	2.5	10,000	150,000	17	147,000	147,000
Total (Base-FA, PPC–FA, and TA)	16	.....	.....	42	.....	.....
Disability Funds—Financial Assistance (DF–FA)*	6	100,000	500,000	14	429,000	429,000
Healthy Food Financing Initiative—Financial Assistance (HFFI–FA)*	23	500,000	5,000,000	10	2,300,000	2,300,000

*DF–FA and HFFI–FA appropriation will be allocated in one competitive round between the NACA and CDFI Program NOFAs.

The CDFI Fund reserves the right to award more or less than the amounts cited above in each category, based upon available funding and other factors, as appropriate.

2. Funding Availability for the FY 2022 Funding Round: Funds for the FY 2022 Funding Round are subject to change based on passage of a final FY 2022 budget; if Congress does not appropriate funds for the NACA Program there will not be an FY 2022 Funding Round. If funds are appropriated, the amount of such funds may be greater or less than the amounts set forth above. The CDFI Fund reserves the right to contact applicants to seek additional information in the event that final FY 2022 appropriations for the NACA Program change any of the requirements of this NOFA. As of the date of this NOFA, the CDFI Fund is operating under a continuing funding resolution as enacted by the Further Extending Government Funding Act (Pub. L. 117–70).

3. Anticipated Start Date and Period of Performance: The Period of Performance for TA grants begins with the date of the award announcement and includes either (i) an Emerging CDFI Recipient's three full consecutive fiscal years after the date of the award announcement, or (ii) a Certified CDFI Recipient's two full consecutive fiscal years after the date of the award announcement, or (iii) a Sponsoring Entity Recipient's four full years after the date of the award announcement, during which the Recipient must meet the Performance Goals and Measures (PG&Ms) set forth in the Assistance Agreement. The Period of Performance for FA awards begins with the date of the award announcement and includes a Recipient's three full consecutive fiscal years after the date of the award announcement, during which time the Recipient must meet the PG&Ms set forth in the Assistance Agreement.

B. Types of Awards: Through the NACA Program, the CDFI Fund provides two types of awards: Financial Assistance (FA) and Technical Assistance (TA) awards. An Applicant may submit an Application for a TA grant or an FA award under the NACA Program, but not both. FA Awards include the Base Financial Assistance (Base-FA) award and the following awards that are provided as a supplement to the Base-FA award: Healthy Food Financing Initiative—Financial Assistance (HFFI–FA), Persistent Poverty Counties—Financial Assistance (PPC–FA), and Disability Funds—Financial Assistance (DF–FA). The HFFI–FA, PPC–FA, and DF–FA Applications will be evaluated independently from the Base-FA Application, and will not affect the Base-FA Application evaluation or Base-FA award amount.

However, Applicants that qualify for the NACA Program may submit two Applications: One Application (either for a TA grant or an FA award, but not both) through the CDFI Program; and one Application (either for a TA grant or an FA award, but not both) through the NACA Program. NACA qualified Applicants that choose to apply for awards through both the CDFI Program and the NACA Program may either apply for the same type of award under each Program or for a different type of award under each Program. NACA qualified FA Applicants that choose to apply for an FA award under both the NACA Program and CDFI Program and are selected for an award under both Programs will be provided the FA award under the CDFI Program. NACA qualified TA Applicants that choose to apply for a TA award under both the NACA Program and CDFI Program and are selected for an award under both Programs will be provided the TA award under the NACA Program. NACA qualified Applicants that choose to apply for a TA award and a FA award under separate programs and are selected for an award under both Programs will be provided the larger of the two awards. NACA Applicants cannot receive an award under both Programs within the same funding round.

The Indian Community Economic Enhancement Act of 2020 (Pub. L. 116–261) permanently waived the Matching Funds [2] requirement for Native American CDFIs,[3] and as a result, Native American CDFI FA Applicants are not required to provide Matching Funds. Additionally, TA Applicants are not required to provide Matching Funds.

1. Base-FA Awards: Base-FA awards are provided in the form of a grant. The CDFI Fund reserves the right, in its sole discretion, to provide a Base-FA award in an amount other than that which the Applicant requests; however, the award

[2] Matching Funds shall mean funds from sources other than the Federal government as defined in accordance with the CDFI Program Regulations at 12 CFR 1805.500.

[3] A Native American CDFI (Native CDFI) is one that Primarily Serves a Native Community. Primarily Serves is defined as 50% or more of an Applicant's activities being directed to a Native Community.

amount will not exceed the Applicant's award request as stated in its Application.

2. Persistent Poverty Counties—Financial Assistance (PPC–FA) Awards: PPC–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that are selected to receive a Base-FA award through the NACA Program FY 2022 Funding Round will be eligible to receive a PPC–FA award. PPC–FA awards are provided in the form of a grant. The CDFI Fund reserves the right, in its sole discretion, to provide a PPC–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

3. Disability Funds—Financial Assistance (DF–FA) Awards: DF–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that have been selected to receive a Base-FA award through the NACA Program FY 2022 Funding Round will be eligible to receive a DF–FA award. DF–FA awards are provided in the form of a grant for Native American CDFIs. The CDFI Fund reserves the right, in its sole discretion, to provide a DF–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

4. Healthy Food Financing Initiative—Financial Assistance (HFFI–FA) Awards: HFFI–FA awards will be provided as a supplement to Base-FA awards; therefore, only those Applicants that have been selected to receive a Base-FA award through the NACA Program FY 2022 Funding Round will be eligible to receive an HFFI–FA award. HFFI–FA awards are provided in the form of a grant for Native American CDFIs. The CDFI Fund reserves the right, in its sole discretion, to provide an HFFI–FA award in an amount other than that which the Applicant requests; however, the award amount will not exceed the Applicant's award request as stated in its Application.

5. TA Grants: TA is provided in the form of grants. The CDFI Fund reserves the right, in its sole discretion, to provide a TA grant in an amount other than that which the Applicant requests; however, the TA grant amount will not exceed the Applicant's request as stated in its Application.

C. Eligible Activities:

1. FA Awards: Base-FA, PPC–FA, DF–FA, and HFFI–FA award funds may be expended for activities serving Commercial Real Estate, Small Business, Microenterprise, Community Facilities, Consumer Financial Products, Consumer Financial Services, Commercial Financial Products, Commercial Financial Services, Affordable Housing, Intermediary Lending to Non-Profits and CDFIs, and other lines of business as deemed appropriate by the CDFI Fund in the following five categories: (i) Financial Products; (ii) Financial Services; (iii) Loan Loss Reserves; (iv) Development Services; and (v) Capital Reserves. The FA Budget is the amount of the award and must be expended in the five eligible activity categories prior to the end of the Budget Period.[4] None of the eligible activity categories will be authorized for Indirect Costs or an associated Indirect Cost Rate. Base-FA Recipients must meet PG&Ms, which will be derived from projections and attestations provided by the Applicant in its Application, to achieve one or more of the following FA Objectives: (i) Increase Volume of Financial Products in an Eligible Market(s) and/or in the Applicant's approved Target Market and/or Increase Volume of Financial Services in an Eligible Market(s) and/or in the Applicant's approved Target Market; (ii) Serve Eligible Market(s) or the Applicant's approved Target Market in New Geographic Area or Areas; (iii) Provide New Financial Products in an Eligible Market(s) and/or in the Applicant's approved Target Market, Provide New Financial Services in an Eligible Market(s) and/or in the Applicant's approved Target Market, or Provide New Development Services in an Eligible Market(s) and/or in the Applicant's approved Target Market; and (iv) Serve New Targeted Population or Populations. At the end of each year of the Period of Performance, 50% or more of the Financial Products closed by NACA Recipients must be in Native Communities. FA awards may only be used for Direct Costs associated with an eligible activity; no indirect expenses are allowed. Up to 15% of the FA award may be used for Direct Administrative Expenses associated with an eligible FA activity. ''Direct Administrative Expenses'' shall mean Direct Costs, as described in section 2 CFR 200.413 of the Uniform Requirements, which are incurred by the Recipient to carry out the Financial Assistance. Direct Costs incurred to provide Development Services or Financial Services do not constitute Direct Administrative Expenses.

The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements,[5] with respect to any Direct Costs. For purposes of this NOFA, the five eligible activity categories are defined below:

TABLE 3—BASE–FA, PPC–FA, DF–FA, AND HFFI–FA ELIGIBLE ACTIVITY CATEGORIES

FA eligible activity	FA eligible activity definition *	Eligible CDFI institution types
i. Financial Products	FA expended as loans, Equity Investments and similar financing activities (as determined by the CDFI Fund) including the purchase of loans originated by Certified CDFIs and the provision of loan guarantees. In the case of CDFI Intermediaries, Financial Products may also include loans to CDFIs and/or Emerging CDFIs, and deposits in Insured Credit Union CDFIs, Emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs. For HFFI–FA, however, the purchase of loans originated by Certified CDFIs, loan refinancing, or any type of financing for prepared food outlets are not eligible activities.	All.

[4] Budget Period means the time interval from the start date of a funded portion of an award to the end date of that funded portion during which Recipients are authorized to expend the funds awarded.

[5] § 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.

(a) Recipients and Subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain, equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any Subsidiary or Affiliate of such entities).

TABLE 3—BASE–FA, PPC–FA, DF–FA, AND HFFI–FA ELIGIBLE ACTIVITY CATEGORIES—Continued

FA eligible activity	FA eligible activity definition *	Eligible CDFI institution types
ii. Financial Services	FA expended for providing checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services.	Regulated Institutions [6] only. Not applicable for HFFI–FA Recipients.
iii. Loan Loss Reserves	FA set aside in the form of cash reserves, or through accounting-based accrual reserves, to cover losses on loans, accounts, and notes receivable or for related purposes that the CDFI Fund deems appropriate.	All.
iv. Development Services	FA expended for activities undertaken by a CDFI, its Affiliate or contractor that (i) promote community development and (ii) prepare or assist current or potential borrowers or investees to use the CDFI's Financial Products or Financial Services. For example, such activities include financial or credit counseling; homeownership counseling; business planning; and management assistance.	All.
v. Capital Reserves	FA set aside as reserves to support the Applicant's ability to leverage other capital, for such purposes as increasing its net assets or providing financing, or for related purposes as the CDFI Fund deems appropriate.	Regulated Institutions only. Not applicable for DF–FA.

* *All FA eligible activities must be in an Eligible Market or the Applicant's approved Target Market.* Eligible Market is defined as (i) a geographic area meeting the requirements set forth in 12 CFR 1805.201(b)(3)(ii), or (ii) individuals that are Low-Income, African American, Hispanic, Native American, Native Hawaiians residing in Hawaii, Alaska Natives residing in Alaska, or Other Pacific Islanders residing in American Samoa, Guam or the Northern Mariana Islands.

2. DF–FA Award: DF–FA award funds may only be expended for eligible FA activities (referenced in Table 3) to directly or indirectly benefit individuals with disabilities. The DF–FA Recipient must close Financial Products for the primary purpose of directly or indirectly benefiting people with disabilities, where the majority of the DF–FA supported loans or investments benefit individuals with disabilities, in an amount equal to or greater than 85% of the total DF–FA provided. Eligible DF–FA financing activities may include, among other activities, loans to develop or purchase affordable, accessible, and safe housing; loans to provide or facilitate employment opportunities; and loans to purchase assistive technology.

