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Title 3—

The President

Executive Order 14067 of March 9, 2022

Ensuring Responsible Development of Digital Assets

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* Advances in digital and distributed ledger technology for financial services have led to dramatic growth in markets for digital assets, with profound implications for the protection of consumers, investors, and businesses, including data privacy and security; financial stability and systemic risk; crime; national security; the ability to exercise human rights; financial inclusion and equity; and energy demand and climate change. In November 2021, non–state issued digital assets reached a combined market capitalization of $3 trillion, up from approximately $14 billion in early November 2016. Monetary authorities globally are also exploring, and in some cases introducing, central bank digital currencies (CBDCs).

While many activities involving digital assets are within the scope of existing domestic laws and regulations, an area where the United States has been a global leader, growing development and adoption of digital assets and related innovations, as well as inconsistent controls to defend against certain key risks, necessitate an evolution and alignment of the United States Government approach to digital assets. The United States has an interest in responsible financial innovation, expanding access to safe and affordable financial services, and reducing the cost of domestic and cross-border funds transfers and payments, including through the continued modernization of public payment systems. We must take strong steps to reduce the risks that digital assets could pose to consumers, investors, and business protections; financial stability and financial system integrity; combating and preventing crime and illicit finance; national security; the ability to exercise human rights; financial inclusion and equity; and climate change and pollution.

Sec. 2. *Objectives.* The principal policy objectives of the United States with respect to digital assets are as follows:

(a) We must protect consumers, investors, and businesses in the United States. The unique and varied features of digital assets can pose significant financial risks to consumers, investors, and businesses if appropriate protections are not in place. In the absence of sufficient oversight and standards, firms providing digital asset services may provide inadequate protections for sensitive financial data, custodial and other arrangements relating to customer assets and funds, or disclosures of risks associated with investment. Cybersecurity and market failures at major digital asset exchanges and trading platforms have resulted in billions of dollars in losses. The United States should ensure that safeguards are in place and promote the responsible development of digital assets to protect consumers, investors, and businesses; maintain privacy; and shield against arbitrary or unlawful surveillance, which can contribute to human rights abuses.

(b) We must protect United States and global financial stability and mitigate systemic risk. Some digital asset trading platforms and service providers have grown rapidly in size and complexity and may not be subject to or in compliance with appropriate regulations or supervision. Digital asset issuers, exchanges and trading platforms, and intermediaries whose activities may increase risks to financial stability, should, as appropriate, be subject to and in compliance with regulatory and supervisory standards that govern traditional market infrastructures and financial firms, in line with the general

principle of ''same business, same risks, same rules.'' The new and unique uses and functions that digital assets can facilitate may create additional economic and financial risks requiring an evolution to a regulatory approach that adequately addresses those risks.

(c) We must mitigate the illicit finance and national security risks posed by misuse of digital assets. Digital assets may pose significant illicit finance risks, including money laundering, cybercrime and ransomware, narcotics and human trafficking, and terrorism and proliferation financing. Digital assets may also be used as a tool to circumvent United States and foreign financial sanctions regimes and other tools and authorities. Further, while the United States has been a leader in setting international standards for the regulation and supervision of digital assets for anti–money laundering and countering the financing of terrorism (AML/CFT), poor or nonexistent implementation of those standards in some jurisdictions abroad can present significant illicit financing risks for the United States and global financial systems. Illicit actors, including the perpetrators of ransomware incidents and other cybercrime, often launder and cash out of their illicit proceeds using digital asset service providers in jurisdictions that have not yet effectively implemented the international standards set by the inter-governmental Financial Action Task Force (FATF). The continued availability of service providers in jurisdictions where international AML/CFT standards are not effectively implemented enables financial activity without illicit finance controls. Growth in decentralized financial ecosystems, peer-to-peer payment activity, and obscured blockchain ledgers without controls to mitigate illicit finance could also present additional market and national security risks in the future. The United States must ensure appropriate controls and accountability for current and future digital assets systems to promote high standards for transparency, privacy, and security—including through regulatory, governance, and technological measures—that counter illicit activities and preserve or enhance the efficacy of our national security tools. When digital assets are abused or used in illicit ways, or undermine national security, it is in the national interest to take actions to mitigate these illicit finance and national security risks through regulation, oversight, law enforcement action, or use of other United States Government authorities.

(d) We must reinforce United States leadership in the global financial system and in technological and economic competitiveness, including through the responsible development of payment innovations and digital assets. The United States has an interest in ensuring that it remains at the forefront of responsible development and design of digital assets and the technology that underpins new forms of payments and capital flows in the international financial system, particularly in setting standards that promote: democratic values; the rule of law; privacy; the protection of consumers, investors, and businesses; and interoperability with digital platforms, legacy architecture, and international payment systems. The United States derives significant economic and national security benefits from the central role that the United States dollar and United States financial institutions and markets play in the global financial system. Continued United States leadership in the global financial system will sustain United States financial power and promote United States economic interests.

(e) We must promote access to safe and affordable financial services. Many Americans are underbanked and the costs of cross-border money transfers and payments are high. The United States has a strong interest in promoting responsible innovation that expands equitable access to financial services, particularly for those Americans underserved by the traditional banking system, including by making investments and domestic and cross-border funds transfers and payments cheaper, faster, and safer, and by promoting greater and more cost-efficient access to financial products and services. The United States also has an interest in ensuring that the benefits of financial innovation are enjoyed equitably by all Americans and that any disparate impacts of financial innovation are mitigated.

(f) We must support technological advances that promote responsible development and use of digital assets. The technological architecture of different digital assets has substantial implications for privacy, national security, the operational security and resilience of financial systems, climate change, the ability to exercise human rights, and other national goals. The United States has an interest in ensuring that digital asset technologies and the digital payments ecosystem are developed, designed, and implemented in a responsible manner that includes privacy and security in their architecture, integrates features and controls that defend against illicit exploitation, and reduces negative climate impacts and environmental pollution, as may result from some cryptocurrency mining.

Sec. 3. *Coordination.* The Assistant to the President for National Security Affairs (APNSA) and the Assistant to the President for Economic Policy (APEP) shall coordinate, through the interagency process described in National Security Memorandum 2 of February 4, 2021 (Renewing the National Security Council System), the executive branch actions necessary to implement this order. The interagency process shall include, as appropriate: the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Labor, the Secretary of Energy, the Secretary of Homeland Security, the Administrator of the Environmental Protection Agency, the Director of the Office of Management and Budget, the Director of National Intelligence, the Director of the Domestic Policy Council, the Chair of the Council of Economic Advisers, the Director of the Office of Science and Technology Policy, the Administrator of the Office of Information and Regulatory Affairs, the Director of the National Science Foundation, and the Administrator of the United States Agency for International Development. Representatives of other executive departments and agencies (agencies) and other senior officials may be invited to attend interagency meetings as appropriate, including, with due respect for their regulatory independence, representatives of the Board of Governors of the Federal Reserve System, the Consumer Financial Protection Bureau (CFPB), the Federal Trade Commission (FTC), the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and other Federal regulatory agencies.

Sec. 4. *Policy and Actions Related to United States Central Bank Digital Currencies.* (a) The policy of my Administration on a United States CBDC is as follows:

(i) Sovereign money is at the core of a well-functioning financial system, macroeconomic stabilization policies, and economic growth. My Administration places the highest urgency on research and development efforts into the potential design and deployment options of a United States CBDC. These efforts should include assessments of possible benefits and risks for consumers, investors, and businesses; financial stability and systemic risk; payment systems; national security; the ability to exercise human rights; financial inclusion and equity; and the actions required to launch a United States CBDC if doing so is deemed to be in the national interest.

(ii) My Administration sees merit in showcasing United States leadership and participation in international fora related to CBDCs and in multi-country conversations and pilot projects involving CBDCs. Any future dollar payment system should be designed in a way that is consistent with United States priorities (as outlined in section 4(a)(i) of this order) and democratic values, including privacy protections, and that ensures the global financial system has appropriate transparency, connectivity, and platform and architecture interoperability or transferability, as appropriate.

(iii) A United States CBDC may have the potential to support efficient and low-cost transactions, particularly for cross-border funds transfers and payments, and to foster greater access to the financial system, with fewer of the risks posed by private sector-administered digital assets. A United States CBDC that is interoperable with CBDCs issued by other monetary

authorities could facilitate faster and lower-cost cross-border payments and potentially boost economic growth, support the continued centrality of the United States within the international financial system, and help to protect the unique role that the dollar plays in global finance. There are also, however, potential risks and downsides to consider. We should prioritize timely assessments of potential benefits and risks under various designs to ensure that the United States remains a leader in the international financial system.

(b) Within 180 days of the date of this order, the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of National Intelligence, and the heads of other relevant agencies, shall submit to the President a report on the future of money and payment systems, including the conditions that drive broad adoption of digital assets; the extent to which technological innovation may influence these outcomes; and the implications for the United States financial system, the modernization of and changes to payment systems, economic growth, financial inclusion, and national security. This report shall be coordinated through the interagency process described in section 3 of this order. Based on the potential United States CBDC design options, this report shall include an analysis of:

(i) the potential implications of a United States CBDC, based on the possible design choices, for national interests, including implications for economic growth and stability;

(ii) the potential implications a United States CBDC might have on financial inclusion;

(iii) the potential relationship between a CBDC and private sector-administered digital assets;

(iv) the future of sovereign and privately produced money globally and implications for our financial system and democracy;

(v) the extent to which foreign CBDCs could displace existing currencies and alter the payment system in ways that could undermine United States financial centrality;

(vi) the potential implications for national security and financial crime, including an analysis of illicit financing risks, sanctions risks, other law enforcement and national security interests, and implications for human rights; and

(vii) an assessment of the effects that the growth of foreign CBDCs may have on United States interests generally.

(c) The Chairman of the Board of Governors of the Federal Reserve System (Chairman of the Federal Reserve) is encouraged to continue to research and report on the extent to which CBDCs could improve the efficiency and reduce the costs of existing and future payments systems, to continue to assess the optimal form of a United States CBDC, and to develop a strategic plan for Federal Reserve and broader United States Government action, as appropriate, that evaluates the necessary steps and requirements for the potential implementation and launch of a United States CBDC. The Chairman of the Federal Reserve is also encouraged to evaluate the extent to which a United States CBDC, based on the potential design options, could enhance or impede the ability of monetary policy to function effectively as a critical macroeconomic stabilization tool.

(d) The Attorney General, in consultation with the Secretary of the Treasury and the Chairman of the Federal Reserve, shall:

(i) within 180 days of the date of this order, provide to the President through the APNSA and APEP an assessment of whether legislative changes would be necessary to issue a United States CBDC, should it be deemed appropriate and in the national interest; and

(ii) within 210 days of the date of this order, provide to the President through the APNSA and the APEP a corresponding legislative proposal, based on consideration of the report submitted by the Secretary of the Treasury under section 4(b) of this order and any materials developed by the Chairman of the Federal Reserve consistent with section 4(c) of this order.