For the purposes of DF–FA, a person with a Disability is a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment, as defined by the American Disabilities Act (ADA) at *https://www.ada.gov/cguide.htm.*

3. TA Grants: TA grant funds may be expended for the following eight eligible activity categories: (i) Compensation—Personal Services; (ii) Compensation—Fringe Benefits; (iii) Professional Service Costs; (iv) Travel Costs; (v) Training and Education Costs; (vi) Equipment; (vii) Supplies; and (viii) Incorporation Costs. Only Sponsoring Entities may use TA grant funds for Incorporation Costs. The TA Budget is the amount of the award and must be expended in the eight eligible activity categories before the end of the Budget Period. None of the eligible activity categories will be authorized for Indirect Costs or an associated Indirect Cost Rate. Any expenses that are prohibited by the Uniform Requirements are unallowable and are generally found in Subpart E-Cost Principles. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs. For purposes of this NOFA, the eight eligible activity categories are defined below:

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[6] Regulated Institutions include Insured Credit Unions, Insured Depository Institutions, State-Insured Credit Unions and Depository Institution Holding Companies.

Table 4. TA Eligible Activity Categories, Subject to the Applicable Provisions of the Uniform Requirements	
(i) Compensation – Personal Services	TA paid to cover all remuneration paid currently or accrued, for services of Applicant's employees rendered during the Period of Performance under the TA grant in accordance with section 2 CFR 200.430 of the Uniform Requirements. Any work performed directly but unrelated to the purposes of the TA grant may not be paid as Compensation through a TA grant. For example, the salaries for building maintenance would not carry out the purpose of a TA grant and would be deemed unallowable.
(ii) Compensation - Fringe Benefits	TA paid to cover allowances and services provided by the Applicant to its employees as Compensation in addition to regular salaries and wages, in accordance with section 2 CFR 200.431 of the Uniform Requirements. Such expenditures are allowable as long as they are made under formally established and consistently applied organizational policies of the Applicant.
(iii) Professional Service Costs	TA used to pay for professional and consultant services (e.g., such as strategic and marketing plan development), rendered by persons who are members of a particular profession or possess a special skill (e.g., credit analysis, portfolio management), and who are not officers or employees of the Applicant, in accordance with section 2 CFR 200.459 of the Uniform Requirements. Payment for a consultant's services may not exceed the current maximum of the daily equivalent rate paid to an Executive Schedule Level IV Federal employee. Professional and consultant services must build the capacity of the CDFI. For example, professional services that provide direct Development Services to the customers does not build the capacity of the CDFI to provide those services and would not be eligible. The Applicant must comply, as applicable, with section 2 CFR 200.216 of the Uniform Requirements, with respect to payment of Professional Service Costs.
(iv) Travel Costs	TA used to pay costs of transportation, lodging, subsistence, and related items incurred by the Applicant's personnel who are on travel status on

	business related to the TA award, in accordance with section 2 CFR 200.475 of the Uniform Requirements. Travel Costs do not include costs incurred by the Applicant's consultants who are on travel status. Any payments for travel expenses incurred by the Applicant's personnel but unrelated to carrying out the purpose of the TA grant would be deemed unallowable. As such, documentation must be maintained that justifies the travel as necessary to the TA grant.
(v) Training and Education Costs	TA used to pay the cost of training and education provided by the Applicant for employees' development in accordance with section 2 C.F.R 200.473 of the Uniform Requirements. TA can only be used to pay for training costs incurred by the Applicant's employees. Training and Education Costs may not be incurred by the Applicant's consultants.
(vi) Equipment	TA used to pay for tangible personal property, having a useful life of more than one year and a per-unit acquisition cost of at least $5,000, in accordance with section 2 CFR 200.1 of the Uniform Requirements. For example, items such as office furnishings and information technology systems are allowable as Equipment costs. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301-8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to the purchase of Equipment.
(vii) Supplies	TA used to pay for tangible personal property with a per unit acquisition cost of less than $5,000 in accordance with section 2 CFR 200.1 of the Uniform Requirements. For example, a desktop computer costing $1,000 is allowable as a Supply cost. The Applicant must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301-8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to the purchase of Supplies.
(viii) Incorporation Costs (*Sponsoring Entities only)*	TA used to pay for incorporation fees in connection with the establishment or reorganization of an organization as a CDFI, in accordance with section 2 CFR 200.455 of the Uniform Requirements. Incorporation Costs are allowable for NACA Program Sponsoring Entity Applicants only.

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4. HFFI–FA Award: HFFI–FA award funds may only be expended for eligible FA activities referenced in Table 3. The HFFI–FA investments must comply with the following guidelines:

a. Recipient must close Financial Products for Healthy Food Retail Outlets and Healthy Food Non-Retail Outlets in its approved Target Market in an amount equal to or greater than 100% of the total HFFI Financial Assistance provided. Eligible financing activities to Healthy Food Retail Outlets and Healthy Food Non-Retail Outlets require that the majority of the loan or investment be devoted to offering a range of Healthy Food choices, which may include, among other activities, investments supporting an existing retail store or wholesale operation upgrade to offer an expanded range of Healthy Food choices, or supporting a nonprofit organization that expands the availability of Healthy Foods in underserved areas.

b. Recipient must demonstrate that it has closed Financial Products to Healthy Food Retail Outlets located in Food Deserts in the Recipient's approved Target Market in an amount equal to 75% of the total HFFI Financial Assistance provided.

Definitions:

Healthy Foods: Healthy Foods include unprepared nutrient-dense foods and beverages as set forth in the USDA Dietary Guidelines for Americans 2020–2025 including whole fruits and vegetables, whole grains, fat free or low-fat dairy foods, lean meats and poultry (fresh, refrigerated, frozen or canned). Healthy Foods should have low or no added sugars, and be low-sodium, reduced sodium, or no-salt-added. (See USDA Dietary Guidelines: *http://www.dietaryguidelines.gov*).

Healthy Food Retail Outlets: Commercial sellers of Healthy Foods including, but not limited to, grocery stores, mobile food retailers, farmers markets, retail cooperatives, corner stores, bodegas, stores that sell other food and non-food items along with a range of Healthy Foods.

Healthy Food Non-Retail Outlets: Wholesalers of Healthy Foods including, but not limited to, wholesale food outlets, wholesale cooperatives, or other non-retail food producers that supply for sale a range of Healthy Food options; entities that produce or distribute Healthy Foods for eventual retail sale, and entities that provide consumer education regarding the consumption of Healthy Foods.

Food Deserts: Distressed geographic areas where either a substantial number or share of residents has low access to a supermarket or large grocery store. For the purpose of satisfying this requirement, a Food Desert must either: (1) Be a census tract determined to be a Food Desert by the U.S. Department of Agriculture (USDA), in its USDA Food Access Research Atlas; (2) be a census tract adjacent to a census tract determined to be a Food Desert by the USDA, in its USDA Food Access Research Atlas; which has a median family income less than or equal to 120% of the applicable Area Median Family Income; or (3) be a Geographic Unit as defined in 12 CFR part 1805.201(b)(3)(ii)(B), which (i) individually meets at least one of the criteria in 12 CFR part 1805.201(b)(3)(ii)(D), and (ii) has been identified as having low access to a supermarket or grocery store through a methodology that has been adopted for use by another governmental or philanthropic healthy food initiative.

5. PPC–FA Award: PPC–FA award funds may only be expended for eligible FA activities referenced in Table 3. The PPC–FA Recipient must close Financial Products in PPC in an Eligible Market or in the Applicant's approved Target Market in an amount equal to or greater than 100% of the total PPC Financial Assistance provided. The specific counties that meet the criteria for ''persistent poverty'' can be found at: *https://www.cdfifund.gov/sites/cdfi/files/documents/cdfi-ppc-feb19-2020.xls.*

III. Eligibility Information

A. Eligible Applicants: For the purposes of this NOFA, the following tables set forth the eligibility criteria to receive an award from the CDFI Fund, along with certain definitions of terms. There are four categories of Applicant eligibility criteria: (1) CDFI certification criteria (Table 5); (2) requirements that apply to all Applicants (Table 6); (3) requirements that apply to TA Applicants (Table 7); and (4) requirements that apply to FA Applicants (Table 8).

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Table 5. CDFI Certification Criteria Definitions	
Certified CDFI	• An entity that the CDFI Fund has officially notified that it meets all CDFI certification requirements.
Emerging CDFI (TA Applicants)	• A non-Certified entity that demonstrates to the CDFI Fund in its Application that it has an acceptable plan to meet CDFI certification requirements by the end of its Period of Performance, or another date that the CDFI Fund selects. • An Emerging CDFI that has prior award(s) must comply with CDFI certification PG&M(s) stated in its prior Assistance Agreement(s). • An Emerging CDFI selected to receive a TA grant will be required to become a Certified CDFI by a date specified in the Assistance Agreement.
Sponsoring Entity	• Sponsoring Entities include any legal organization that primarily serves a Native Community with "primary" meaning, at least 50% of its activities are directed toward the Native Community. • An eligible organization that proposes to create a separate legal organization that will become a Certified CDFI serving Native Communities. • Each Sponsoring Entity selected to receive a TA grant will be required to create a CDFI and ensure that this newly created CDFI becomes certified by the dates specified in the Assistance Agreement.
Definition of Native Other Targeted Population as Target Market	The CDFI Fund uses the following definitions, set forth in the Office of Management and Budget (OMB) Notice, Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity (October 30, 1997), as amended and supplemented: • American Indian, Native American, or Alaska Native: A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment; and • Native Hawaiian (living in Hawaii): A person having origins in any of the original peoples of Hawaii.

Table 6. Eligibility Requirements for All Applicants	
Applicant	• Only the entity that will carry out the proposed award activities may apply for an award (other than Depository Institution Holding Companies (DIHC)[7] - see below, and Sponsoring Entities). Recipients may not create a new legal entity to carry out the proposed award activities (except for Sponsoring Entities). • The information in the Application should only reflect the activities of the Applicant, including the presentation of financial and portfolio information. Do not include financial or portfolio information from parent companies, Affiliates, or Subsidiaries in the Application unless it relates to the provision of Development Services. • An Applicant that applies on behalf of another organization will be rejected without further consideration, other than Depository Institution Holding Companies (see below).
Application type and submission overview through Grants.gov and Awards Management Information System (AMIS)	• Applicants must submit the Required Application Documents listed in Table 10. • The CDFI Fund will only accept Applications that use the official Application templates provided on the Grants.gov and AMIS websites. Applications submitted with alternative or altered templates will not be considered. • Applicants undergo a two-step process that requires the submission of Application documents by two separate deadlines in two different locations: 1) the SF-424 in Grants.gov and 2) all other Required Application Documents in AMIS. • Grants.gov and the SF-424: ○ Grants.gov: Applicants must submit the Standard Form (SF) SF-424, Application for Federal Assistance. ○ All Applicants must register in the Grants.gov system to successfully submit an Application. The Grants.gov registration process can take 30 days or more to complete. The CDFI Fund strongly encourages Applicants to register as early as possible. ○ The CDFI Fund will not extend the SF-424 application deadline for any Applicant that started the Grants.gov registration process on, before, or after the date of the publication of this NOFA, but did not complete it by the deadline except in the case of a Federal government administrative or technological error that directly resulted in a late submission of the SF-424. ○ The SF-424 must be submitted in Grants.gov on or before the deadline listed in Table 1 and Table 12. Applicants are strongly encouraged to submit their SF-424 as early as possible in the Grants.gov portal. ○ The deadline for the Grants.gov submission is before the AMIS submission deadline. ○ The SF-424 must be submitted under the NACA Program Funding Opportunity Number for the NACA

	Program Application. *NACA Program Applicants should be careful to not select the CDFI Program Funding Opportunity Number when submitting their SF-424 for the NACA Program.* NACA Program Applicants that submit their SF-424 for the NACA Program Application under the CDFI Program Funding Opportunity Number will be deemed ineligible for the NACA Program Application. ○ If the SF-424 is not accepted by Grants.gov by the deadline, the CDFI Fund will not review any material submitted in AMIS and the Application will be deemed ineligible. • AMIS and all other Required Application Documents listed in Table 10: ○ AMIS is an enterprise-wide information technology system. Applicants will use AMIS to submit and store organization and Application information with the CDFI Fund. ○ Applicants are only allowed one NACA Program Application submission in AMIS. ○ Each Application in AMIS must be signed by an Authorized Representative. ○ Applicants must ensure that the Authorized Representative is an employee or officer of the Applicant, authorized to sign legal documents on behalf of the organization. *Consultants working on behalf of the organization may not be designated as Authorized Representatives.* ○ Only the Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. ○ All Required Application Documents must be submitted in AMIS on or before the deadline specified in Tables 1 and 12. ○ The CDFI Fund will not extend the deadline for any Applicant except in the case of a Federal government administrative or technological error that directly resulted in the late submission of the Application in AMIS.
Employer Identification Number (EIN)	• Applicants must have a unique EIN assigned by the Internal Revenue Service (IRS). • The CDFI Fund will reject an Application submitted with the EIN of a parent or Affiliate organization. • The EIN in the Applicant's AMIS account must match the EIN in the Applicant's System for Award Management (SAM) account. The CDFI Fund reserves the right to reject an Application if the EIN in the Applicant's AMIS account does not match the EIN in its SAM account.

	• Applicants must enter their EIN into their AMIS profile on or before the deadline specified in Tables 1 and 12.
Dun & Bradstreet, (DUNS) number	• Pursuant to OMB guidance (68 FR 38402), an Applicant must apply using its unique DUNS number in Grants.gov. • The CDFI Fund will reject an Application submitted with the DUNS number of a parent or Affiliate organization. • The DUNS number in the Applicant's AMIS account must match the DUNS number in the Applicant's Grants.gov and SAM accounts. The CDFI Fund will reject an Application if the DUNS number in the Applicant's AMIS account does not match the DUNS number in its Grants.gov and SAM accounts. • Applicants must enter their DUNS number into their AMIS profile on or before the deadline specified in Tables 1 and 12.
System for Award Management (SAM)	• SAM is a web-based, government-wide application that collects, validates, stores, and disseminates business information about the federal government's trading partners in support of the contract awards, grants, and electronic payment processes. • Applicants must register in SAM as part of the Grants.gov registration process. • Applicants must have a DUNS number and an EIN number in order to register in SAM. • Applicants must be registered in SAM in order to submit an SF-424 in Grants.gov. • The CDFI Fund reserves the right to deem an Application ineligible if the Applicant's SAM account expires during the Application evaluation period, or is set to expire before September 30, 2022, and the Applicant does not re-activate, or renew, as applicable, the account within the deadlines that the CDFI Fund communicates to affected Applicants during the Application evaluation period.
AMIS Account	• Each Applicant must register as an organization in AMIS and submit all Required Application Documents listed in Table 10 through the AMIS portal. • The Application of any organization that does not properly register in AMIS by the deadline set forth in Table 1 – FY 2022 NACA Program Funding Round Critical Deadlines for Applicants – will be rejected without further consideration. • The Authorized Representative and/or Application Point of Contact must be included as "users" in the Applicant's AMIS account. • An Applicant that fails to properly register and update its AMIS account may miss important communication from the CDFI Fund and/or may not be able to successfully submit an Application.
501 (c)(4) status	• Pursuant to 2 U.S.C. 1611, any 501(c)(4) organization that engages in lobbying activities is not eligible to receive a CDFI or NACA Program award.

Compliance with Nondiscrimination and Equal Opportunity Statutes, Regulations, and Executive Orders	• An Applicant may not be eligible to receive an award if proceedings have been instituted against it in, by, or before any court, governmental agency, or administrative body, and a final determination within the last three years indicates the Applicant has violated any of the following laws, including but not limited to: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); the Age Discrimination Act of 1975, (42 U.S.C. 6101-6107), and Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and Title IX of the Education Amendments of 1972.
Depository Institution Holding Company Applicant	• In the case where a CDFI Depository Institution Holding Company Applicant intends to carry out the activities of an award through its Subsidiary CDFI Insured Depository Institution, the Application must be submitted by the CDFI Depository Institution Holding Company and reflect the activities and financial performance of the Subsidiary CDFI Insured Depository Institution. • If a Depository Institution Holding Company and its Certified CDFI Subsidiary Insured Depository Institution (through which it will carry out the activities of the award) both apply for an award under this NOFA, only the Depository Institution Holding Company will receive an award, not both. In such instances, the Subsidiary Insured Depository Institution will be deemed ineligible. • Authorized Representatives of both the Depository Institution Holding Company and the Subsidiary CDFI Insured Depository Institution must certify that the information included in the Application represents that of the Subsidiary CDFI Insured Depository Institution, and that the award funds will be used to support the Subsidiary CDFI Insured Depository Institution for the eligible activities outlined in the Application.
Use of award	• All awards made through this NOFA must be used to support the Applicant's activities in at least one of the FA or TA Eligible Activity Categories (see Section II. (C)). • With the exception of Depository Institution Holding Company Applicants and Sponsoring Entities, awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent. The Recipient of any award made through this NOFA must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301-8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

Requested award amount	• An Applicant must state its requested award amount in the Application in AMIS. An Applicant that does not include this amount will not be allowed to submit an Application.
Pending resolution of noncompliance	• The CDFI Fund will consider an Application submitted by an Applicant that has pending noncompliance issues on any of its previously executed Award Agreement(s), Allocation Agreement(s), and/or Assistance Agreement(s) if the CDFI Fund has not yet made a final compliance determination.
Noncompliance or default status	• The CDFI Fund will not consider an Application submitted by an Applicant that has a previously executed Award Agreement(s), Allocation Agreement(s), and/or Assistance Agreement(s) if, as of the date of the Application, (i) the CDFI Fund has made a final determination that such entity is noncompliant or found in default with a previously executed Award Agreement, Allocation Agreement and/or Assistance Agreement and (ii) the CDFI Fund has provided written notification that such entity is ineligible to apply for or receive any future CDFI Fund awards or allocations. Such entities will be ineligible to submit an Application for such time period as specified by the CDFI Fund in writing. • The CDFI Fund will not consider any Applicant that has defaulted on a loan from the CDFI Fund within five years of the Application deadline.
Debarment/Do Not Pay Verification	• The CDFI Fund will conduct a debarment check and will not consider an Application submitted by an Applicant (or Affiliate of an Applicant) if the Applicant is delinquent on any Federal debt. • The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. The Do Not Pay Business Center provides delinquency information to the CDFI Fund to assist with the debarment check.

[7] Depository Institution Holding Company or DIHC means a Bank Holding Company or a Savings and Loan Holding Company.

Table 7. Eligibility Requirements for TA Applicants	
CDFI certification status	Certified CDFIs, Emerging CDFIs, or Sponsoring Entities (see definitions in Table 5).
Matching Funds	• Matching Funds documentation is not required for TA awards.
Limitation on Awards	• An Emerging CDFI serving Native Communities may not receive more than three TA awards as an uncertified CDFI. • A Sponsoring Entity is only eligible to apply for an award if (i) it does not have an active prior award or (ii) the certification goal in its active award's Assistance Agreement has been satisfied and it proposes to create another CDFI that will serve one or more Native Communities.

Proposed Activities	• Applicants must propose to directly undertake eligible activities with TA awards. For example, an uncertified CDFI Applicant must propose to become certified as part of its Application and a Certified CDFI Applicant must propose activities that build its capacity to serve its Target Market or an Eligible Market. • With the exception of Sponsoring Entities, Applicants may not propose to use a TA award to create a separate legal entity to become a Certified CDFI or otherwise carry out the TA award activities.
Regulated Institution	• Each Regulated Institution TA Applicant must have a CAMELS/CAMEL rating (rating for Insured Depository Institutions and Credit Unions, respectively) or equivalent type of rating by its regulator (collectively referred to as "CAMELS/CAMEL rating") of at least "4". • TA Applicants with CAMELS/CAMEL ratings of "5" will not be eligible for awards. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CAMELS/CAMEL rating eligibility requirements noted above apply to both the Depository Institution Holding Company Applicant as well as the Subsidiary Insured Depository Institution. • The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.
Target Market	• TA Applicants must demonstrate that the Certified CDFI, Emerging CDFI, or the CDFI to be created by the Sponsoring Entity will primarily serve one or more Native Communities as its Target Market.

Table 8. Eligibility Requirements for FA Applicants	
CDFI certification status	• Each FA Applicant must be a Certified CDFI as of the publication date of this NOFA in the Federal Register. • The CDFI Fund will consider an Application submitted by an Applicant that has pending noncompliance issues with its Annual Certification Report if the CDFI Fund has not yet made a final compliance determination. • If a Certified CDFI loses its certification at any point prior to the award announcement, the Application will be deemed ineligible and no longer be considered by the CDFI Fund.
Activities in Native Communities	• For consideration under this NOFA, each FA Applicant must: o Demonstrate that at least 50% of its past activities were in one or more Native Communities; and o Describe how it will target its lending/investing activities to one or more Native Communities.
Target Market	• For consideration under this NOFA, an FA Applicant's certification Target Market must have one or more of the following characteristics: o For qualifying with an *Investment Area*, the Applicant must demonstrate that the Investment Area approved for certification is

	also a geographic area of Federally-designated reservations, Hawaiian homelands, Alaska Native Villages and U.S. Census Bureau designated Tribal Statistical Areas; and/or ○ For qualifying with an Other Targeted Population (OTP), the applicant's Target Market approved for certification must be an OTP of Native Americans or American Indians, including Alaska Natives living in Alaska and Native Hawaiians living in Hawaii. • Any FA Applicant whose certification Target Market does not meet either of the conditions above will not be eligible for an FA award under this NOFA.
Community Collaboration	• All FA Applicants must demonstrate strong community collaboration with Native Communities.
Matching Funds documentation	• Native American CDFIs are not required to provide Matching Funds.
$5 Million funding cap	• The CDFI Fund is prohibited from obligating more than $5 million in CDFI and NACA Program awards, in the aggregate, to any one organization and its Subsidiaries and Affiliates during any three-year period from the Announcement Date. • For TA Applicants, for purposes of this NOFA and per final FY 2022 appropriations language, the CDFI Fund will include CDFI and NACA Program final awards in the cap calculation that were provided to an Applicant (and/or its Subsidiaries or Affiliates) under the FY 2020, and 2021 funding rounds, as well as the requested FY 2022 award, excluding DF-FA and HFFI-FA awards. • For FA Applicants, for purposes of this NOFA and per final FY 2022 appropriations language, the CDFI Fund will include CDFI and NACA Program final awards in the cap calculation that were provided to an Applicant (and/or its Subsidiaries or Affiliates) under the FY 2020 and 2021 funding rounds, as well as the requested FY 2022 award, excluding DF-FA and HFFI-FA awards.
FA Applicants with Community Partners	• A NACA Applicant can apply for assistance jointly with a Community Partner. The CDFI Applicant must complete the NACA Program Application and address the Community Partnership in its business plan and other sections of the Application as specified in the Application materials. • The CDFI Applicant must be a Certified CDFI as defined in Table 5. • An Application with a Community Partner must: ○ Describe how the NACA Applicant and Community Partner will each participate in the partnership and how the partnership will enhance eligible activities serving the Investment Area and/or Targeted Population. ○ Demonstrate that the Community Partnership activities are consistent with the strategic plan submitted by the NACA Applicant. • Assistance provided upon approval of an Application with a Community Partner shall only be entrusted to the NACA Applicant and shall not be used to fund any activity carried out directly by the Community Partner or an Affiliate or Subsidiary thereof.
Regulated Institution	• Each Regulated Institution FA Applicant must have a CAMELS/CAMEL rating (rating for Insured Depository Institutions and Credit Unions,

	respectively) or equivalent type of rating by its regulator (collectively referred to as "CAMELS/CAMEL rating") of at least "3". • FA Applicants with CAMELS/CAMEL ratings of "4 or 5" will not be eligible for awards. • In the case of a Depository Institution Holding Company Applicant that intends to carry out the award through a Subsidiary Insured Depository Institution, the CAMELS/CAMEL rating eligibility requirements noted above apply to both the Depository Institution Holding Company Applicant as well as the Subsidiary Insured Depository Institution. • The CDFI Fund will also evaluate material concerns identified by the Appropriate Federal Banking Agency in determining the eligibility of Regulated Institution Applicants.
PPC-FA	• All PPC-FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all NACA FA award eligibility requirements; and ○ Provide a PPC-FA award request amount in AMIS.
DF-FA	• All DF-FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all NACA FA award eligibility requirements; ○ Submit the DF-FA Application; and ○ Provide a DF-FA award request amount in AMIS.
HFFI-FA	• All HFFI-FA Applicants must: ○ Submit a CDFI or NACA Program FA Application; ○ Meet all NACA FA award eligibility requirements; ○ Submit the HFFI-FA Application; and ○ Provide a HFFI-FA award request amount in AMIS.