Sec. 5. *Measures to Protect Consumers, Investors, and Businesses.* (a) The increased use of digital assets and digital asset exchanges and trading platforms may increase the risks of crimes such as fraud and theft, other statutory and regulatory violations, privacy and data breaches, unfair and abusive acts or practices, and other cyber incidents faced by consumers, investors, and businesses. The rise in use of digital assets, and differences across communities, may also present disparate financial risk to less informed market participants or exacerbate inequities. It is critical to ensure that digital assets do not pose undue risks to consumers, investors, or businesses, and to put in place protections as a part of efforts to expand access to safe and affordable financial services.

(b) Consistent with the goals stated in section 5(a) of this order:

(i) Within 180 days of the date of this order, the Secretary of the Treasury, in consultation with the Secretary of Labor and the heads of other relevant agencies, including, as appropriate, the heads of independent regulatory agencies such as the FTC, the SEC, the CFTC, Federal banking agencies, and the CFPB, shall submit to the President a report, or section of the report required by section 4 of this order, on the implications of developments and adoption of digital assets and changes in financial market and payment system infrastructures for United States consumers, investors, businesses, and for equitable economic growth. One section of the report shall address the conditions that would drive mass adoption of different types of digital assets and the risks and opportunities such growth might present to United States consumers, investors, and businesses, including a focus on how technological innovation may impact these efforts and with an eye toward those most vulnerable to disparate impacts. The report shall also include policy recommendations, including potential regulatory and legislative actions, as appropriate, to protect United States consumers, investors, and businesses, and support expanding access to safe and affordable financial services. The report shall be coordinated through the interagency process described in section 3 of this order.

(ii) Within 180 days of the date of this order, the Director of the Office of Science and Technology Policy and the Chief Technology Officer of the United States, in consultation with the Secretary of the Treasury, the Chairman of the Federal Reserve, and the heads of other relevant agencies, shall submit to the President a technical evaluation of the technological infrastructure, capacity, and expertise that would be necessary at relevant agencies to facilitate and support the introduction of a CBDC system should one be proposed. The evaluation should specifically address the technical risks of the various designs, including with respect to emerging and future technological developments, such as quantum computing. The evaluation should also include any reflections or recommendations on how the inclusion of digital assets in Federal processes may affect the work of the United States Government and the provision of Government services, including risks and benefits to cybersecurity, customer experience, and social-safety-net programs. The evaluation shall be coordinated through the interagency process described in section 3 of this order.

(iii) Within 180 days of the date of this order, the Attorney General, in consultation with the Secretary of the Treasury and the Secretary of Homeland Security, shall submit to the President a report on the role of law enforcement agencies in detecting, investigating, and prosecuting criminal activity related to digital assets. The report shall include any recommendations on regulatory or legislative actions, as appropriate.

(iv) The Attorney General, the Chair of the FTC, and the Director of the CFPB are each encouraged to consider what, if any, effects the growth of digital assets could have on competition policy.

(v) The Chair of the FTC and the Director of the CFPB are each encouraged to consider the extent to which privacy or consumer protection measures within their respective jurisdictions may be used to protect users of digital assets and whether additional measures may be needed.

(vi) The Chair of the SEC, the Chairman of the CFTC, the Chairman of the Federal Reserve, the Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation, and the Comptroller of the Currency are each encouraged to consider the extent to which investor and market protection measures within their respective jurisdictions may be used to address the risks of digital assets and whether additional measures may be needed.

(vii) Within 180 days of the date of this order, the Director of the Office of Science and Technology Policy, in consultation with the Secretary of the Treasury, the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Chair of the Council of Economic Advisers, the Assistant to the President and National Climate Advisor, and the heads of other relevant agencies, shall submit a report to the President on the connections between distributed ledger technology and short-, medium-, and long-term economic and energy transitions; the potential for these technologies to impede or advance efforts to tackle climate change at home and abroad; and the impacts these technologies have on the environment. This report shall be coordinated through the interagency process described in section 3 of this order. The report should also address the effect of cryptocurrencies' consensus mechanisms on energy usage, including research into potential mitigating measures and alternative mechanisms of consensus and the design tradeoffs those may entail. The report should specifically address:

(A) potential uses of blockchain that could support monitoring or mitigating technologies to climate impacts, such as exchanging of liabilities for greenhouse gas emissions, water, and other natural or environmental assets; and

(B) implications for energy policy, including as it relates to grid management and reliability, energy efficiency incentives and standards, and sources of energy supply.

(viii) Within 1 year of submission of the report described in section 5(b)(vii) of this order, the Director of the Office of Science and Technology Policy, in consultation with the Secretary of the Treasury, the Secretary of Energy, the Administrator of the Environmental Protection Agency, the Chair of the Council of Economic Advisers, and the heads of other relevant agencies, shall update the report described in section 5(b)(vii) of this order, including to address any knowledge gaps identified in such report.

Sec. 6. *Actions to Promote Financial Stability, Mitigate Systemic Risk, and Strengthen Market Integrity.* (a) Financial regulators—including the SEC, the CFTC, and the CFPB and Federal banking agencies—play critical roles in establishing and overseeing protections across the financial system that safeguard its integrity and promote its stability. Since 2017, the Secretary of the Treasury has convened the Financial Stability Oversight Council (FSOC) to assess the financial stability risks and regulatory gaps posed by the ongoing adoption of digital assets. The United States must assess and take steps to address risks that digital assets pose to financial stability and financial market integrity.

(b) Within 210 days of the date of this order, the Secretary of the Treasury should convene the FSOC and produce a report outlining the specific financial stability risks and regulatory gaps posed by various types of digital assets and providing recommendations to address such risks. As the Secretary

of the Treasury and the FSOC deem appropriate, the report should consider the particular features of various types of digital assets and include recommendations that address the identified financial stability risks posed by these digital assets, including any proposals for additional or adjusted regulation and supervision as well as for new legislation. The report should take account of the prior analyses and assessments of the FSOC, agencies, and the President's Working Group on Financial Markets, including the ongoing work of the Federal banking agencies, as appropriate.

Sec. 7. *Actions to Limit Illicit Finance and Associated National Security Risks.* (a) Digital assets have facilitated sophisticated cybercrime-related financial networks and activity, including through ransomware activity. The growing use of digital assets in financial activity heightens risks of crimes such as money laundering, terrorist and proliferation financing, fraud and theft schemes, and corruption. These illicit activities highlight the need for ongoing scrutiny of the use of digital assets, the extent to which technological innovation may impact such activities, and exploration of opportunities to mitigate these risks through regulation, supervision, public-private engagement, oversight, and law enforcement.

(b) Within 90 days of submission to the Congress of the National Strategy for Combating Terrorist and Other Illicit Financing, the Secretary of the Treasury, the Secretary of State, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of National Intelligence, and the heads of other relevant agencies may each submit to the President supplemental annexes, which may be classified or unclassified, to the Strategy offering additional views on illicit finance risks posed by digital assets, including cryptocurrencies, stablecoins, CBDCs, and trends in the use of digital assets by illicit actors.

(c) Within 120 days of submission to the Congress of the National Strategy for Combating Terrorist and Other Illicit Financing, the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, the Secretary of Commerce, the Secretary of Homeland Security, the Director of the Office of Management and Budget, the Director of National Intelligence, and the heads of other relevant agencies shall develop a coordinated action plan based on the Strategy's conclusions for mitigating the digital-asset-related illicit finance and national security risks addressed in the updated strategy. This action plan shall be coordinated through the interagency process described in section 3 of this order. The action plan shall address the role of law enforcement and measures to increase financial services providers' compliance with AML/CFT obligations related to digital asset activities.

(d) Within 120 days following completion of all of the following reports—the National Money Laundering Risk Assessment; the National Terrorist Financing Risk Assessment; the National Proliferation Financing Risk Assessment; and the updated National Strategy for Combating Terrorist and Other Illicit Financing—the Secretary of the Treasury shall notify the relevant agencies through the interagency process described in section 3 of this order on any pending, proposed, or prospective rulemakings to address digital asset illicit finance risks. The Secretary of the Treasury shall consult with and consider the perspectives of relevant agencies in evaluating opportunities to mitigate such risks through regulation.

Sec. 8. *Policy and Actions Related to Fostering International Cooperation and United States Competitiveness.* (a) The policy of my Administration on fostering international cooperation and United States competitiveness with respect to digital assets and financial innovation is as follows:

(i) Technology-driven financial innovation is frequently cross-border and therefore requires international cooperation among public authorities. This cooperation is critical to maintaining high regulatory standards and a level playing field. Uneven regulation, supervision, and compliance across jurisdictions creates opportunities for arbitrage and raises risks to financial

stability and the protection of consumers, investors, businesses, and markets. Inadequate AML/CFT regulation, supervision, and enforcement by other countries challenges the ability of the United States to investigate illicit digital asset transaction flows that frequently jump overseas, as is often the case in ransomware payments and other cybercrime-related money laundering. There must also be cooperation to reduce inefficiencies in international funds transfer and payment systems.

(ii) The United States Government has been active in international fora and through bilateral partnerships on many of these issues and has a robust agenda to continue this work in the coming years. While the United States held the position of President of the FATF, the United States led the group in developing and adopting the first international standards on digital assets. The United States must continue to work with international partners on standards for the development and appropriate interoperability of digital payment architectures and CBDCs to reduce payment inefficiencies and ensure that any new funds transfer and payment systems are consistent with United States values and legal requirements.

(iii) While the United States held the position of President of the 2020 G7, the United States established the G7 Digital Payments Experts Group to discuss CBDCs, stablecoins, and other digital payment issues. The G7 report outlining a set of policy principles for CBDCs is an important contribution to establishing guidelines for jurisdictions for the exploration and potential development of CBDCs. While a CBDC would be issued by a country's central bank, the supporting infrastructure could involve both public and private participants. The G7 report highlighted that any CBDC should be grounded in the G7's long-standing public commitments to transparency, the rule of law, and sound economic governance, as well as the promotion of competition and innovation.

(iv) The United States continues to support the G20 roadmap for addressing challenges and frictions with cross-border funds transfers and payments for which work is underway, including work on improvements to existing systems for cross-border funds transfers and payments, the international dimensions of CBDC designs, and the potential of well-regulated stablecoin arrangements. The international Financial Stability Board (FSB), together with standard-setting bodies, is leading work on issues related to stablecoins, cross-border funds transfers and payments, and other international dimensions of digital assets and payments, while FATF continues its leadership in setting AML/CFT standards for digital assets. Such international work should continue to address the full spectrum of issues and challenges raised by digital assets, including financial stability, consumer, investor, and business risks, and money laundering, terrorist financing, proliferation financing, sanctions evasion, and other illicit activities.

(v) My Administration will elevate the importance of these topics and expand engagement with our critical international partners, including through fora such as the G7, G20, FATF, and FSB. My Administration will support the ongoing international work and, where appropriate, push for additional work to drive development and implementation of holistic standards, cooperation and coordination, and information sharing. With respect to digital assets, my Administration will seek to ensure that our core democratic values are respected; consumers, investors, and businesses are protected; appropriate global financial system connectivity and platform and architecture interoperability are preserved; and the safety and soundness of the global financial system and international monetary system are maintained.