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B. Matching Funds Requirements: Native American CDFIs are not required to provide Matching Funds.

TABLE 9—RESERVED

IV. Application and Submission Information

A. Address to Request an Application Package: Application materials can be found on the CDFI Fund's website at *www.cdfifund.gov/programs-training/Programs/native-initiatives.* Applicants may request a paper version of any Application material by contacting the CDFI Fund Help Desk at *cdfihelp@cdfi.treas.gov.* Paper versions of Application materials will only be provided if an Applicant cannot access the CDFI Fund's website.

B. Content and Form of Application Submission: All Applications must be prepared using the English language, and calculations must be computed in U.S. dollars. The following table lists the Required Application Documents for the FY 2022 Funding Round. The CDFI Fund reserves the right to request and review other pertinent or public information that has not been specifically requested in this NOFA or the Application. Information submitted by the Applicant that the CDFI Fund has not specifically requested will not be reviewed or considered as part of the Application. Financial data, portfolio, and activity information provided in the Application should only include the Applicant's activities. Information submitted must accurately reflect the Applicant's activities.

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Table 10. Required Application Documents		
Application Documents	**Applicant Type**	**Submission Format**
Active AMIS Account	All Applicants	AMIS
SF-424	All Applicants	Fillable PDF in Grants.gov
NACA Program Application Components: • Funding Application Detail • Data, Charts, and Narrative sections as listed in AMIS and outlined in Application materials	All Applicants	AMIS
PPC-FA Application Components: • Funding Application Detail • Narratives • AMIS Charts	PPC-FA Applicants	AMIS
DF-FA Application Components: • Funding Application Detail • Narratives • AMIS Charts	DF-FA Applicants	AMIS
HFFI-FA Application Components: • Funding Application Detail • Narratives • AMIS charts	HFFI-FA Applicants	AMIS
ATTACHMENTS TO THE APPLICATION:		
Key Staff Resumes	All Applicants	PDF or Word document in AMIS
Organizational Chart	All Applicants	PDF in AMIS
Completed, final audited financial statements for the Applicant's Three Most Recent Historic Fiscal Years	FA Applicants and TA Applicants, if available: loan funds, Venture Capital Funds[8], and other non-Regulated Institutions	PDF in AMIS
Management Letter for the Applicant's Most Recent Historic Fiscal Year. The Management Letter is prepared by the Applicant's auditor and is a communication on internal control over financial reporting, compliance, and other matters. The	FA Applicants and TA Applicants, if available: loan funds, Venture Capital Funds, and other non-Regulated Institutions	PDF in AMIS

Management Letter contains the auditor's findings regarding the Applicant's accounting policies and procedures, internal controls, and operating policies, including any material weaknesses, significant deficiencies, and other matters identified during auditing. The Management Letter may include suggestions for improving on identified weaknesses and deficiencies and/or best practice suggestions for items that may not be considered to be weaknesses or deficiencies. The Management Letter may also include items that are not required to be disclosed in the annual audited financial statements. The Management Letter is distinct from the auditor's Opinion Letter, which is required by Generally Accepted Accounting Principles (GAAP). Management Letters are not required by GAAP, and are sometimes provided by the auditor as a separate letter from the audit itself.		
Statement(s) in Lieu of Management Letter for Applicant's Most Recent Historic Fiscal Year using the template available as part of the Application in AMIS and attested to by an Authorized Representative of the Applicant. (required only if Management Letters are not available for audited financial statements).	FA Applicants: loan funds, Venture Capital Funds, and other non-Regulated Institutions, TA Applicants, if audited financial statements ARE available but the Management Letters are NOT available: loan funds, Venture Capital Funds, and other non-Regulated Institutions	AMIS
Unaudited financial statements for Applicant's Three Most Recent Historic Years (required if available, and only if audited financial statements are not available)	FA and TA Applicants, if available: loan funds, Venture Capital Funds, and other non-Regulated Institutions	PDF in AMIS
Current Year to Date - December 31, 2021 Unaudited financial statements	FA and TA Applicants: loan funds, Venture Capital Funds, and other non-Regulated Institutions	PDF in AMIS
Community Partnership Agreement	FA Applicants, if applicable	PDF or Word document in AMIS

[8] A Venture Capital Fund is an organization that predominantly invests funds in businesses, typically in the form of either Equity Investments or subordinated debt with equity features such as revenue participation or warrants, and generally seeks to participate in the upside returns of such businesses in an effort to at least partially offset the risk of its investments.

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C. Application Submission: The CDFI Fund has a two-step process that requires the submission of Required Application Documents (listed in Table 10) on separate deadlines and locations. The SF–424 must be submitted through *Grants.gov* and all other Required Application Documents through the AMIS portal. The CDFI Fund will not accept Applications via email, mail, facsimile, or other forms of communication, except in extremely rare circumstances that have been pre-approved in writing by the CDFI Fund. The deadline for submitting the SF–424 is listed in Tables 1 and 12.

All Applicants must register in the *Grants.gov* system to successfully submit the SF–424. The *Grants.gov* registration process can take 45 days or longer to complete and the CDFI Fund strongly encourages Applicants to start the *Grants.gov* registration process as early as possible (refer to the following link: *http://www.grants.gov/web/grants/register.html*). Since the *Grants.gov* registration process requires Applicants to have DUNS and EIN numbers, Applicants without these required numbers should allow for additional time to complete the *Grants.gov* registration process. Further, as described in Section IV. (E) of this NOFA, new requirements for registration in the System for Awards Management (SAM), which is required as part of the *Grants.gov* registration process, may take more time than in recent years. The CDFI Fund will not extend the Application deadline for any Applicant that started the *Grants.gov* registration process but did not complete it by the deadline. An Applicant that has previously registered with *Grants.gov* must verify that its registration is current and active. Applicants should contact *Grants.gov* directly with questions related to the registration or submission process as the CDFI Fund does not maintain the *Grants.gov* system.

Each Application must be signed by a designated Authorized Representative in AMIS before it can be submitted. Applicants must ensure that an Authorized Representative is an employee or officer and is authorized to sign legal documents on behalf of the Applicant. Consultants working on behalf of the Applicant may not be designated as Authorized Representatives. Only a designated Authorized Representative or Application Point of Contact, included in the Application, may submit the Application in AMIS. If an Authorized Representative or Application Point of Contact does not submit the Application, the Application will be deemed ineligible.

D. Dun & Bradstreet Universal Numbering System: Pursuant to the Uniform Requirements, each Applicant must provide as part of its Application submission, a Dun and Bradstreet Universal Numbering System (DUNS) number. Applicants without a DUNS number will not be able to register and submit an Application in the *Grants.gov* system. Allow sufficient time for Dun & Bradstreet to respond to inquiries and/or requests for DUNS numbers.

E. System for Award Management (SAM): Any entity applying for Federal grants or other forms of Federal financial assistance through *Grants.gov* must be registered in SAM before submitting its Application. Registration in SAM is required as part of the *Grants.gov* registration process. The SAM registration process may take one month or longer to complete. A signed notarized letter identifying the SAM authorized entity administrator for the entity associated with the DUNS number is required. This requirement is applicable to new entities registering in SAM, as well as to existing entities with registrations being updated or renewed in SAM. Applicants without DUNS and/or EIN numbers should allow for additional time as an Applicant cannot register in SAM without those required numbers. Applicants that have previously completed the SAM registration process must verify that their SAM accounts are current and active. Each Applicant must continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an Application under consideration by a Federal awarding agency. The CDFI Fund will deem ineligible any Applicant that fails to properly register or activate its SAM account and, as a result, is unable to submit the SF–424 in *Grants.gov* or Application in AMIS by the applicable Application deadlines. These restrictions also apply to organizations that have not yet received a DUNS or EIN number. Applicants must contact SAM directly with questions related to registration or SAM account changes as the CDFI Fund does not maintain this system and has no ability to make changes or correct errors of any kind. For more information about SAM, visit *https://www.sam.gov.*

TABLE 11—GRANTS.gov REGISTRATION TIMELINE SUMMARY

Step	Agency	Estimated minimum time to complete
Obtain a DUNS number	Dun & Bradstreet	One (1) Week*.
Obtain an EIN Number	Internal Revenue Service (IRS)	Two (2) Weeks*.
Register in *SAM.gov*	System for Award Management (*SAM.gov*)	Four (4) Weeks*.
Register in *Grants.gov*	*Grants.gov*	One (1) Week**.

*Applicants are advised that the stated durations are estimates only and represent minimum timeframes. Actual timeframes may take longer. The CDFI Fund will deem ineligible any Applicant that fails to properly register or activate its SAM account, has not yet received a DUNS or EIN number, and/or fails to properly register in *Grants.gov*.

**This estimate assumes an Applicant has a DUNS number, an EIN number, and is already registered in *SAM.gov*.

F. Submission Dates and Times:

1. Submission Deadlines: The following table provides the critical deadlines for the FY 2022 Funding Round.

TABLE 12—FY 2022 NACA PROGRAM FUNDING ROUND CRITICAL DEADLINES FOR APPLICANTS

Description	Deadline	Time (eastern time—ET)	Submission method
Last day to create an Awards Management Information Systems (AMIS) Account (all Applicants).	March 14, 2022	11:59 p.m. ET ...	AMIS.
Last day to enter EIN and DUNS numbers in AMIS (all Applicants).	March 14, 2022	11:59 p.m. ET ...	AMIS.
Last day to submit SF–424 (Application for Federal Assistance).	March 14, 2022	11:59 p.m. ET ...	Electronically via *Grants.gov*.
Last day to contact NACA Program staff	April 8, 2022	5:00 p.m. ET	Service Request via AMIS or CDFI Fund Helpdesk: 202–653–0421.
Last day to contact AMIS–IT Help Desk (regarding AMIS technical problems only).	April 12, 2022	5:00 p.m. ET	Service Request via AMIS or 202–653–0422 or *AMIS@cdfi.treas.gov*.
Last day to submit NACA Program Application for Financial Assistance (FA) or Technical Assistance (TA).	April 12, 2022	11:59 p.m. ET ...	AMIS.