(b) In furtherance of the policy stated in section 8(a) of this order:

(i) Within 120 days of the date of this order, the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Commerce, the Administrator of the United States Agency for International Development, and the heads of other relevant agencies, shall establish a framework for interagency international engagement with foreign counterparts and

in international fora to, as appropriate, adapt, update, and enhance adoption of global principles and standards for how digital assets are used and transacted, and to promote development of digital asset and CBDC technologies consistent with our values and legal requirements. This framework shall be coordinated through the interagency process described in section 3 of this order. This framework shall include specific and prioritized lines of effort and coordinated messaging; interagency engagement and activities with foreign partners, such as foreign assistance and capacity-building efforts and coordination of global compliance; and whole-of-government efforts to promote international principles, standards, and best practices. This framework should reflect ongoing leadership by the Secretary of the Treasury and financial regulators in relevant international financial standards bodies, and should elevate United States engagement on digital assets issues in technical standards bodies and other international fora to promote development of digital asset and CBDC technologies consistent with our values.

(ii) Within 1 year of the date of the establishment of the framework required by section 8(b)(i) of this order, the Secretary of the Treasury, in consultation with the Secretary of State, the Secretary of Commerce, the Director of the Office of Management and Budget, the Administrator of the United States Agency for International Development, and the heads of other relevant agencies as appropriate, shall submit a report to the President on priority actions taken under the framework and its effectiveness. This report shall be coordinated through the interagency process described in section 3 of this order.

(iii) Within 180 days of the date of this order, the Secretary of Commerce, in consultation with the Secretary of State, the Secretary of the Treasury, and the heads of other relevant agencies, shall establish a framework for enhancing United States economic competitiveness in, and leveraging of, digital asset technologies. This framework shall be coordinated through the interagency process described in section 3 of this order.

(iv) Within 90 days of the date of this order, the Attorney General, in consultation with the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security, shall submit a report to the President on how to strengthen international law enforcement cooperation for detecting, investigating, and prosecuting criminal activity related to digital assets.

Sec. 9. *Definitions.* For the purposes of this order:

(a) The term ''blockchain'' refers to distributed ledger technologies where data is shared across a network that creates a digital ledger of verified transactions or information among network participants and the data are typically linked using cryptography to maintain the integrity of the ledger and execute other functions, including transfer of ownership or value.

(b) The term ''central bank digital currency'' or ''CBDC'' refers to a form of digital money or monetary value, denominated in the national unit of account, that is a direct liability of the central bank.

(c) The term ''cryptocurrencies'' refers to a digital asset, which may be a medium of exchange, for which generation or ownership records are supported through a distributed ledger technology that relies on cryptography, such as a blockchain.

(d) The term ''digital assets'' refers to all CBDCs, regardless of the technology used, and to other representations of value, financial assets and instruments, or claims that are used to make payments or investments, or to transmit or exchange funds or the equivalent thereof, that are issued or represented in digital form through the use of distributed ledger technology. For example, digital assets include cryptocurrencies, stablecoins, and CBDCs. Regardless of the label used, a digital asset may be, among other things, a security, a commodity, a derivative, or other financial product.

Digital assets may be exchanged across digital asset trading platforms, including centralized and decentralized finance platforms, or through peer-to-peer technologies.

(e) The term ''stablecoins'' refers to a category of cryptocurrencies with mechanisms that are aimed at maintaining a stable value, such as by pegging the value of the coin to a specific currency, asset, or pool of assets or by algorithmically controlling supply in response to changes in demand in order to stabilize value.

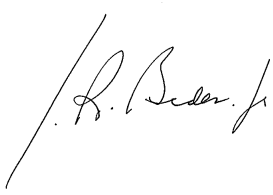
Sec. 10. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
March 9, 2022.

[FR Doc. 2022–05471
Filed 3–11–22; 8:45 am]
Billing code 3395–F2–P

Rules and Regulations

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Monday, March 14, 2022

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0157; Project Identifier AD–2022–00193–R; Amendment 39–21969; AD 2022–06–03]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Inc. (Type Certificate Previously Held by Bell Helicopter Textron Inc.) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–02–02 which applied to certain Bell Textron Inc. (type certificate previously held by Bell Helicopter Textron Inc.) Model 204B, 205A, 205A–1, 205B, 210, and 212 helicopters with a certain main rotor hub strap pin (pin) installed. AD 2022–02–02 required removing certain outboard pins from service and prohibited installing them on any helicopter. This AD expands the applicability to all affected pins, regardless if they are outboard or inboard. This AD also requires inspecting the removed pin for any deformation and if it is deformed, removing the mating strap fitting (fitting) from service. This AD was prompted by the discovery that AD 2022–02–02 inadvertently limited its applicability to only outboard pins when, in fact, all pins are subject to the unsafe condition and the determination that a deformed pin may have damaged the fitting. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 16, 2022.

The FAA must receive any comments on this AD by April 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 final rule, contact Bell Textron, Inc., P.O. Box 482, Fort Worth, TX, 76101; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0157; 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, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Kuethe Harmon, Safety Management Program Manager, Certification & Program Management Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5198; email *kuethe.harmon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued Emergency AD 2021–15–51 on July 6, 2021, and it published as a Final rule; request for comments on August 9, 2021 as Amendment 39–21678 (86 FR 43406) (AD 2021–15–51). AD 2021–15–51 applied to Bell Textron Inc. Model 204B, 205A, 205A–1, 205B, and 212 helicopters with a pin part number (P/N) 204–012–104–005 with a serial number (S/N) prefix ''FNFS'' installed. AD 2021–15–51 was prompted by a fatal accident of a Model 212 helicopter in which the affected pin sheared off during flight, resulting in the main rotor blade and the main rotor head detaching from the helicopter. The pin had accumulated only 20 total hours time-in-service (TIS). An inspection of a different Model 212 helicopter revealed that another pin installed, and made by the same manufacturer and with the same S/N prefix, was deformed; this pin had accumulated only 29 total hours TIS. Because an affected pin could also be installed on other helicopters, AD 2021–15–51 also applied to Model 204B, 205A, 205A–1, and 205B helicopters. Failure of a pin could result in the main rotor blade detaching from the helicopter and subsequent loss of control of the helicopter.

After AD 2021–15–51 was issued, it was determined that an affected pin could also be installed on Model 210 helicopters. Therefore, the FAA issued superseding AD 2022–02–02 (87 FR 1668, January 12, 2022) (AD 2022–02–02) which retained all of the requirements in AD 2021–15–51 and added Model 210 helicopters to the applicability. However, as published, the AD number in the regulatory text was incorrectly specified as FAA–2021–1003; the correct AD number was 2022–02–02. The FAA subsequently issued corrected AD 2022–02–02 (87 FR 7368, February 9, 2022) to correct the AD number.

Actions Since AD 2022–02–02 Was Issued

Since the FAA issued AD 2022–02–02, it was discovered that the word ''outboard'' was inadvertently included in that AD's applicability, resulting in the possibility that corrective actions for the inboard pin may not be accomplished. Additionally, the FAA determined, after further review of the related service information, that inspecting the affected pin for any deformity and removing the fitting P/N 212–010–103–ALL or 204–012–103–ALL from service is required to address the unsafe condition. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency determined the unsafe condition described previously is likely to exist or develop in other products of the same type designs.

Related Service Information

The FAA reviewed Bell Alert Service Bulletins (ASBs), each Revision A and dated July 22, 2021:

- ASB 204B–21–74 for Model 204B helicopters, S/Ns 2001 through 2070 and 2196 through 2199;
- ASB 205–21–117 for Model 205A and 205A–1 helicopters, S/Ns 30001 through 30065, 30067 through 30165, 30167 through 30187, 30189 through 30296, and 30298 through 30332;
- ASB 205B–21–71 for Model 205B helicopters, S/Ns 30066, 30166, 30188, and 30297;
- ASB 210–21–14 for all Model 210 helicopters, and
- ASB 212–21–165 for Model 212 helicopters, S/Ns 30501 through 30999, 31101 through 31311, 32101 through 32142, and 35001 through 35103.

The ASBs specify removing all P/N 204–012–104–005 pins with an S/N prefix ''FNFS'' before further flight. The ASBs also specify inspecting removed pins for deformation and scrapping the fitting, P/N 212–010–103–ALL or 204–012–103–ALL, if the pin is deformed. The ASBs also specify that, although the investigation is still in progress, removing these pins from service is required. The ASBs state that these pins may not have been manufactured in accordance with the engineering design requirements and may therefore shear as a result of this nonconformance.

AD Requirements

This AD requires, before further flight, removing from service each pin P/N 204–012–104–005 with an S/N prefix ''FNFS'' and inspecting it for any deformation. If there is any deformation, this AD also requires removing the fitting from service before further flight. Finally, this AD prohibits installing the affected pin on any helicopter as of the effective date of this AD.

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because an affected pin was involved in a fatal accident in which the pin sheared off during flight, resulting in the main rotor blade and the main rotor head detaching from the helicopter. That pin had accumulated only 20 total hours TIS. An additional investigation revealed that another pin installed on a different helicopter and made by the same manufacturer and with the same S/N prefix was deformed. This pin had accumulated only 29 total hours TIS. The wording in AD 2022–02–02 could have caused an inboard pin with the same part number and S/N prefix, which is subject to the same unsafe condition, to be left in service. Failure of an affected pin could occur at any time without any previous indication, which could result in the failure of parts critical to the control of the helicopter. Thus, an urgent unsafe condition exists and corrective actions must be accomplished before further flight.

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

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0157 and Project Identifier AD 2022–00193–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Kuethe Harmon, Safety Management Program Manager, Certification & Program Management Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 155 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Replacing up to four pins takes about 20 work-hours and parts cost about $1,756 for four pins for an estimated cost of up to $3,456 per helicopter, and up to $535,680 for the U.S. fleet.

Replacing up to 4 fittings takes about 2 work-hours and parts cost about $14,400 for an estimated cost of up to $14,570 per helicopter, and up to $2,258,350 for the U.S. fleet.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2022–02–02, Amendment 39–21899 (87 FR 1668, January 12, 2022; corrected 87 FR 7368, February 9, 2022); and

■ b. Adding the following new AD:

2022–06–03 Bell Textron Inc. (Type Certificate Previously Held by Bell Helicopter Textron Inc.): Amendment 39–21969; Docket No. FAA–2022–0157; Project Identifier AD–2022–00193–R.

(a) Effective Date

This airworthiness directive (AD) is effective March 16, 2022.

(b) Affected ADs

This AD replaces AD 2022–02–02, Amendment 39–21899 (87 FR 1668, January 12, 2022) and corrected as AD 2022–02–02, Amendment 39–21899 (87 FR 7368, February 9, 2022).

(c) Applicability

This AD applies to Bell Textron Inc. (type certificate previously held by Bell Helicopter Textron Inc.) Model 204B, 205A, 205A–1, 205B, 210, and 212 helicopters, certificated in any category, with a main rotor hub strap pin (pin) part number 204–012–104–005 with a serial number prefix ''FNFS'' installed.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6200, Main Rotor System.