2. Confirmation of Application Submission in Grants.gov and AMIS: Applicants are required to submit the SF–424, Application for Federal Assistance through the *Grants.gov* system, under the NACA Program Funding Opportunity Number by the applicable deadline. All other Required Application Documents (listed in Table 10) must be submitted through the AMIS website by the applicable deadline. Applicants must submit the SF–424 prior to submitting the Application in AMIS. If the SF–424 is not successfully accepted by *Grants.gov* by the deadline, the CDFI Fund will not review the Application submitted in AMIS, and the Application will be deemed ineligible.

a. *Grants.gov Submission Information:* Each Applicant will receive an email from *Grants.gov* immediately after submitting the SF–424 confirming that the submission has entered the *Grants.gov* system. This email will contain a tracking number for the submitted SF–424. Within 48 hours, the Applicant will receive a second email, which will indicate if the submitted SF–424 was either successfully validated or rejected with errors. However, Applicants should not rely on the email notification from *Grants.gov* to confirm that their SF–424 was validated. Applicants are strongly encouraged to use the tracking number provided in the first email to closely monitor the status of their SF–424 by contacting the helpdesk at *Grants.gov* directly. The Application material submitted in AMIS is not officially accepted by the CDFI Fund until *Grants.gov* has validated the SF–424.

b. *AMIS Submission Information:* AMIS is a web-based portal where Applicants will directly enter their Application information and add the required attachments listed in Table 10. AMIS will verify that the Applicant provided the minimum information required to submit an Application. Applicants are responsible for the quality and accuracy of the information and attachments included in the Application submitted in AMIS. The CDFI Fund strongly encourages Applicants to allow for sufficient time to review and complete all Required Application Documents listed in Table 10, and remedy any issues prior to the Application deadline. Each Application must be signed by an Authorized Representative in AMIS before it can be submitted. Applicants must ensure that the Authorized Representative is an employee or officer and is authorized to sign legal documents on behalf of the Applicant. Consultants working on behalf of the Applicant may not be designated as Authorized Representatives. Only an Authorized Representative or an Application Point of Contact may submit an Application. If an Authorized Representative or Application Point of Contact does not submit the Application, the Application will be deemed ineligible. Applicants may only submit one Base-FA or TA Application under the NACA Program. Upon submission, the Application will be locked and cannot be resubmitted, edited, or modified in any way. The CDFI Fund will not unlock or allow multiple Application submissions.

3. Late Submission or AMIS Account Creation: The CDFI Fund will not accept an Application if the SF–424 is not submitted and accepted by *Grants.gov* by the SF–424 deadline. Additionally, the CDFI Fund will not accept an Application if it is not signed by an Authorized Representative and submitted in AMIS by the Application deadline listed in Table 1 and Table 12. The CDFI Fund will also not accept an Application from an Applicant that failed to create an AMIS account by the deadlines specified in Table 1 and Table 12. In these cases, the CDFI Fund will not review any material submitted, and the Application will be deemed ineligible.

However, in cases where a Federal government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424, the Application, or creating an AMIS account by the deadlines stated in this NOFA, Applicants are provided the opportunity to submit a written request for acceptance of late submissions. The CDFI Fund will not consider the late submission of the SF–424, the Application, or the late creation of an AMIS account that was a direct result of a delay in a Federal Government process, unless such delay was the result of a Federal government administrative or technological error.

a. *Creation of AMIS Account:* In cases where a Federal government administrative or technological error directly resulted in precluding an Applicant from creating an AMIS account by the required deadline, the Applicant must submit a written request for approval to create its AMIS account after the deadline, and include documentation of the error, no later than two business days after the AMIS account creation deadline. The CDFI Fund will not respond to requests for creating an AMIS account after that time. Applicants must submit such request via an AMIS Service Request to the CDFI Program or an email to *cdfihelp@cdfi.treas.gov* with a subject line of ''AMIS Account Creation Deadline Extension Request.''

b. *SF–424 Late Submission:* In cases where a Federal government administrative or technological error directly resulted in precluding an Applicant from submitting the SF–424 by the required deadline, the Applicant must submit a written request for

acceptance of the late SF–424 submission and include documentation of the error no later than two business days after the SF–424 deadline. The CDFI Fund will not respond to requests for acceptance of late SF–424 submissions after that time period. Applicants must submit late SF–424 submission requests to the CDFI Fund via an AMIS Service Request to the NACA Program with a subject line of ''Late SF–424 Submission Request.''

c. *Application Late Submission:* In cases where a Federal government administrative or technological error directly resulted in precluding an Applicant from submitting the Application in AMIS by the required deadline, the Applicant must submit a written request for acceptance of the late Application submission and include documentation of the error no later than two business days after the Application deadline. The CDFI Fund will not respond to requests for acceptance of late Application submissions after that time period. Applicants must submit late Application submission requests to the CDFI Fund via an AMIS Service Request to the NACA Program with a subject line of ''Late Application Submission Request.''

G. Funding Restrictions: Base-FA, PPC–FA, DF–FA, HFFI–FA and TA awards are limited by the following:

1. Base-FA Awards:

a. A Recipient shall use Base-FA funds only for the eligible activities described in Section II. (C)(1) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, Base-FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. Base-FA funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay Base-FA funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

2. PPC–FA Awards:

a. A Recipient shall use PPC–FA funds only for the eligible activities described in Section II. (C)(5) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, PPC–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. PPC–FA funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay PPC–FA funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

3. DF–FA Awards:

a. A Recipient shall use DF–FA funds only for the eligible activities described in Section II.(C)(2) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, DF–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. DF–FA funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay DF–FA funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

4. HFFI–FA Awards:

a. A Recipient shall use HFFI–FA funds only for the eligible activities described in Section II.(C)(4) of this NOFA and its Assistance Agreement.

b. With the exception of Depository Institution Holding Company Applicants, HFFI–FA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

c. HFFI–FA funds shall only be paid to the Recipient.

d. The CDFI Fund, in its sole discretion, may pay HFFI–FA funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

e. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

5. TA Grants:

a. A Recipient shall use TA funds only for the eligible activities described in Section II.(C)(3) of this NOFA and its Assistance Agreement.

b. A Sponsoring Entity Recipient must create the Emerging CDFI as a legal entity no later than the end of the first year of the Period of Performance. Upon creation of the Emerging CDFI, the Sponsoring Entity must request the CDFI Fund to amend the Assistance Agreement to add the Emerging CDFI as a co-Recipient. The Sponsoring Entity must add the Emerging CDFI as a co-Recipient within 90 days the end of the first year of the Period of Performance. The Sponsoring Entity must then transfer any remaining balances and/or assets derived from the TA award to the Emerging CDFI.

c. With the exception of Depository Institution Holding Company Applicants, TA awards may not be used to support the activities of, or otherwise be passed through, transferred, or co-awarded to, third-party entities, whether Affiliates, Subsidiaries, or others, unless done pursuant to a merger or acquisition or similar transaction, and with the CDFI Fund's prior written consent.

d. TA funds shall only be paid to the Recipient.

e. The CDFI Fund, in its sole discretion, may pay TA funds in amounts, or under terms and conditions, which are different from those requested by an Applicant.

f. The Recipient must comply, as applicable, with the Buy American Act of 1933, 41 U.S.C. 8301–8303 and section 2 CFR 200.216 of the Uniform Requirements, with respect to any Direct Costs.

V. Application Review Information

A. Criteria: If the Applicant has submitted an eligible Application, the CDFI Fund will conduct a substantive review in accordance with the criteria and procedures described in the Regulations, this NOFA, the Application guidance, and the Uniform Requirements. The CDFI Fund reserves the right to contact the Applicant by telephone, email, or mail for the

purpose of clarifying or confirming Application information. If contacted, the Applicant must respond within the time period communicated by the CDFI Fund or risk that its Application will be rejected. The CDFI Fund will review the Base–FA, DF–FA, PPC–FA, HFFI–FA, and TA Applications in accordance with the process below. All internal and external reviewers will complete the CDFI Fund's conflict of interest process. The CDFI Fund's Application conflict of interest policy is located on the CDFI Fund's website.

1. Base–FA Application Scoring, Award Selection, Review, and Selection Process: The CDFI Fund will evaluate each Application using a five-step review process illustrated in the sections below. Applicants that meet the minimum criteria will advance to the next step in the review process. Applicants applying as a Community Partnership must describe the partnership in the Application pursuant to the requirements set forth in Table 8, and will be evaluated in accordance with the review process described below.

a. Step 1: Eligibility Review: The CDFI Fund will evaluate each Application to determine its eligibility status pursuant to Section III of this NOFA.

b. Step 2: Financial Analysis and Compliance Risk Evaluation:

i. Step 2: Financial Analysis: For Regulated Institutions, the CDFI Fund will consider financial safety and soundness information from the Appropriate Federal or State Banking Agency. As detailed in Table 8, each Regulated Institution FA Applicant (including a subsidiary Depository Institution that will expend and carry out the activities of an award on behalf of a Depository Institution Holding Company Applicant) must have a CAMELS/CAMEL rating of at least ''3'' and/or no significant material concerns from its regulator.

For non-regulated Applicants, the CDFI Fund will evaluate the financial health and viability of each non-regulated Applicant using financial information provided by the Applicant. For the Financial Analysis, each non-regulated Applicant will receive a Total Financial Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. The Total Financial Composite Score is based on the analysis of twenty-three (23) financial indicators. Applications will be grouped based on the Total Financial Composite Score. Applicants must receive a Total Financial Composite Score of one (1), two (2), or three (3) to advance to Step 3. Applicants that receive an initial Total Financial Composite Score of four (4) or five (5) will be re-evaluated and re-scored by CDFI Fund staff. If the Total Financial Composite Score remains four (4) or five (5) after CDFI Fund staff review, the Applicant will not advance to Step 3.

ii. Step 2: Compliance Risk Evaluation: For the compliance analysis, the CDFI Fund will evaluate the compliance risk of each Applicant using information provided in the Application as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to the CDFI Fund's PG&Ms. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. Applicants that receive an initial Total Compliance Composite Score of four (4) or five (5) will be re-evaluated by CDFI Fund staff. If the Applicant is deemed a high compliance risk after CDFI Fund staff review, the Applicant will not advance to Step 3.

c. Step 3: Business Plan Review: Applicants that proceed to Step 3 will be evaluated on the soundness of their comprehensive business plan. Two external non-CDFI Fund Reviewers will conduct the Step 3 evaluation. Reviewers will evaluate the Application sections listed in Table 13. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applications will be ranked based on Total Business Plan Scores, in descending order. In order to advance to Step 4, Applicants must receive a Total Business Plan Score that is either (1) equal to receiving a point score equivalent to a ''Good'' out of a ranking scale in descending order of Excellent, Good, Fair, Limited or Poor, in each section listed in Table 13, or (2) within the top 70% of the NACA FA Applicant pool, whichever is greater. In the case of tied Total Business Plan Scores that would prevent an Applicant from moving to Step 4, all Applicants with the same score will progress to Step 4. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when determining the Step 4 Applicant pool.

TABLE 13—STEP 3: BASE–FA BUSINESS PLAN REVIEW SCORING CRITERIA

Base–FA application sections	Possible score	Score needed to advance
Executive Summary	Not Scored	N/A.
Business Strategy	12	N/A.
Market and Competitive Analysis	7	N/A.
Products and Services	12	N/A.
Management and Track Record	12	N/A.
Growth and Projections	7	N/A.
Total Business Plan Score	50	NACA Applicants: Top 70% of all NACA Applicant Step 3 Scores.

d. Step 4: Policy Objective Review: The CDFI Fund internal reviewers will evaluate each Application to determine its ability to meet policy objectives of the CDFI Fund. Each Applicant will be evaluated in each of the categories listed in Table 14 below, and will receive a Total Policy Objective Review Composite Score on a scale of one (1) to five (5), with one (1) being the highest score. Applicants are then grouped according to Total Policy Objective Review Scores.