(e) Unsafe Condition

This AD was prompted by a fatal accident in which a pin sheared off during flight, which resulted in the main rotor blade and the main rotor head detaching from the helicopter. The FAA is issuing this AD to address this unsafe condition and prevent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Before further flight after the effective date of this AD, remove from service any pin that is identified in paragraph (c) of this AD and inspect it for any deformity. If the pin is deformed, remove from service the mating strap fitting (P/N 212 –010–103–ALL or 204–012–103–ALL).

(2) As of the effective date of this AD, do not install any pin that is identified in paragraph (c) of this AD on any helicopter.

(h) Special Flight Permit

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, DSCO Branch, Compliance & Airworthiness Division, 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 DSCO Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ASW-190-COS@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Kuethe Harmon, Safety Management Program Manager, Certification & Program Management Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5198; email *kuethe.harmon@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on March 4, 2022.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05378 Filed 3–10–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0838; Project Identifier AD–2020–01590–A; Amendment 39–21965; AD 2022–05–13]

RIN 2120–AA64

Airworthiness Directives; Honda Aircraft Company LLC Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Honda Aircraft Company LLC (Honda) Model HA–420 airplanes. This AD was prompted by a report of in-flight smoke and fire that initiated from the windshield heat power wire braid. This AD requires incorporating temporary revisions into the airplane flight manual (AFM) and the quick reference handbook (QRH) that modify procedures for windshield heat

operation until the affected windshield assemblies are replaced. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 18, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 18, 2022.

ADDRESSES: For service information identified in this final rule, contact Honda Aircraft Company LLC, 6430 Ballinger Road, Greensboro, NC 27410; phone: (336) 662–0246; website: *http://www.hondajet.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. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0838.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0838; 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, 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: Bryan Long, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5578; email: *bryan.long@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain serial-numbered Honda Model HA–420 airplanes. The NPRM published in the **Federal Register** on September 30, 2021 (86 FR 54126). The NPRM was prompted by a report of in-flight smoke and fire that initiated from the windshield heat power wire braid on a Honda Model HA–420 airplane. An investigation identified that certain Honda Model HA–420 airplanes could have a severed windshield heat power wire braid from installation of the windshield heat wiring during manufacture. The severed windshield heat power wire braid could cause arcing that ignites the wire sheathing and sealant and the windshield acrylic. This condition, if not addressed, could lead to cockpit smoke and fire. In the NPRM, the FAA proposed to require incorporating temporary revisions into the AFM and the QRH that modify procedures for windshield heat operation until the affected windshield assemblies are replaced. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from three commenters. The commenters were an individual, an anonymous commenter, and Honda. The following presents the comments received on the NPRM and the FAA's response to each comment.

Comment Regarding Whether Windshield Replacement Is Justified

An individual requested that the NPRM be re-evaluated. The commenter stated that although fire is one of the greatest dangers in the cockpit, there is insufficient data to justify requiring windshield assembly replacement. The commenter noted that the proposed AD is based on a single occurrence of cockpit smoke and fire.

The FAA considered not only the occurrence of cockpit smoke and fire but also the possible results of a severed windshield heat power wire braid. A severed windshield heat power wire braid could ignite the wire sheathing and sealant and the windshield acrylic and lead to cockpit smoke and fire. The FAA's analysis determined that an unsafe condition exists and is likely to exist or develop in airplanes of the same type design. Accordingly, this condition warrants corrective action through an AD. The FAA did not change this AD based on this comment.

Request To Extend the Compliance Time for Replacing the Windshield Assembly

Honda requested that the FAA extend the compliance time for replacing the windshield assembly in paragraph (h) of the proposed AD from within 24 months to within 36 months after the effective date of the AD. In support, Honda stated that there is a shortage of parts due to supply chain disruptions caused by the COVID–19 pandemic. Honda explained that extending the compliance time would not increase risk to affected airplanes because of other mitigating actions in place, such as service information detailing the risk of windshield electrical arcing and the revised flight manual procedures, which reduce the exposure to an arcing event.

The FAA has determined that the 24-month compliance time for windshield assembly replacement is the maximum time allowable for the affected airplanes to continue to safely operate. While the FAA makes every effort to avoid grounding aircraft, the FAA cannot base its AD action on whether spare parts are available or can be produced. However, operators may request approval to extend the compliance time as an alternative method of compliance (AMOC) under paragraph (j)(1) of this final rule, provided sufficient data are submitted. The FAA did not change this AD based on this comment.

Request To Consider Honda's Recommendation

An anonymous commenter requested that the FAA consider Honda's recommendation to replace the windshield assembly and incorporate it into the mandatory maintenance of the airplane. The commenter stated that although Honda issued a service bulletin, the FAA did not include it in the NPRM.

The commenter's requested change is not necessary because paragraph (h) of this AD already requires windshield assembly replacement in accordance with the steps in the Honda service bulletin. In addition, as 14 CFR part 39 requires that operators comply with ADs, replacement of the windshield assembly is mandatory. The FAA did not change this AD based on this comment.

Conclusion

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following temporary revisions.

- Honda Aircraft Company Temporary Revision TR 04A–1, dated 2020, for Airplane Flight Manual HJI–29001–003–001 Rev C.
- HondaJet Temporary Revision TR 04A–1, dated 2020, for Quick Reference Handbook HJ1–29000–007–001 Rev C.
- Honda Aircraft Company Temporary Revision TR 04A–1, dated 2020, for Airplane Flight Manual HJ1–29001–003–001 Rev E.
- HondaJet Temporary Revision TR 04A–1, dated 2020, for Quick Reference

Handbook Normal Procedures Rev E, HJ1–29001–007–001.

These temporary revisions provide modified procedures for windshield heat operation to reduce exposure to potential windshield heat for the applicable serial numbers specified on the documents.

The FAA also reviewed Honda Service Bulletin SB–420–56–002, Revision B, dated April 19, 2021 (Honda SB–420–002B). The service bulletin specifies identifying and replacing affected windshield assemblies. The service bulletin also specifies removing the temporary revisions to the AFM, QRH, and electronic checklist (ECL) after the affected windshield assemblies have been replaced.

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.

Differences Between This AD and the Service Information

Honda issued temporary revisions to the AFM, QRH, and ECL prior to issuing Honda SB–420–002B, which specifies replacement of the windshield assemblies. Honda SB–420–002B does not specify incorporating the temporary revisions to the AFM, QRH, and ECL but addresses removal if the temporary revisions were incorporated. This AD does not require incorporating or removing the temporary revisions to the ECL because the ECL is not part of the approved type design of the airplane. All pertinent requirements would be addressed through the AFM.

Costs of Compliance

The FAA estimates that this AD affects 156 airplanes of U.S. registry. There are 475 affected windshield assemblies worldwide, and the FAA has no way of knowing the number of affected windshield assemblies installed on U.S. airplanes. The estimated cost on U.S. operators reflects the maximum possible cost based on the 156 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Insert revised procedures in the AFM and QRH.	1 work-hour × $85 per hour = $85	Not applicable	$85	$13,260
* Windshield assembly replacement (both left and right assemblies).	154 work-hours × $85 per hour = $13,090	$153,286	166,376	25,954,656
Remove revised procedures from the AFM and QRH.	1 work-hour × $85 per hour = $85	Not applicable	85	13,260

* On most airplanes, both the left and right windshield assemblies have a serial number affected by the unsafe condition, and the above costs represents replacement of both the left and right windshield assemblies. However, some airplanes may only have one affected windshield assembly and not require replacement of both.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will 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 Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2022–05–13 Honda Aircraft Company LLC: Amendment 39–21965; Docket No. FAA–2021–0838; Project Identifier AD–2020–01590–A.

(a) Effective Date

This airworthiness directive (AD) is effective April 18, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Honda Aircraft Company LLC Model HA–420 airplanes, serial numbers 42000011 through 42000179, 42000182, and 42000187, certificated in any category, with a windshield assembly installed that has a part number and serial number listed in table 5 of the Accomplishment Instructions in Honda Aircraft Company Alert Service Bulletin SB–420–56–002, Revision B, dated April 19, 2021 (Honda SB–420–56–002, Revision B).

(d) Subject

Joint Aircraft System Component (JASC) Code 3040, Windshield/Door Rain/Ice Removal.

(e) Unsafe Condition

This AD was prompted by a report of in-flight smoke and fire that initiated from the

windshield heat power wire braid. The FAA is issuing this AD to prevent arcing of the windshield heat power wire braid, which could ignite the wire sheathing and sealant and the windshield acrylic. This condition, if not addressed, could lead to cockpit smoke and fire.

(f) Compliance

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

(g) Temporary Revisions to the Airplane Flight Manuals (AFMs) and Quick Reference Handbooks (QRHs)

(1) Within 15 days after the effective date of this AD, revise the existing AFM and QRH for your airplane by inserting the pages identified in the applicable temporary revisions listed in paragraphs (g)(1)(i) through (iv) of this AD.

(i) Honda Aircraft Company Temporary Revision TR 04A–1, dated 2020, for Airplane Flight Manual HJI–29001–003–001 Rev C.

(ii) HondaJet Temporary Revision TR 04A–1, dated 2020, for Quick Reference Handbook HJ1–29000–007–001 Rev C.

(iii) Honda Aircraft Company Temporary Revision TR 04A–1, dated 2020, for Airplane Flight Manual HJ1–29001–003–001 Rev E.

(iv) HondaJet Temporary Revision TR 04A–1, dated 2020, for Quick Reference Handbook Normal Procedures Rev E, HJ1–29001–007–001.

(2) The actions required by paragraph (g)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4), and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(h) Windshield Assembly Replacement

Within 24 months after the effective date of this AD, for each windshield assembly with a part number and serial number listed in table 5 of the Accomplishment Instructions in Honda SB–420–56–002, Revision B, replace the windshield assembly in accordance with step (2) or (3) of the Accomplishment Instructions in Honda SB–420–56–002, Revision B.

(i) Removal of Revisions to the AFMs and QRHs

Before further flight after replacing the windshield assemblies required by paragraph (h) of this AD, remove the AFM and QRH pages that were required by paragraph (g) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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 (k) 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.

(3) For service information that contains steps that are labeled as ''Required for Compliance'' (RC), the following provisions apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

(ii) Steps not labeled as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the RC steps, including substeps and identified figures, can still be done as specified, and the airplane can be put back in an airworthy condition.

(k) Related Information

For more information about this AD, contact Bryan Long, Aviation Safety Engineer, Atlanta ACO Branch, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5578; email: *Bryan.Long@faa.gov*.

(l) Material Incorporated by Reference

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

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

(i) Honda Aircraft Company Temporary Revision TR 04A–1, dated 2020, for Airplane Flight Manual HJI–29001–003–001 Rev C.

(ii) Honda Aircraft Company Temporary Revision TR 04A–1, dated 2020, for Airplane Flight Manual HJ1–29001–003–001 Rev E.

(iii) HondaJet Temporary Revision TR 04A–1, dated 2020, for Quick Reference Handbook HJ1–29000–007–001 Rev C.

(iv) HondaJet Temporary Revision TR 04A–1, dated 2020, for Quick Reference Handbook Normal Procedures Rev E, HJ1–29001–007–001.

(v) Honda Aircraft Company Alert Service Bulletin SB–420–56–002, Revision B, dated April 19, 2021.

(3) For service information identified in this AD, contact Honda Aircraft Company LLC, 6430 Ballinger Road, Greensboro, NC 27410; phone: (336) 662–0246; website: *https://www.hondajet.com.*

(4) You may view this service information at 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.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email: *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on February 25, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05222 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0158; Project Identifier AD–2022–00199–R; Amendment 39–21971; AD 2022–06–05]

RIN 2120–AA64

Airworthiness Directives; Various Restricted Category Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2021–15–52 which applied to various restricted category helicopters originally manufactured by Bell Textron Inc. with a certain main rotor hub strap pin (pin) installed. AD 2021–15–52 required removing certain outboard pins from service and prohibited installing them on any helicopter. This AD expands the applicability to all affected pins, regardless if they are outboard or inboard. This AD also requires inspecting the removed pin for any deformation and if it is deformed, removing the mating strap fitting (fitting) from service. This AD was prompted by the discovery that AD 2021–15–52 inadvertently limited its applicability to only outboard pins when, in fact, all pins are subject to the unsafe condition and the determination that a deformed pin may have damaged the fitting. Finally, this AD updates the current type certificate holder information as reflected in the type certificate data sheet (TCDS) and expands the applicability of AD 2021–15–52. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective March 16, 2022.

The FAA must receive any comments on this AD by April 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 final rule, contact Bell Textron, Inc., P.O. Box 482, Fort Worth, TX, 76101; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0158; 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, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Kuethe Harmon, Safety Management Program Manager, Certification & Program Management Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5198; email *kuethe.harmon@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued Emergency AD 2021–15–52 on July 6, 2021, and it published as a Final rule; request for comments on July 29, 2021 as Amendment 39–21664 (86 FR 40779) (AD 2021–15–52). AD 2021–15–52 applied to the following restricted category helicopters originally manufactured by Bell Textron Inc., with an outboard pin part number (P/N) 204–012–104–005 with a serial number (S/N) prefix ''FNFS'' installed:

• Rotorcraft Development Corporation Model HH–1K helicopters;

• Robinson Air Crane Inc.; Rotorcraft Development Corporation; and Tamarack Helicopters, Inc., Model TH–1F helicopters;

• Bell Textron Inc.; Overseas Aircraft Support, Inc. (type certificate previously held by JTBAM, Inc.); and Rotorcraft Development Corporation Model TH–1L helicopters;

• Richards Heavylift Helo, Inc., Model UH–1A helicopters;

• International Helicopters, Inc.; Overseas Aircraft Support, Inc.; Red Tail Flying Services, LLC; Richards Heavylift Helo, Inc.; Rotorcraft Development Corporation; Southwest Florida Aviation International, Inc. (helicopters with an SW204 or SW204HP designation are Southwest Florida Aviation International, Inc., Model UH–1B helicopters); and WSH, LLC (type certificate previously held by San Joaquin Helicopters), Model UH–1B helicopters;

• Bell Textron Inc.; Overseas Aircraft Support, Inc.; Rotorcraft Development Corporation; Smith Helicopters; and West Coast Fabrications Model UH–1E helicopters;

• AST, Inc.; California Department of Forestry; Robinson Air Crane, Inc.; Rotorcraft Development Corporation; and Tamarack Helicopters, Inc., Model UH–1F helicopters;

• Arrow Falcon Exporters Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC; JJASPP Engineering Services, LLC; Northwest Rotorcraft, LLC; Overseas Aircraft Support, Inc.; Richards Heavylift Helo, Inc.; Rotorcraft Development Corporation; Southwest Florida Aviation International, Inc. (helicopters with an SW205 designation are Southwest Florida Aviation International, Inc., Model UH–1H helicopters); and Tamarack Helicopters, Inc., Model UH–1H helicopters;

• Bell Textron Inc.; Overseas Aircraft Support, Inc.; and Rotorcraft Development Corporation Model UH–1L helicopters; and

• Robinson Air Crane, Inc.; and Rotorcraft Development Corporation Model UH–1P helicopters.

AD 2021–15–52 was prompted by a fatal accident of a Model 212 helicopter in which the affected pin sheared off during flight, resulting in the main rotor blade and the main rotor head detaching from the helicopter. The pin had accumulated only 20 total hours time-in-service (TIS). An inspection of a different Model 212 helicopter revealed that another pin installed, and made by the same manufacturer and with the same S/N prefix, was deformed; this pin had accumulated only 29 total hours TIS. Failure of a pin could result in the main rotor blade detaching from the helicopter and subsequent loss of control of the helicopter.

Actions Since AD 2021–15–52 Was Issued

Since the FAA issued AD 2021–15–52, it was discovered that the word ''outboard'' was inadvertently included in the AD's applicability, resulting in the possibility that corrective actions for the inboard pin may not be accomplished. This AD also updates the current type certificate holder information, as reflected in the TCDS, for Model UH–1B helicopters and adds Model SW205A–1 to the applicability because an affected pin can also be installed on Model SW205A–1 helicopters. Additionally, the FAA determined, after further review of the related service information, that inspecting the affected pin for any deformity and removing the fitting P/N 212–010–103–ALL or 204–012–103–ALL from service is required to address the unsafe condition. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

The FAA is issuing this AD because the agency determined the unsafe condition described previously is likely to exist or develop in other products of the same type designs.

Related Service Information

The FAA reviewed Bell Alert Service Bulletins (ASBs) UH–1H–21–21 and UH–1H–II–21–31, each Revision A and dated July 22, 2021. The ASBs specify removing all P/N 204–012–104–005 pins with an S/N prefix ''FNFS'' before further flight. The ASBs also specify inspecting removed pins for deformation and scrapping the fitting, P/N 212–010–103–ALL or 204–012–103–ALL, if the pin is deformed. The ASBs also specify that, although the investigation is still in progress, removing these pins from service is required. The ASBs state that these pins may not have been manufactured in accordance with the engineering design requirements and may therefore shear as a result of this nonconformance.

AD Requirements

This AD requires, before further flight, removing from service each pin P/N 204–012–104–005 with an S/N prefix ''FNFS'' and inspecting it for any deformation. If there is any deformation, this AD also requires removing the fitting from service before further flight. Finally, this AD prohibits installing the affected pin on any helicopter as of the effective date of this AD.

Interim Action

The FAA considers this AD to be an interim action. If final action is later

identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies foregoing notice and comment prior to adoption of this rule because an affected pin was involved in a fatal accident in which the pin sheared off during flight, resulting in the main rotor blade and the main rotor head detaching from the helicopter. That pin had accumulated only 20 total hours TIS. An additional investigation revealed that another pin installed on a different helicopter and made by the same manufacturer and with the same S/N prefix was deformed. This pin had accumulated only 29 total hours TIS. The wording in AD 2021–15–52 could have caused an inboard pin with the same part number and S/N prefix, which is subject to the same unsafe condition, to be left in service. Failure of an affected pin could occur at any time without any previous indication, which could result in the failure of parts critical to the control of the helicopter. Thus, an urgent unsafe condition exists and corrective actions must be accomplished before further flight.

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

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–0158 and Project Identifier AD 2022–00199–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Kuethe Harmon, Safety Management Program Manager, Certification & Program Management Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 529 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Replacing up to four pins takes about 20 work-hours and parts cost about $1,756 for four pins for an estimated cost of up to $3,456 per helicopter, and up to $1,828,224 for the U.S. fleet.

Replacing up to 4 fittings takes about 2 work-hours and parts cost about $14,400 for an estimated cost of up to $14,570 per helicopter, and up to $7,707,530 for the U.S. fleet.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–15–52, Amendment 39–21664 (86 FR 40779, July 29, 2021); and

■ b. Adding the following new AD:

2022–06–05 Various Restricted Category Helicopters: Amendment 39–21971; Docket No. FAA–2022–0158; Project Identifier AD–2022–00199–R.

(a) Effective Date

This airworthiness directive (AD) is effective March 16, 2022.

(b) Affected ADs

This AD replaces AD 2021–15–52, Amendment 39–21664 (86 FR 40779, July 29, 2021).

(c) Applicability

This AD applies to the following various restricted category helicopters with a main rotor hub strap pin (pin) part number 204–012–104–005 with a serial number prefix ''FNFS'' installed:

(1) Model HH–1K helicopters; current type certificate holders include but are not limited to Rotorcraft Development Corporation;

(2) Model SW205A–1 helicopters; current type certificate holders include but are not limited to Southwest Florida Aviation International, Inc.;

(3) Model TH–1F helicopters; current type certificate holders include but are not limited to Robinson Air Crane Inc.; Rotorcraft Development Corporation; and Tamarack Helicopters, Inc.;

(4) Model TH–1L helicopters; current type certificate holders include but are not limited to Bell Textron Inc.; Overseas Aircraft Support, Inc. (type certificate previously held by JTBAM, Inc.); and Rotorcraft Development Corporation;

(5) Model UH–1A helicopters; current type certificate holders include but are not limited to Richards Heavylift Helo, Inc.;

(6) Model UH–1B helicopters; current type certificate holders include but are not limited to International Helicopters, Inc.; Overseas Aircraft Support, Inc.; Red Tail Flying Services, LLC; Richards Heavylift Helo, Inc.; Rotorcraft Development Corporation; Southwest Florida Aviation International, Inc.; and WSH, LLC (type certificate previously held by San Joaquin Helicopters);

Note 1 to paragraph (c)(6): Helicopters with an SW204 or SW204HP designation are Southwest Florida Aviation International, Inc., Model UH–1B helicopters.

(7) Model UH–1E helicopters; current type certificate holders include but are not limited to Bell Textron Inc.; Overseas Aircraft Support, Inc.; Rotorcraft Development Corporation; Smith Helicopters; and West Coast Fabrications;

(8) Model UH–1F helicopters; current type certificate holders include but are not limited to AST, Inc.; California Department of Forestry; Robinson Air Crane, Inc.; Rotorcraft Development Corporation; and Tamarack Helicopters, Inc.;

(9) Model UH–1H helicopters; current type certificate holders include but are not limited to Arrow Falcon Exporters, Inc.; Global Helicopter Technology, Inc.; Hagglund Helicopters, LLC; JJASPP Engineering Services LLC; Northwest Rotorcraft, LLC; Overseas Aircraft Support, Inc.; Richards Heavylift Helo, Inc.; Rotorcraft Development Corporation; Southwest Florida Aviation International, Inc., and Tamarack Helicopters, Inc.;

Note 2 to paragraph (c)(9): Helicopters with an SW205 designation are Southwest Florida Aviation International, Inc., Model UH–1H helicopters.

(10) Model UH–1L helicopters; current type certificate holders include but are not limited to Bell Textron Inc.; Overseas Aircraft Support, Inc.; and Rotorcraft Development Corporation; and

(11) Model UH–1P helicopters; current type certificate holders include but are not limited to Robinson Air Crane, Inc.; and Rotorcraft Development Corporation.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6200, Main Rotor System.

(e) Unsafe Condition

This AD was prompted by a fatal accident in which a pin sheared off during flight, which resulted in the main rotor blade and the main rotor head detaching from the helicopter. The FAA is issuing this AD to address this unsafe condition and prevent loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

(1) Before further flight after the effective date of this AD, remove from service any pin that is identified in the introductory text of paragraph (c) of this AD and inspect it for any deformity. If the pin is deformed, remove from service the mating strap fitting (P/N 212–010–103–ALL or 204–012–103–ALL).