The CDFI Fund also conducts a due diligence review for Applications that includes an analysis of programmatic risk factors including, but not limited to: History of performance in managing Federal awards (including timeliness of reporting and compliance); ability to meet FA Objective(s) selected by Base–FA Applicants in their Applications; reports and findings from audits; and the Applicant's ability to effectively implement Federal requirements, each of which could impact the Total Policy Objective Review Score.

TABLE 14—STEP 4: BASE–FA POLICY REVIEW SCORING CRITERIA

Section	Possible scores	High score	Score needed to advance
Economic Distress	1, 2, 3, 4, or 5	1	N/A.
Economic Opportunities	1, 2, 3, 4, or 5	1	N/A.
Community Collaboration	1, 2, 3, 4, or 5	1	N/A.
Total Policy Objective Review Composite Score	1, 2, 3, 4, or 5	1	All Scores Advance.

e. Step 5: Award Amount Determination: The CDFI Fund determines an award amount for each Application based on the Step 4 Total Policy Objective Review Score, the Applicant's request amount, and on certain other factors, including, but not limited to, an Applicant's deployment track record, minimum award size, and funding availability. Applicants may have Award amounts reduced from the requested award amount or not funded as a result of this analysis. Based on funding availability for Core, SECA, and/or NACA Base–FA Applicant types, the CDFI Fund reserves the right to not award all Applicants that advance to Step 5. In cases where funding availability is not sufficient to award all Applications, priority will be given to Applicants that score highest on the Step 4 Policy Objective review in each Applicant type Category (Core, SECA and/or NACA). For NACA FA Applicants, the award cannot exceed 100% of the Applicant's total portfolio outstanding as of the Applicant's most recent historic fiscal year end [9], or the minimum award size as noted in Table 2, whichever is greater.

2. Healthy Food Financing Initiative-FA (HFFI–FA) Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each HFFI–FA Application associated with a Base–FA Application that progresses to Step 4 of the FA Application review process. The reviewer will evaluate the Application sections listed in Table 15 and assign a Total HFFI–FA Score up to 60 points. The CDFI Fund will make awards to the highest scoring Applicants first. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that fail to receive a Base–FA award will not be considered for a HFFI–FA award.

The CDFI Fund conducts additional levels of due diligence for Applications that are under consideration for an HFFI–FA award. Award amounts may be reduced from the requested award amount as a result of this analysis. The CDFI Fund may reduce awards sizes from requested amounts based on certain variables, including but not limited to, an Applicant's loan disbursement activity, total portfolio outstanding, or compliance with prior HFFI–FA awards. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when making its funding decisions.

TABLE 15—STEP 4 HFFI–FA APPLICATION SCORING CRITERIA

Sections	Possible score (points)
Target Market Profile	10
Healthy Food Financial Products	10
Projected HFFI–FA Activities	15
HFFI Track Record	20
Management Capacity for Providing Healthy Food Financing	5
Total HFFI–FA Possible Score	60

3. Persistent Poverty Counties—Financial Assistance (PPC–FA) Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate the PPC–FA request of each associated Base-FA Application that progresses to Step 4 of the FA Application review process. PPC–FA requests are not scored. PPC–FA award amounts will be determined based on the total number of eligible Applicants and funding availability, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's overall portfolio size, historical track record of deployment in PPC, pipeline of projects in PPC, minimum award size, and funding availability. Applicants that fail to receive a Base-FA award will not be considered for a PPC–FA award.

4. Disability Funds-Financial Assistance (DF–FA) Application Scoring, Award Selection, Review, and Selection Process: A CDFI Fund internal reviewer will evaluate each DF–FA Application associated with a Base-FA Application that progresses to Step 4 of the FA Application review process. The reviewer will evaluate the Application and assign a Total DF–FA Score on a scale of one (1) to three (3), with one (1) being the highest score. Applicants are then grouped according to Total DF–FA Score. All Applications will be reviewed in accordance with standard reviewer evaluation materials. Applicants that fail to receive a Base–FA award will not be considered for a DF–FA award. Award amounts will be determined on the basis of the Total DF–FA Score, the Applicant's requested amount, and on certain factors, including but not limited to, an Applicant's deployment track record, minimum award size, and funding availability. Award amounts may be reduced from the requested award amount as a result of this analysis. The CDFI Fund will make awards to the highest scoring Applicants first.

TABLE 16—STEP 3 DF–FA APPLICATION SCORING CRITERIA

Section	Possible scores	High score
DF–FA Narrative Questions	1, 2, or 3	1

[9] For the purposes of this NOFA, an Applicant's most recent historic fiscal year end is determined as follows.

(A) Applicants with a 3/31 fiscal year end date will treat FY 2021 as their most recent historic fiscal year and FY 2022 as their current year.

(B) Applicants with a 6/30 fiscal year end date will treat FY 2021 as their most recent historic fiscal year and FY 2022 as their current year.

(C) Applicants with a 9/30 fiscal year end date and a completed FY 2021 audit will treat FY 2021 as their most recent historic fiscal year and FY 2022 as their current year.

(D) Applicants with a 9/30 fiscal year end date but without a final, completed FY 2021 audit will treat FY 2020 as their most recent historic fiscal year and FY 2021 as their current year.

(E) Applicants with a 12/31 fiscal year end date, with or without a final, completed FY 2021 audit, will treat FY 2020 as their most recent historic fiscal year and FY 2021 as their current year.

TABLE 16—STEP 3 DF–FA APPLICATION SCORING CRITERIA—Continued

Section	Possible scores	High score
Total DF–FA Score	1, 2, or 3	1

5. Technical Assistance (TA) Application Scoring, Award Selection, Review, and Selection Process: The CDFI Fund will evaluate each Application to determine its eligibility pursuant to Section III of this NOFA. If the Application satisfies the eligibility criteria, the CDFI Fund will evaluate the TA Application. Sponsoring Entity or Emerging CDFI Applicants must receive a rating of Low Risk or Medium Risk in Section I of the TA Business Plan Review to progress to Section II of the TA Business Plan Review. Sponsoring Entity, or Emerging CDFI Applicants that receive a rating of High Risk in Section I of the TA Business Plan Review will not be considered for an award. Section I of the TA Business Plan Review is not applicable for Certified CDFI Applicants. Sponsoring Entity, Emerging CDFI, and Certified CDFI Applicants must receive a rating of Low Risk or Medium Risk in Section II of the TA Business Plan Review to be considered for an award. Applicants that receive a rating of High Risk in Section II of the TA Business Plan Review will not be considered for an award.

An Applicant that is a Certified CDFI will be evaluated on the demonstrated need for TA funding to build the CDFI's capacity, further the Applicant's strategic goals, and achieve impact within the Applicant's Target Market. An Applicant that is an Emerging CDFI will be evaluated on the Applicant's demonstrated capability and plan to achieve CDFI certification within three years, or if a prior Recipient, the certification PG&M stated in its prior Assistance Agreement. An Applicant that is an Emerging CDFI will also be evaluated on its demonstrated need for TA funding to build the CDFI's capacity and further its strategic goals. An Applicant that is a Sponsoring Entity will be rated on its demonstrated capability to create a separate legal entity within one year that will achieve CDFI certification within four years. An Applicant that is a Sponsoring Entity will also be rated on its demonstrated need for TA funding to build the CDFI's capacity and further its strategic goals.

The CDFI Fund will rate each part of the TA Business Plan Review as indicated in Table 17.

TABLE 17—TA BUSINESS PLAN REVIEW

Business plan review component	Applicant type	Ratings
Section I:		
Primary Mission	Sponsoring Entity and Emerging CDFI Applicants	Low Risk, Medium Risk, or High Risk.
Financing Entity	Sponsoring Entity and Emerging CDFI Applicants.	
Target Market	Sponsoring Entity and Emerging CDFI Applicants.	
Accountability	Sponsoring Entity and Emerging CDFI Applicants.	
Development Services	Sponsoring Entity and Emerging CDFI Applicants.	
Section II:		
Target Market Needs & Strategy.	Sponsoring Entity, Emerging CDFI, and Certified Applicants	Low Risk, Medium Risk, or High Risk.
Organizational Capacity	Sponsoring Entity, Emerging CDFI, and Certified Applicants.	
Management Capacity	Sponsoring Entity, Emerging CDFI, and Certified Applicants.	

Each TA Application will be evaluated by one internal CDFI Fund reviewer. All Applications will be reviewed in accordance with CDFI Fund standard reviewer evaluation materials for the Business Plan Review.

The CDFI Fund conducts additional levels of due diligence for Applications that are under consideration for an award. This due diligence includes an analysis of programmatic and financial risk factors including, but not limited to, financial stability, history of performance in managing Federal awards (including timeliness of reporting and compliance), reports and findings from audits, and the Applicant's ability to effectively implement Federal requirements. The CDFI Fund will also evaluate the compliance risk of each Applicant using information provided in the Application as well as an Applicant's reporting history, reporting capacity, and performance risk with respect to the CDFI Fund's PG&Ms. Each Applicant will receive a Total Compliance Composite Score on a scale of one (1) to five (5), with one (1) being the highest rating. Applicants that receive an initial Total Compliance Composite Score of four (4) or five (5) will be re-evaluated by CDFI Fund staff. If the Applicant is deemed a high compliance risk after CDFI staff review, the Applicant will not be considered for an award. The CDFI Fund will also evaluate the Applicant's ability to meet certification criteria of being a legal entity and a non-government entity. Award amounts may be reduced as a result of the due diligence analysis in addition to consideration of the Applicant's funding request and similar factors. Lastly, the CDFI Fund may consider the geographic diversity of Applicants when making its funding decisions.

6. Regulated Institutions: The CDFI Fund will consider safety and soundness information from the Appropriate Federal or State Banking Agency. If the Applicant is a CDFI Depository Institution Holding Company, the CDFI Fund will consider information provided by the Appropriate Federal or State Banking Agencies about both the CDFI Depository Institution Holding Company and the Certified CDFI Subsidiary Insured Depository Institution that will expend and carry out the award. If the Appropriate Federal or State Banking Agency identifies safety and soundness concerns (including any concerns for Subsidiary Depository Institutions carrying out activities of an award on behalf of a CDFI Depostory Institution

Holding Company), the CDFI Fund will assess whether such concerns cause or will cause the Applicant to be incapable of undertaking the activities for which funding has been requested.

7. Non-Regulated Institutions: The CDFI Fund must ensure, to the maximum extent practicable, that Recipients which are non-regulated CDFIs are financially and managerially sound, and maintain appropriate internal controls (12 U.S.C. 4707(f)(1)(A) and 12 CFR 1805.800(b)). Further, the CDFI Fund must determine that an Applicant's capacity to operate as a CDFI and its continued viability will not be dependent upon assistance from the CDFI Fund (12 U.S.C. 4704(b)(2)(A)). If it is determined that the Applicant is incapable of meeting these requirements, the CDFI Fund reserves the right to deem the Applicant ineligible or terminate the award.

B. Anticipated Award Announcement: The CDFI Fund anticipates making NACA Program award announcement before September 30, 2022. However, the anticipated award Announcement Date is subject to change without notice.