(2) As of the effective date of this AD, do not install any pin that is identified in the introductory text of paragraph (c) of this AD on any helicopter.

(h) Special Flight Permit

Special flight permits are prohibited.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, DSCO Branch, Compliance & Airworthiness Division, 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 DSCO Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-ASW-190-COS@faa.gov.*

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

(j) Related Information

For more information about this AD, contact Kuethe Harmon, Safety Management Program Manager, Certification & Program Management Section, DSCO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5198; email *kuethe.harmon@faa.gov.*

(k) Material Incorporated by Reference

None.

Issued on March 8, 2022.

Ross Landes,

Deputy Director for Regulatory Operations, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05379 Filed 3–10–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–1191; Airspace Docket No. 21–ASO–40]

RIN 2120–AA66

Establishment of Class E Airspace; Iuka, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace extending upward from 700 feet above the surface to accommodate Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) serving Iuka Airport, Iuka, MS. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting

Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC, 20591; Telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA, 30337; Telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace for Iuka Airport, Iuka, MS to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (87 FR 2090, January 13, 2022) for Docket No. FAA–2021–1191 to establish Class E airspace extending upward from 700 feet above the surface for Iuka Airport, Iuka, MS.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Iuka Airport to accommodate RNAV SIAPs serving the airport.

Subsequent to publication of the Notice of Proposed Rule Making (NPRM), the FAA found that the geographic coordinates were incorrect. This action corrects the error.

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11F.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

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

* * * * *

ASO MS E5 Iuka, MS [NEW]

Iuka Airport, MS
(Lat. 34°46′24″ N, long. 88°09′58″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Iuka Airport.

Issued in College Park, Georgia, on March 9, 2022.

Matthew N. Cathcart,

Manager, Operations Support Group, Eastern Service Center, AJV–E2.

[FR Doc. 2022–05278 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0941; Airspace Docket No. 21–ASO–31]

RIN 2120–AA66

Amendment of Class D, Class E, and Establishment of Class E Airspace; Atlanta, GA Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface, and establishes Class E Airspace Designated as an Extension to a Class D Surface Area in the Atlanta, GA area. This action replaces the Atlanta Very High Frequency Omnidirectional Range Collocated Tactical Air Navigation (VORTAC) with the term Point of Origin. This action updates several airport names and geographic coordinates. This action also makes an editorial change replacing the term Airport/Facility Directory with the term Chart Supplement in the legal descriptions of associated Class D and E airspaces. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, May 19, 2022. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; Telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: John Goodson, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone (404) 305–5966.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend airspace in the Atlanta, GA area, to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 71597, December 17, 2021) for Docket No. FAA–2021–0941 to amend Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface, and establish Class E Airspace Designated as an Extension to a Class D Surface Area in the Atlanta, GA area.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D and Class E airspace designations are published in Paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class E airspace listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.

The Rule

The FAA amends 14 CFR part 71 to amend Class D airspace, Class E surface airspace, and Class E airspace extending upward from 700 feet above the surface, and establish Class E Airspace Designated as an Extension to Class D airspace at the following airports:

The Dekalb-Peachtree Airport Class D airspace is amended by removing unnecessary verbiage from the descriptor header, updating the geographical coordinates of the airport to coincide with the FAA's database, and replacing the outdated term Airport/Facility Directory with the term Chart Supplement in the airport description. In addition, the language in the legal description is amended to include, excluding the airspace that borders the Dobbins Air Reserve Base (ARB) Class D airspace extension to the southeast.

The Fulton County Executive Airport/Charlie Brown Field (formerly Atlanta, Fulton County Airport-Brown Field) Class D airspace is amended by removing unnecessary verbiage from the descriptor header and updating the airport's name. Dobbins ARB Class D airspace is amended by updating the geographical coordinates of the ARB to coincide with the FAA's database.

The Cobb County International Airport/McCollum Field (formerly Cobb County/McCollum Field) Class D airspace is amended by removing unnecessary verbiage from the descriptor header, updating the airport's name, and updating the geographical coordinates of the airport to coincide with the FAA's database. Dobbins ARB (formerly Dobbins ARB/NAS Atlanta) Class D airspace is amended by updating the ARB's name and updating the geographical coordinates of the ARB to coincide with the FAA's database. This action also replaces the outdated term Airport/Facility Directory with the term Chart Supplement in the airport description.

The Dobbins ARB (formerly Dobbins ARB/NAS Atlanta) Class D airspace would be amended by removing unnecessary verbiage from the descriptor header, updating the ARB's name, and updating the geographical coordinates of the ARB to coincide with the FAA's database. Cobb County International Airport/McCollum Field (formerly Cobb County—McCollum Field) Class D airspace is amended by updating the airport's name and updating the geographical coordinates of the airport to coincide with the FAA's database. Fulton County Executive Airport/Charlie Brown Field (formerly Fulton County Airport—Brown Field) Class D airspace is amended by updating the airport's name. This action also replaces the outdated term Airport/

Facility Directory with the term Chart Supplement in the airport description.

The Dekalb-Peachtree Airport Class E surface airspace is amended by removing unnecessary verbiage from the descriptor header, updating the geographical coordinates of the airport to coincide with the FAA's database, and removing unnecessary verbiage in the description.

The Dekalb-Peachtree Airport Class E Airspace Designated as an Extension to a Class D Surface Area is established by adding that airspace extending upward from the surface within 1 mile each side of the Dekalb-Peachtree Airport 206° and 021° bearings from the airport, extending from the 4-mile radius of Dekalb-Peachtree Airport to 7.7 miles southwest and northeast of the airport respectively.

The Fulton County Executive Airport/Charlie Brown Field Class E Airspace Designated as an Extension to a Class D Surface Area is established by adding that airspace extending upward from the surface within 1 mile each side of the Fulton County Executive Airport/Charlie Brown Field 260° and 080° bearings from the airport, extending from the 4-mile radius of Fulton County Executive Airport/Charlie Brown Field to 7.2 miles west and east of the airport respectively.

The Cobb County International Airport/McCollum Field Class E Airspace Designated as an Extension to a Class D Surface Area is established by adding that airspace extending upward from the surface from the 4-mile radius of the Cobb County International Airport/McCollum Field to the 8.4-mile radius of the airport; clockwise from the 255° bearing to the 303° bearing from the airport and within 1 mile each side of the Cobb County International Airport/McCollum Field 089° bearing extending from the 4-mile radius to 8.4 miles east of the airport excluding that portion within the Dobbins ARB, Class D airspace area.

The Atlanta, GA Class E airspace extending upward from 700 feet above the surface is amended by updating the name of Hartsfield-Jackson Atlanta International Airport (formerly Atlanta, The William B. Hartsfield Atlanta International Airport) and updating the geographical coordinates of the airport to coincide with the FAA's database. Dobbins ARB Class E airspace extending upward from 700 feet above the surface is amended by updating the ARB's name (formerly Dobbins AFB) and updating the geographical coordinates of the airport to coincide with the FAA's database. Fulton County Executive Airport/Charlie Brown Field Class E airspace extending upward from 700 feet above the surface is amended by updating the airport's name (formerly Fulton County Airport-Brown Field) and increasing the radius to 9.7 miles (formerly 5 miles). Cobb County International Airport/McCollum Field Class E airspace extending upward from 700 feet above the surface is amended by updating the airport's name (formerly Cobb County-McCollum Field), updating the geographical coordinates of the airport to coincide with the FAA's database, and increasing the radius to 10.9 miles (formerly 7 miles). Dekalb-Peachtree Airport Class E airspace extending upward from 700 feet above the surface is amended by updating the geographical coordinates of the airport to coincide with the FAA's database and increasing the radius to 10.2 miles (formerly 7 miles). The Atlanta VORTAC is replaced by the term Point of Origin and the geographical coordinates are updated to coincide with the FAA's database.

Subsequent to publication of the Notice of Proposed Rule Making (NPRM), the FAA found that the updated geographical coordinates of Dobbins ARB created a shift to the southeast of Class D airspace, which created a Class D airspace overlap with the Dobbins ARB's extension to the southeast and Dekalb-Peachtree Airport Class D airspace. Also, subsequent to publication of the NPRM, it was discovered that the name of Cobb County International Airport-McCollum Field required updating. The correct name is Cobb County International Airport/McCollum Field. This action resolves both issues.

Class D and Class E airspace designations are published in Paragraphs 5000, 6002, 6004, and 6005, respectively, of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ASO GA D Atlanta, GA [Amended]

DeKalb-Peachtree Airport, GA
(Lat. 33°52′34″ N, long. 84°18′07″ W)
Dobbins ARB
(Lat. 33°54′52″ N, long. 84°30′51″ W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4-mile radius of DeKalb-Peachtree Airport, excluding the airspace that borders the Dobbins ARB Class D airspace extension to the southeast. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will

thereafter be continuously published in the Chart Supplement.

ASO GA D Atlanta, GA [Amended]

Fulton County Executive Airport/Charlie Brown Field, GA
(Lat. 33°46′45″ N, long. 84°31′17″ W)
Dobbins ARB
(Lat. 33°54′52″ N, long. 84°30′51″ W)

That airspace extending upward from the surface to and including 3,300 feet MSL within a 4-mile radius of Fulton County Executive Airport/Charlie Brown Field; excluding the portion north of a line connecting the 2 points of intersection with a 5.5-mile radius circle centered on Dobbins ARB.

ASO GA D Marietta, GA [Amended]

Cobb County International Airport/ McCollum Field, GA
(Lat. 34°00′47″ N, long. 84°35′49″ W)
Dobbins ARB
(Lat. 33°54′52″ N, long. 84°30′51″ W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4-mile radius of Cobb County International Airport/McCollum Field, GA, excluding that airspace southeast of a line connecting the 2 points of intersection with a 5.5-mile radius centered on Dobbins ARB. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

ASO GA D Marietta, GA [Amended]

Dobbins ARB, GA
(Lat. 33°54′52″ N, long. 84°30′51″ W)
Cobb County International Airport/ McCollum Field
(Lat. 34°00′47″ N, long. 84°35′49″ W)
Fulton County Executive Airport/Charlie Brown Field
(Lat. 33°46′45″ N, long. 84°31′17″ W)

That airspace extending upward from the surface to and including 3,600 feet MSL within a 5.5-mile radius of Dobbins ARB and within 1.7 miles each side of the 289° bearing and the 109° bearing from the Dobbins ARB, extending from the 5.5-mile radius to 6.9 miles east and west of the airport; excluding that airspace northwest of a line connecting the 2 points of intersection with a 4-mile radius centered on Cobb County International Airport/McCollum Field, and the 5.5-mile radius of Dobbins ARB, and also excluding that airspace south of a line connecting the 2 points of intersection with the 4-mile radius centered on Fulton County Executive Airport/Charlie Brown Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Surface Airspace.

* * * * *

ASO GA E2 Atlanta [Amended]

Dekalb-Peachtree Airport, GA
(Lat. 33°52′34″ N, long. 84°18′07″ W)

That airspace within a 4-mile radius of the Dekalb-Peachtree Airport.

Paragraph 6004 Class E Airspace Designated as an Extension to Class D.

* * * * *

ASO GA E4 Atlanta [New]

Dekalb-Peachtree Airport, GA
(Lat. 33°52′34″ N, long. 84°18′07″ W)

That airspace extending upward from the surface within 1 mile each side of the Dekalb-Peachtree Airport 206° and 021° bearings from the airport, extending from the 4-mile radius of Dekalb-Peachtree Airport to 7.7 miles southwest and northeast of the airport.

ASO GA E4 Atlanta, GA [New]

Fulton County Executive Airport/Charlie Brown Field, GA
(Lat. 33°46′45″ N, long. 84°31′17″ W)

That airspace extending upward from the surface within 1 mile each side of the Fulton County Executive Airport/Charlie Brown Field 260° and 080° bearings from the airport, extending from the 4-mile radius of Fulton County Executive Airport/Charlie Brown Field to 7.2 miles west and east of the airport.

ASO GA E4 Marietta, GA [New]

Cobb County International Airport/ McCollum Field, GA
(Lat. 34°00′47″ N, long. 84°35′49″ W)

That airspace extending upward from the surface from the 4-mile radius of the Cobb County International Airport/McCollum Field to the 8.4-mile radius of the airport; clockwise from the 255° bearing to the 303° bearing from the airport and within 1 mile each side of the Cobb County International Airport/McCollum Field 089° bearing extending from the 4-mile radius to 8.4 miles east of the airport excluding that portion within the Dobbins ARB, GA Class D airspace area.

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

* * * * *

ASO GA E5 Atlanta, GA [Amended]

Hartsfield-Jackson Atlanta International Airport, GA
(Lat. 33°38′12″ N, long. 84°25′40″ W)
Dobbins ARB
(Lat. 33°54′52″ N, long. 84°30′51″ W)
Fulton County Executive Airport/Charlie Brown Field
(Lat. 33°46′45″ N, long. 84°31′17″ W)
Cobb County International Airport/ McCollum Field
(Lat. 34°00′47″ N, long. 84°35′49″ W)
Dekalb-Peachtree Airport
(Lat. 33°52′34″ N, long. 84°18′07″ W)
Point of Origin
(Lat. 33°37′45″ N, long. 84°26′06″ W)

That airspace extending upward from 700 feet above the surface within a 12-mile radius of the Point of Origin and within a 9.7-mile radius of Fulton County Executive Airport/ Charlie Brown Field and within an 8-mile radius of Dobbins ARB and within a 10.9-mile radius of Cobb County International Airport/McCollum Field, and within a 10.2-mile radius of Dekalb-Peachtree Airport.

Issued in College Park, Georgia, on March 9, 2022.

Matthew N. Cathcart,

Manager, Operations Support Group, Eastern Service Center, AJV–E2.

[FR Doc. 2022–05279 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31418; Amdt. No. 3999]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is March 14, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 14, 2022.

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

For Examination

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

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

3. The office of Aeronautical Information Services, 6500 South

MacArthur Blvd., Oklahoma City, OK 73169 or,

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

Availability

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

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

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

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

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

Lists of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on March 4, 2022.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CRF part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective 21 April 2022

Milwaukee, WI, KMWC, RNAV (GPS) RWY 4L, Orig-E

Effective 19 May 2022

Fort Smith, AR, KFSM, ILS OR LOC RWY 8, Amdt 1B
Fort Smith, AR, KFSM, ILS Z OR LOC Z RWY 26, Amdt 22A
Fort Smith, AR, KFSM, RADAR–1, Amdt 8F
Fort Smith, AR, KFSM, RNAV (GPS) RWY 2, Amdt 2C
Fort Smith, AR, KFSM, RNAV (GPS) RWY 8, Amdt 1C
Fort Smith, AR, KFSM, RNAV (GPS) RWY 26, Amdt 1C
Fort Smith, AR, Fort Smith Rgnl, Takeoff Minimums and Obstacle DP, Amdt 4B
Fort Smith, AR, KFSM, VOR Z OR TACAN Z RWY 8, Amdt 11F
Fort Smith, AR, KFSM, VOR Z OR TACAN Z RWY 26, Amdt 20K
Casa Grande, AZ, KCGZ, RNAV (GPS) RWY 23, Amdt 1
Paso Robles, CA, KPRB, PASO ROBLES TWO GRAPHIC DP
Paso Robles, CA, KPRB, Takeoff Minimums and Obstacle DP, Amdt 2A
San Francisco, CA, KSFO, ILS OR LOC RWY 28R, ILS RWY 28R (SA CAT I), ILS RWY 28R (CAT II), ILS RWY 28R (CAT III), Amdt 15B

Granby, CO, KGNB, RNAV (GPS)-C, Orig
Holyoke, CO, KHEQ, RNAV (GPS) RWY 32, Orig-F
Jekyll Island, GA, 09J, RNAV (GPS) RWY 36, Amdt 1B, CANCELLED
Mountain Home, ID, U76, ALKAL ONE GRAPHIC DP
Mountain Home, ID, U76, RNAV (GPS) RWY 10, Orig
Mountain Home, ID, U76, RNAV (GPS) RWY 28, Amdt 2
Mountain Home, ID, U76, Takeoff Minimums and Obstacle DP, Amdt 6
Mount Vernon, IL, KMVN, ILS OR LOC RWY 23, Amdt 12A
Indianapolis, IN, KTYQ, RNAV (GPS) RWY 18, Amdt 1D
Indianapolis, IN, KTYQ, VOR RWY 18, Amdt 1E
Lafayette, IN, KLAF, ILS OR LOC RWY 10, Amdt 11D
Logansport, IN, KGGP, VOR–A, Amdt 7B, CANCELLED
Peru, IN, I76, VOR RWY 1, Amdt 8E, CANCELLED
Sheridan, IN, 5I4, RNAV (GPS) RWY 23, Amdt 1
Sheridan, IN, 5I4, VOR–A, Amdt 6B, CANCELLED
Marion, KY, KGDA, Takeoff Minimums and Obstacle DP, Amdt 2
Lafayette, LA, KLFT, RADAR 1, Amdt 11, CANCELLED
Lake Charles, LA, KLCH, LOC BC RWY 33, Amdt 20A, CANCELLED
Bedford, MA, Laurence G Hanscom FLD, Takeoff Minimums and Obstacle DP, Amdt 6A
Rangeley, ME, 8B0, RNAV (GPS) RWY 14, Orig
Rangeley, ME, 8B0, RNAV (GPS) RWY 32, Orig
Cheboygan, MI, KSLH, RNAV (GPS) RWY 10, Amdt 3D
Detroit, MI, KYIP, ILS OR LOC RWY 5, Orig
Detroit, MI, KYIP, ILS OR LOC RWY 5R, Amdt 16, CANCELLED
Detroit, MI, KYIP, ILS OR LOC RWY 23, Orig
Detroit, MI, KYIP, ILS OR LOC RWY 23L, Amdt 8, CANCELLED
Detroit, MI, KYIP, RNAV (GPS) RWY 5, Orig
Detroit, MI, KYIP, RNAV (GPS) RWY 5R, Amdt 2, CANCELLED
Detroit, MI, KYIP, RNAV (GPS) RWY 23, Orig
Detroit, MI, KYIP, RNAV (GPS) RWY 23L, Amdt 2, CANCELLED
Detroit, MI, Willow Run, Takeoff Minimums and Obstacle DP, Amdt 11
Troy, MI, KVLL, RNAV (GPS) RWY 10, Amdt 3A
Troy, MI, KVLL, Takeoff Minimums and Obstacle DP, Amdt 4B
Appleton, MN, AQP, Takeoff Minimums and Obstacle DP, Orig-B
Camdenton, MO, KOZS, Takeoff Minimums and Obstacle DP, Amdt 3
Bozeman, MT, KBZN, ILS OR LOC RWY 12, Amdt 9D
Plentywood, MT, KPWD, RNAV (GPS) RWY 12, Orig-D
Plentywood, MT, KPWD, RNAV (GPS) RWY 30, Orig-D
Fayetteville, NC, Fayetteville Rgnl/Grannis Field, Takeoff Minimums and Obstacle DP, Orig-A
Binghamton, NY, KBGM, ILS OR LOC RWY 16, Amdt 8
East Hampton, NY, KHTO, RNAV (GPS) X RWY 10, Amdt 1A, CANCELLED
East Hampton, NY, KHTO, RNAV (GPS) Y RWY 10, Amdt 1, CANCELLED
East Hampton, NY, KHTO, RNAV (GPS) Y RWY 28, Amdt 2, CANCELLED
East Hampton, NY, KHTO, RNAV (GPS) Z RWY 10, Amdt 1A, CANCELLED
East Hampton, NY, KHTO, RNAV (GPS) Z RWY 28, Amdt 1, CANCELLED
East Hampton, NY, East Hampton, Takeoff Minimums and Obstacle DP, Amdt 3A, CANCELLED
Skaneateles, NY, 6B9, RNAV (GPS)-B, Orig-A
Oklahoma City, OK, KOKC, RNAV (GPS) RWY 13, Amdt 3D
Oklahoma City, OK, KOKC, RNAV (GPS) Y RWY 17L, Amdt 3D
Oklahoma City, OK, KOKC, RNAV (GPS) Y RWY 17R, Amdt 6A
Oklahoma City, OK, KPWA, ILS OR LOC RWY 35R, Amdt 1
Oklahoma City, OK, KPWA, RNAV (GPS) RWY 17L, Amdt 2B
Oklahoma City, OK, KPWA, RNAV (GPS) RWY 17R, Orig-A
Oklahoma City, OK, KPWA, RNAV (GPS) RWY 35L, Orig-A
Oklahoma City, OK, KPWA, RNAV (GPS) RWY 35R, Amdt 1
Stillwater, OK, KSWO, ILS OR LOC RWY 17, Amdt 3
Stillwater, OK, KSWO, RNAV (GPS) RWY 35, Amdt 1C
Sumter, SC, KSMS, NDB RWY 23, Amdt 3A, CANCELLED
Gettysburg, SD, 0D8, RNAV (GPS) RWY 13, Amdt 2C
Gettysburg, SD, 0D8, RNAV (GPS) RWY 31, Amdt 2C
Springfield, TN, M91, RNAV (GPS) RWY 4, Amdt 1D
Springfield, TN, M91, RNAV (GPS) RWY 22, Amdt 1D
Coleman, TX, KCOM, RNAV (GPS) RWY 15, Amdt 1B
Corsicana, TX, KCRS, NDB RWY 32, Amdt 3D, CANCELLED
Houston, TX, KIAH, RNAV (RNP) Y RWY 26L, Orig-E
Midland, TX, KMDD, VOR RWY 25, Amdt 3E
Salt Lake City, UT, KSLC, LDA RWY 35, Orig-D
Salt Lake City, UT, KSLC, RNAV (GPS) RWY 35, Amdt 3B
Bellingham, WA, KBLI, RNAV (RNP) Z RWY 34, Amdt 1B
Spokane, WA, KGEG, VOR RWY 21, Orig

Rescinded: On February 23, 2022 (87 FR 10069), the FAA published an Amendment in Docket No. 31413, Amdt No. 3995, to Part 97 of the Federal Aviation Regulations under section 97.29. The following entry for Binghamton, NY, effective March 24, 2022, is hereby rescinded in its entirety:

Binghamton, NY, KBGM, ILS OR LOC RWY 16, Amdt 8

[FR Doc. 2022–05280 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31419; Amdt. No. 4000]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective March 14, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 14, 2022

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

For Examination

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

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

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

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

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

Availability

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

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29 Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

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

Availability and Summary of Material Incorporated by Reference

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

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

The Rule

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

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

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

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

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC, on March 4, 2022.