C. Application Rejection: The CDFI Fund reserves the right to reject an Application if information (including administrative errors) comes to the CDFI Fund's attention that: Adversely affects an Applicant's eligibility for an award; adversely affects the Recipient's certification as a CDFI (to the extent that the award is conditional upon CDFI certification); adversely affects the CDFI Fund's evaluation or scoring of an Application; or indicates fraud or mismanagement on the Applicant's part. If the CDFI Fund determines any portion of the Application is incorrect in a material respect, the CDFI Fund reserves the right, in its sole discretion, to reject the Application. The CDFI Fund reserves the right to change its eligibility and evaluation criteria and procedures, if the CDFI Fund deems it appropriate. If the changes materially affect the CDFI Fund's award decisions, the CDFI Fund will provide information about the changes through its website. The CDFI Fund's award decisions are final, and there is no right to appeal decisions.

D. External Non-CDFI Fund Reviewers: All external non-CDFI Fund reviewers are selected based on criteria that includes a professional background in community and economic development finance, and experience reviewing the financial statements of all CDFI institution types. Reviewers must complete the CDFI Fund's conflict of interest process and be approved by the CDFI Fund. The CDFI Fund's Application reader conflict of interest policy is located on the CDFI Fund's website.

VI. Federal Award Administration Information

A. Award Notification: Each successful Applicant will receive an email ''notice of award'' notification from the CDFI Fund stating that its Application has been approved for an award. Each Applicant not selected for an award will receive an email stating that a debriefing notice has been provided in its AMIS account.

B. Assistance Agreement: Each Applicant selected to receive an award must enter into an Assistance Agreement with the CDFI Fund in order to receive a payment(s). The Assistance Agreement will set forth the award's terms and conditions, including but not be limited to the: (i) Award amount; (ii) award type; (iii) award uses; (iv) eligible use of funds; (v) PG&Ms; and (vi) reporting requirements. FA Assistance Agreements have three-year Periods of Performance. TA Assistance Agreements have two-year Periods of Performance for Certified CDFIs, three-year Periods of Performance for Emerging CDFIs, and four-year Periods of Performance for Sponsoring Entity Recipients. Upon creation of the Emerging CDFI, the Sponsoring Entity must request the CDFI Fund to amend the Assistance Agreement and add the Emerging CDFI as a party thereto. The Emerging CDFI, as co-Recipient, will be subject to all of the terms and conditions of the Assistance Agreement, including all PG&Ms.

1. Certificate of Good Standing: All FA and TA Recipients that are not Regulated Institutions will be required to provide the CDFI Fund with a certificate of good standing from the secretary of state for the Recipient's jurisdiction of formation prior to closing. This certificate can often be acquired online on the secretary of state website for the Recipient's jurisdiction of formation and must generally be dated within 180 days prior to the Federal Award Date of the Assistance Agreement. Due to potential backlogs in state government offices, Applicants are advised to submit requests for certificates of good standing no later than 60 days after they submit their Applications.

2. Closing: Pursuant to the Assistance Agreement, there will be an initial closing at which point the Assistance Agreement and related documents will be properly executed and delivered, and an initial payment of FA or TA may be made. The first payment is the estimated amount of the award that the Recipient states in its Application that it will use for eligible FA or TA activities in the first 12 months after the award announcement. The CDFI Fund reserves the right to increase the first payment amount on any award to ensure that any subsequent payments are at least $25,000 for FA and $5,000 for TA awards.

The CDFI Fund will minimize the time between the Recipient incurring costs for eligible activities and award payment(s) in accordance with the Uniform Requirements. Advanced payments for eligible activities will occur no more than one year in advance of the Recipient incurring costs for the eligible activities. Following the initial closing, there may be subsequent closings involving additional award payments. Any documentation in addition to the Assistance Agreement that is connected with such subsequent closings and payments shall be properly executed and timely delivered by the Recipient to the CDFI Fund.

3. Requirements Prior to Entering into an Assistance Agreement: If, prior to entering into an Assistance Agreement, information (including administrative errors) comes to the CDFI Fund's attention that: Adversely affects the Recipient's eligibility for an award; adversely affects the Recipient's certification as a CDFI (to the extent that the award is conditional upon CDFI certification); adversely affects the CDFI Fund's evaluation of the Application; indicates that the Recipient is not in compliance with any requirement listed in the Uniform Requirements; indicates that the Recipient is not in compliance with a term or condition of any prior award from the CDFI Fund; indicates the Recipient has failed to execute and return a prior round Assistance Agreement to the CDFI Fund within the CDFI Fund's deadlines; or indicates fraud or mismanagement on the Recipient's part, the CDFI Fund may, in its discretion and without advance notice to the Recipient, terminate the award or take such other actions as it deems appropriate. The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient fails to return the Assistance Agreement, signed by the Authorized Representative of the Recipient, and/or provide the CDFI Fund with any requested documentation, within the CDFI Fund's deadlines.

In addition, the CDFI Fund reserves the right, in its sole discretion, to terminate and rescind the Assistance Agreement and the award made under this NOFA pending the criteria described in the following table:

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Table 18. Requirements Prior to Executing an Assistance Agreement	
Requirement	**Criteria**
Failure to meet reporting requirements	• If a Recipient received a prior award under any CDFI Fund program and is not in compliance with the reporting requirements of the previously executed Award Agreement(s), Allocation Agreement(s), and/or Assistance Agreement(s), the CDFI Fund may delay entering into an Assistance Agreement or disbursing an award until such reporting requirements are met. If the Recipient is unable to meet the requirement(s) within the timeframe specified by the CDFI Fund, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA. • The automated systems the CDFI Fund uses only acknowledge a report's receipt and are not a determination of meeting reporting requirements.
Failure to maintain CDFI certification	• An FA Recipient must be a Certified CDFI. • If an FA Recipient fails to maintain CDFI certification, the CDFI Fund will terminate and rescind the Assistance Agreement and the award made under this NOFA. • If a TA Recipient is a Certified CDFI at the time of award announcement, it must maintain CDFI certification. • If a Certified CDFI TA Recipient fails to maintain CDFI certification, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA.
Pending resolution of noncompliance	• The CDFI Fund will delay entering into an Assistance Agreement with a Recipient that has pending noncompliance issues with any of its previously executed CDFI Award Agreement(s), Allocation Agreement(s), and/or Assistance Agreement(s), if the CDFI Fund has not yet made a final compliance determination. • If the Recipient is unable to satisfactorily resolve the compliance issues, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA.
Noncompliance or default status	• If, at any time prior to entering into an Assistance Agreement, the CDFI Fund determines that a Recipient is noncompliant or found in default with any previously executed Award Agreement(s), Allocation

	Agreement(s), and/or Assistance Agreement(s), and the CDFI Fund has provided written notification that the Recipient is ineligible to apply for or receive any future awards or allocations for a time period specified by the CDFI Fund in writing, the CDFI Fund may delay entering into an Assistance Agreement until the Recipient has cured the noncompliance by taking actions the CDFI Fund has specified within such specified timeframe. If the Recipient is unable to cure the noncompliance within the specified timeframe, the CDFI Fund may terminate and rescind the Assistance Agreement and the award made under this NOFA.
Compliance with Federal civil rights requirements	• If prior to entering into an Assistance Agreement under this NOFA, the Recipient receives a final determination, made within the last three years, in any proceeding instituted against the Recipient in, by, or before any court, governmental, or administrative body or agency, declaring that the Recipient has violated the following laws: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C.§ 2000d); Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794); the Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and Title IX of the Education Amendments of 1972, the CDFI Fund will terminate and rescind the Assistance Agreement and the award made under this NOFA.
Do Not Pay	• The Do Not Pay Business Center was developed to support Federal agencies in their efforts to reduce the number of improper payments made through programs funded by the Federal government. • The CDFI Fund reserves the right, in its sole discretion, to rescind an award if the Recipient (or Affiliate of a Recipient) determined to be ineligible based on data in the Do Not Pay database.
Safety and soundness	• If it is determined the Recipient is, or will be, incapable of meeting its award obligations, the CDFI Fund will deem the Recipient to be ineligible, or require it to improve its safety and soundness prior to entering into an Assistance Agreement.

C. Reporting

1. Reporting requirements: On an annual basis during the Period of Performance, the CDFI Fund may collect information from each Recipient including, but not limited to, an Annual Report with the following components (Annual Reporting Requirements):

Table 19. Annual Reporting Requirements*	
Financial Statement Audit Report (Non-profit Recipient including Insured Credit Unions and State-Insured Credit Unions)	A Non-profit Recipient (including Insured Credit Unions and State-Insured Credit Unions) must submit a Financial Statement Audit (FSA) Report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant, if any are prepared. Under no circumstances should this be construed as the CDFI Fund requiring the Recipient to conduct or arrange for additional audits not otherwise required under Uniform Requirements or otherwise prepared at the request of the Recipient or parties other than the CDFI Fund.
Financial Statement Audit Report (For-Profit Recipient)	For-profit Recipients must submit an FSA Report in AMIS, along with the Recipient's statement of financial condition audited or reviewed by an independent certified public accountant.
Financial Statement Audit Report (Depository Institution Holding Company and Insured Depository Institution)	If the Recipient is a Depository Institution Holding Company or an Insured Depository Institution, it must submit a FSA Report in AMIS.
Financial Statement Audit Report (Sponsoring Entities)	A Sponsoring Entity must submit a FSA Report in AMIS, along with a statement of financial condition audited or reviewed by an independent certified public accountant, if any are prepared. Under no circumstances should this be construed as the CDFI Fund requiring the Sponsoring Entity to conduct or arrange for additional audits not otherwise required under Uniform Requirements or otherwise prepared at the request of the Sponsoring Entity or parties other than the CDFI Fund.
Single Audit Report (Non-Profit Recipients, if applicable)	A non-profit Recipient must complete an annual Single Audit pursuant to the Uniform Requirements (see 2 CFR Subpart F-Audit Requirements) if it expends $750,000 or more in Federal awards in its fiscal year, or such other dollar threshold established by OMB pursuant to 2 CFR 200.501. If a Single Audit is required, it must be submitted electronically to the Federal Audit Clearinghouse (FAC) (see 2 CFR Subpart F-Audit Requirements in the Uniform Requirements) and optionally through AMIS.

Transaction Level Report (TLR)	The Recipient must submit a TLR to the CDFI Fund through AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a TLR. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the Financial Assistance, the Depository Institution Holding Company must submit a TLR. The TLR is not required for TA Recipients.
Uses of Award Report	The Recipient must submit the Uses of Award Report to the CDFI Fund in AMIS. If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a Uses of Award Report. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the Financial Assistance, the Depository Institution Holding Company must submit a Uses of Award Report.
Performance Progress Report	**The Recipient must submit the Performance Progress Report through AMIS.** **If the Recipient is a Depository Institution Holding Company that deploys all or a portion of its Financial Assistance through its Subsidiary CDFI Insured Depository Institution, that Subsidiary CDFI Insured Depository Institution must also submit a Performance Progress Report. Furthermore, if the Depository Institution Holding Company itself deploys any portion of the Financial Assistance, the Depository Institution Holding Company must submit a Performance Progress Report.**

* Personally Identifiable Information (PII) is information, which if lost, compromised, or disclosed without authorization, could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual. Although Applicants are required to enter addresses of individual borrowers/ residents of Distressed Communities in AMIS, Applicants should not include the following PII for the individuals who received the Financial Products or Financial Services in AMIS or in the supporting documentation (i.e., name of the individual, Social Security Number, driver's license or state identification number, passport number, Alien Registration Number, etc.). This information should be redacted from all supporting documentation.

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Each Recipient is responsible for the timely and complete submission of the Annual Reporting Requirements. Sponsoring Entities with co-Recipients will be informed of any changes to reporting obligations at the time the Emerging CDFI is joined to the Assistance Agreement. The CDFI Fund reserves the right to contact the Recipient and additional entities or signatories to the Assistance Agreement to request additional information and/or documentation. The CDFI Fund will use such information to monitor each Recipient's compliance with the

requirements of the Assistance Agreement and to assess the impact of the NACA Program. The CDFI Fund reserves the right, in its sole discretion, to modify these reporting requirements, including increasing the scope and frequency of reporting, if it determines it to be appropriate and necessary; however, such reporting requirements will be modified only after notice to Recipients.

2. Financial Management and Accounting: The CDFI Fund will require Recipients to maintain financial management and accounting systems that comply with Federal statutes, regulations, and the terms and conditions of the Federal award. These systems must be sufficient to permit the preparation of reports required by the CDFI Fund to ensure compliance with the terms and conditions of the NACA Program, including the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with Federal statutes, regulations, and the terms and conditions of the Federal award.

The cost principles used by Recipients must be consistent with Federal cost principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the NACA Program award. In addition, the CDFI Fund will require Recipients to: Maintain effective internal controls; comply with applicable statutes, regulations, and the Assistance Agreement; evaluate and monitor compliance; take appropriate action when not in compliance; and safeguard personally identifiable information.

VII. Agency Contacts

A. The CDFI Fund will respond to questions concerning this NOFA and the Application between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time, starting on the date that the NOFA is published through the date listed in Table 1 and Table 12. The CDFI Fund strongly recommends Applicants submit questions to the CDFI Fund via an AMIS Service Request to the NACA Program, Office of Compliance Monitoring and Evaluation, Office of Certification Policy and Evaluation, or IT Help Desk. The CDFI Fund will post on its website responses to reoccurring questions received about the NOFA and Application. Other information regarding the CDFI Fund and its programs may be obtained from the CDFI Fund's website at *http://www.cdfifund.gov.* Table 20 lists CDFI Fund contact information:

TABLE 20—CONTACT INFORMATION

Type of question	Preferred method	Telephone number (not toll free)	Email addresses
NACA Program	Service Request via AMIS	202–653–0421, option 1	*cdfihelp@cdfi.treas.gov.*
CME	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
CPE	Service Request via AMIS	202–653–0423	*ccme@cdfi.treas.gov.*
AMIS—IT Help Desk	Service Request via AMIS	202–653–0422	*AMIS@cdfi.treas.gov.*

B. Information Technology Support: For IT assistance, the preferred method of contact is to submit a Service Request within AMIS. For the Service Request, select ''Technical Issues'' from the Program dropdown menu of the Service Request. People who have visual or mobility impairments that prevent them from using the CDFI Fund's website should call (202) 653–0422 for assistance (this is not a toll free number).

C. Communication with the CDFI Fund: The CDFI Fund will use the contact information in AMIS to communicate with Applicants and Recipients. It is imperative, therefore, that Applicants, Recipients, Subsidiaries, Affiliates, and signatories maintain accurate contact information in their accounts. This includes information such as contact names (especially for the Authorized Representative), email addresses, fax and phone numbers, and office locations.

D. Civil Rights and Diversity: Any person who is eligible to receive benefits or services from the CDFI Fund or Recipients under any of its programs is entitled to those benefits or services without being subject to prohibited discrimination. The Department of the Treasury's Office of Civil Rights and Diversity enforces various Federal statutes and regulations that prohibit discrimination in financially assisted and conducted programs and activities of the CDFI Fund. If a person believes that s/he has been subjected to discrimination and/or reprisal because of membership in a protected group, s/he may file a complaint with: Associate Chief Human Capital Officer, Office of Civil Rights, and Diversity, 1500 Pennsylvania Ave NW, Washington, DC 20220 or (202) 622–1160 (not a toll-free number).

E. Statutory and National Policy Requirements: The CDFI Fund will manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with the U.S. Constitution, Federal Law, statutory, and public policy requirements: Including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

VIII. Other Information

A. Paperwork Reduction Act: Under the Paperwork Reduction Act (44 U.S.C. chapter 35), an agency may not conduct or sponsor a collection of information, and an individual is not required to respond to a collection of information, unless it displays a valid OMB control number. If applicable, the CDFI Fund may inform Applicants that they do not need to provide certain Application information otherwise required. Pursuant to the Paperwork Reduction Act, the CDFI Program, and NACA Program Application has been assigned the following control number: 1559–0021 inclusive of PPC–FA, DF–FA, and HFFI–FA.

B. Application Information Sessions: The CDFI Fund may conduct webinars or host information sessions for organizations that are considering applying to, or are interested in learning about, the CDFI Fund's programs. For further information, visit the CDFI Fund's website at *http://www.cdfifund.gov.*

(Authority: 12 U.S.C. 4701, et seq; 12 CFR parts 1805 and 1815; 2 CFR part 200.)

Jodie L. Harris,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2022–02899 Filed 2–10–22; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: Suicide Prevention 2.0 Program—Community Opinion Survey

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, 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–NEW.

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–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–21.

Title: Suicide Prevention 2.0 Program—Community Opinion Survey.

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: VA authority for this data collection is found under 38 U.S.C., Part I, Chapter 5, Section 527, which authorizes the collection of data that will allow measurement and evaluation of VA Programs, the goal of which is improved health care for veterans. The information will be used to accomplish three aims: (1) Collect baseline data on the knowledge and attitudes of adult US citizens living in specified communities about veterans, veteran suicide, and resources available to veterans to reduce suicide, prior to the implementation of suicide prevention programs; (2) collect follow-up data in the same communities to assess whether those knowledge and attitudes have changed over time; and (3) determine whether the programs and policies implemented by a community resulted in positive change in knowledge and attitudes.

The data will be utilized by the Office of Mental Health and Suicide Prevention in VA Central Office to measure the return on investment of significant resources that have been invested to support communities in their efforts to reduce veteran suicide. Specifically, the Community-Based Interventions (CBI) arm of VA's ''Suicide Prevention 2.0'' (SP2.0) program has launched two different initiatives whose goals are to increase the successful implementation of best practices to prevent veteran suicide in local communities. The data will allow VA to measure a baseline level of expected outcomes, follow-up levels, and explore the role of new programs in any changes, as well as inform program planning and evaluation.

In addition, the data collected will be used by State teams that are engaged in the Governor's Challenge (GC) initiative. GC is one of the initiatives supported by SP2.0 and is structured so that State teams are provided training and technical assistance by VA to expand their efforts to implement suicide prevention programs in their State. This data collection will assist the State teams to assess the effects of their new programming or policies.

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 218 on November 16, 2021, page 63455.

Affected Public: Individuals or Households.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 10,000.

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. 2022–02924 Filed 2–10–22; 8:45 am]

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Vol. 87, No. 29

Friday, February 11, 2022

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FEDERAL REGISTER PAGES AND DATE, FEBRUARY

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
10336 6395
10337 6397
10338 6401
10339 7357

Executive Orders:
13502 (revoked by 14063) 7363
14063 7363

Administrative Orders:
Presidential Determinations:
Presidential Determination No. 2022–09 of Feb. 1, 2022 6759
Notices:
Notice of February 7, 2022 7677

5 CFR

Proposed Rules:
Ch. III 5409

6 CFR

5 6403

7 CFR

210 6984
215 6984
220 6984
226 6984
460 7927
3550 6761
3555 6773
5001 7367

Proposed Rules:
205 5424

8 CFR

214 6017
274a 6017

10 CFR

Proposed Rules:
50 6434
429 ..... 5560, 6436, 6948, 7048
430 ..... 5742, 6786, 7396, 7758
431 ..... 5560, 6436, 6948, 7048

12 CFR

Proposed Rules:
701 6078

14 CFR

25 6017
39 ..... 5389, 5391, 6404, 6777, 7025, 7027, 7029, 7033, 7368, 7679, 7681, 7683, 7685, 7687, 7690, 7692, 7695, 7698, 7701, 7703, 7705, 7708, 7710, 7713, 7931
71 ..... 6406, 6408, 6409, 6410, 6412, 6413, 7715
97 ..... 6019, 6021
399 5655

Proposed Rules:
27 6437
39 ..... 5428, 6082, 6087, 6089, 6091, 6795, 6798, 6802, 7056, 7059, 7062, 7065, 7397, 7765, 7768, 7770, 7774, 7965
71 ..... 5747, 6439, 6804, 7400, 7776
183 7068
193 7968

15 CFR

734 6022
736 6022
744 ..... 6022, 7037
774 6022

Proposed Rules:
30 6440
Ch. VII 7777

16 CFR

Proposed Rules:
1112 6246
1261 6246

17 CFR

249 7934

Proposed Rules:
229 5751
240 ..... 5751, 6652
249 5751
270 7248
274 7248

18 CFR

381 5659

20 CFR

655 6017

Proposed Rules:
220 6094

21 CFR

1 5660
866 6415
870 6417
878 6419
880 6422

Proposed Rules:
10 6708
12 6708
16 6708
203 ..... 6443, 6449
205 6708

22 CFR

Proposed Rules:
120.....5759
126.....5759
127.....5759

27 CFR

5.....7526
7.....7526

28 CFR

523.....7938

29 CFR

2702.....5393

31 CFR

501.....7369
510.....7369
535.....7369
536.....7369
539.....7369
541.....7369
542.....7369
544.....7369
546.....7369
547.....7369
548.....7369
549.....7369
550.....7374
551.....7369
552.....7369
554.....7943
560.....7369
561.....7369
566.....7369
576.....7369
583.....7369
584.....7369
588.....7369
590.....7369
592.....7369
594.....7369
597.....7369
598.....7369

Proposed Rules:
Ch. X.....7068

32 CFR

313.....7944

33 CFR

Ch. I.....7716
Subchapter N.....7716
100.....6026, 7716
117.....5401, 7945
127.....5660
165.....6031, 7042, 7382, 7384, 7946

Proposed Rules:
100.....5430
165.....6450

34 CFR

Proposed Rules:
Ch. III.....5432

36 CFR

7.....5402
251.....7947
1155.....5692
1195.....6037

37 CFR

Proposed Rules:
201.....6452
202.....6452

38 CFR

1.....5693
3.....6038
17.....6425
21.....6427

Proposed Rules:
17.....6456
38.....7402

39 CFR

3040.....6428

40 CFR

49.....7718
52.....7069, 7387, 7722, 7725, 7728
80.....5696
81.....7734
180.....5703, 5709, 6039, 6779, 7388, 7950, 7953

Proposed Rules:
52.....5435, 5438, 5761, 6095, 6806, 7042, 7071, 7404, 7410, 7779, 7784, 7786, 7788, 7970, 7978
55.....7790
63.....6466, 7624
81.....5438, 6806, 7978
87.....6324
141.....7412
171.....6821
271.....5450
1030.....6324
1031.....6324

41 CFR

102–35.....6042
102–37.....6042
102–77.....5711

42 CFR

403.....7746
405.....7746
410.....7746
411.....7746
414.....7746
415.....7746
423.....7746
424.....7746
425.....7746

46 CFR

10.....7716
11.....7716
15.....7716
107.....7716

47 CFR

25.....7748
64.....7044, 7955
73.....6043, 7045, 7748
76.....7748

Proposed Rules:
8.....6827
11.....7413
73.....6100, 6473

48 CFR

332.....5717
352.....5717
501.....7393
502.....7393
511.....7393
538.....6044
539.....7393
552.....6044, 7393
570.....7393

49 CFR

219.....5719
383.....6045
391.....7756
571.....7956, 7964
659.....6783

50 CFR

17.....5737, 6046, 6063
300.....7964
635.....5737
648.....5405, 5739, 7046
679.....7756

Proposed Rules:
17.....5767, 6101, 6118, 7077
20.....5946
216.....6474
300.....6474
665.....6479

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List February 4, 2022

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