Thomas J. Nichols,

Aviation Safety, Flight Standards Service Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

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

* * * *Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject.
21–Apr–22	TX	Houston	David Wayne Hooks Memorial	1/4042	2/17/22	RNAV (GPS) RWY 17R, Amdt 2.
21–Apr–22	MN	Two Harbors	Richard B Helgeson	2/2040	2/11/22	RNAV (GPS) RWY 24, Orig-C.
21–Apr–22	MN	Two Harbors	Richard B Helgeson	2/2041	2/11/22	RNAV (GPS) RWY 6, Orig-C.
21–Apr–22	IN	Rensselaer	Jasper County	2/2356	2/11/22	RNAV (GPS) RWY 18, Orig-C.
21–Apr–22	IN	Rensselaer	Jasper County	2/2357	2/11/22	RNAV (GPS) RWY 36, Orig-C.
21–Apr–22	AZ	Tucson	Ryan Fld	2/3605	2/14/22	ILS OR LOC RWY 6R, Amdt 5D.
21–Apr–22	TX	Houston	David Wayne Hooks Meml	2/3617	2/11/22	RNAV (GPS) RWY 35L, Amdt 1D.
21–Apr–22	TX	Houston	David Wayne Hooks Meml	2/3618	2/11/22	LOC RWY 17R, Amdt 3E.

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject.
21–Apr–22	KS	Emporia	Emporia Muni	2/3952	1/13/22	RNAV (GPS) RWY 19, Orig-B.
21–Apr–22	KS	Emporia	Emporia Muni	2/3953	1/13/22	RNAV (GPS) RWY 1, Orig-B.
21–Apr–22	TN	Humboldt	Humboldt Muni	2/6094	2/22/22	RNAV (GPS) RWY 4, Orig-A.
21–Apr–22	OK	Tahlequah	Tahlequah Muni	2/6583	2/28/22	RNAV (GPS) RWY 35, Amdt 1B.
21–Apr–22	MN	Wheaton	Wheaton Muni	2/9026	2/11/22	RNAV (GPS) RWY 34, Orig-A.
21–Apr–22	MN	Wheaton	Wheaton Muni	2/9028	2/11/22	RNAV (GPS) RWY 16, Orig-A.
21–Apr–22	MN	Roseau	Roseau Muni/Rudy Billberg Fld.	2/9034	2/14/22	VOR RWY 16, Amdt 8.
21–Apr–22	MN	Roseau	Roseau Muni/Rudy Billberg Fld.	2/9036	2/14/22	VOR RWY 34, Amdt 1.

[FR Doc. 2022–05281 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 1, 112, 117, 121, and 507

[Docket No. FDA–2021–D–0563]

Current Good Manufacturing Practice and Preventive Controls, Foreign Supplier Verification Programs, Intentional Adulteration, and Produce Safety Regulations: Enforcement Policy Regarding Certain Provisions; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of availability.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing the availability of a final guidance for industry entitled ''Current Good Manufacturing Practice and Preventive Controls, Foreign Supplier Verification Programs, Intentional Adulteration, and Produce Safety Regulations: Enforcement Policy Regarding Certain Provisions.'' This guidance states Agency policy regarding enforcement of certain requirements related to supply-chain programs for contract manufacturers/processors, the intentional adulteration regulation, and supplier approval and verification requirements in the Current Good Manufacturing Practice and Preventive Controls Regulations and the Foreign Supplier Verification Programs (FSVP) Regulation.

DATES: The announcement of the guidance is published in the **Federal Register** on March 14, 2022.

ADDRESSES: You may submit either electronic or written comments on Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov*.
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–0563 for ''Current Good Manufacturing Practice and Preventive Controls, Foreign Supplier Verification Programs, Intentional Adulteration, and Produce Safety Regulations: Enforcement Policy Regarding Certain Provisions.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

For questions relating to CGMP, Hazard Analysis, and Risk-Based Preventive Controls for Human Food: Jenny Scott, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–2166.

For questions relating to CGMP, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals: Jennifer Erickson, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–7382.

For questions relating to Foreign Supplier Verification Programs for Importers of Food for Humans and Animals: Kevin Kwon, Center for Food Safety and Applied Nutrition (HFS–600), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 703–785–1125.

For questions relating to Mitigation Strategies to Protect Food Against Intentional Adulteration: Ryan Newkirk, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–3712.

For questions relating to Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption: Samir Assar, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1636.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for industry entitled ''Current Good Manufacturing Practice and Preventive Controls, Foreign Supplier Verification Programs, Intentional Adulteration, and Produce Safety Regulations: Enforcement Policy Regarding Certain Provisions.'' We are issuing the guidance consistent with our good guidance practices regulation (21 CFR 10.115). We are implementing the guidance without prior public comment because we have determined that prior public participation is not feasible or appropriate (§ 10.115(g)(2)). We made this determination because the guidance presents a less burdensome policy consistent with the public health. Although this guidance is immediately in effect, it remains subject to comment in accordance with FDA's good guidance practices regulation.

This guidance concerns five of the seven foundational rules that we have established in Title 21 of the Code of Federal Regulations (21 CFR) as part of our implementation of the FDA Food Safety Modernization Act (Pub. L. 111–353). The five final rules are entitled ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Human Food'' (published in the **Federal Register** of September 17, 2015, 80 FR 55908) (part 117); ''Current Good Manufacturing Practice, Hazard Analysis, and Risk-Based Preventive Controls for Food for Animals'' (published in the **Federal Register** of September 17, 2015, 80 FR 51670) (part 507); ''Foreign Supplier Verification Programs for Importers of Food for Humans and Animals'' (published in the **Federal Register** of November 27, 2015, 80 FR 74226) (FSVP regulation); ''Mitigation Strategies to Protect Food Against Intentional Adulteration'' (published in the **Federal Register** of May 27, 2016, 81 FR 34166) (IA regulation or part 121); and ''Standards for the Growing, Harvesting, Packing, and Holding of Produce for Human Consumption'' (published in the **Federal Register** of November 27, 2015, 80 FR 74354) (*https://www.fda.gov/food/guidanceregulation/fsma/ucm334114.htm*) (Produce Safety regulation or part 112).

In the guidance we state that, at this time and based on our current understanding of the risks, we do not intend to enforce certain regulatory requirements for certain entities and/or activities covered by these five rules:

- Extension of FDA's intent not to take enforcement action in certain circumstances against a receiving facility that is a contract manufacturer/processor not in compliance with certain supply-chain program requirements for food manufactured for a brand owner.
- Under the intentional adulteration regulation:
  - Intent not to enforce the intentional adulteration regulation requirements for facilities under the preexisting farm-activity related enforcement policy, and
  - Intent not to enforce the requirement for reanalysis in certain circumstances, for example, when there is a single failure that is addressed through implementation of corrective action procedures.
- Intent not to enforce the supplier approval and verification requirements in parts 117 and 507 and the FSVP regulation with regard to supplier compliance with requirements that are already associated with an enforcement discretion policy.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in part 117 have been approved under OMB control number 0910–0751. The collections of information in part 507 have been approved under OMB control number 0910–0789. The collections of information in 21 CFR part 1, subpart L have been approved under OMB control number 0910–0752. The collections of information in 21 CFR part 121 have been approved under OMB control number 0910–0812. The collections of information in part 112 have been approved under OMB control number 0910–0816.

III. Electronic Access

Persons with access to the internet may obtain the document at either *https://www.fda.gov/RegulatoryInformation/Guidances/default.htm, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: March 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–05315 Filed 3–11–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. FDA–2021–N–0660]

Medical Devices; Clinical Chemistry and Clinical Toxicology Devices; Classification of the Interoperable Automated Glycemic Controller

AGENCY: Food and Drug Administration, HHS.

ACTION: Final amendment; final order.

SUMMARY: The Food and Drug Administration (FDA or we) is classifying the interoperable automated glycemic controller into class II (special controls). The special controls that apply to the device type are identified in this order and will be part of the codified language for the interoperable automated glycemic controller's classification. We are taking this action because we have determined that classifying the device into class II (special controls) will provide a reasonable assurance of safety and effectiveness of the device. We believe this action will also enhance patients' access to beneficial innovative devices.

DATES: This order is effective March 14, 2022. The classification was applicable on December 13, 2019.

FOR FURTHER INFORMATION CONTACT: Joshua Balsam, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3530, Silver Spring, MD 20993–0002, 240–402–6521, *Joshua.Balsam@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Upon request, FDA has classified the interoperable automated glycemic controller as class II (special controls), which we have determined will provide a reasonable assurance of safety and effectiveness. In addition, we believe this action will enhance patients' access to beneficial innovation, by placing the device into a lower device class than the automatic class III assignment.

The automatic assignment of class III occurs by operation of law and without any action by FDA, regardless of the level of risk posed by the new device. Any device that was not in commercial distribution before May 28, 1976, is automatically classified as, and remains within, class III and requires premarket approval unless and until FDA takes an action to classify or reclassify the device (see 21 U.S.C. 360c(f)(1)). We refer to these devices as ''postamendments devices'' because they were not in commercial distribution prior to the date of enactment of the Medical Device Amendments of 1976, which amended the Federal Food, Drug, and Cosmetic Act (FD&C Act).

FDA may take a variety of actions in appropriate circumstances to classify or reclassify a device into class I or II. We may issue an order finding a new device to be substantially equivalent under section 513(i) of the FD&C Act (21 U.S.C. 360c(i)) to a predicate device that does not require premarket approval. We determine whether a new device is substantially equivalent to a predicate by means of the procedures for premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k) and part 807 (21 CFR part 807).

FDA may also classify a device through ''De Novo'' classification, a common name for the process authorized under section 513(f)(2) of the FD&C Act. Section 207 of the Food and Drug Administration Modernization Act of 1997 established the first procedure for De Novo classification (Pub. L. 105–115). Section 607 of the Food and Drug Administration Safety and Innovation Act modified the De Novo application process by adding a second procedure (Pub. L. 112–144). A device sponsor may utilize either procedure for De Novo classification.

Under the first procedure, the person submits a 510(k) for a device that has not previously been classified. After receiving an order from FDA classifying the device into class III under section 513(f)(1) of the FD&C Act, the person then requests a classification under section 513(f)(2).

Under the second procedure, rather than first submitting a 510(k) and then a request for classification, if the person determines that there is no legally marketed device upon which to base a determination of substantial equivalence, that person requests a classification under section 513(f)(2) of the FD&C Act.

Under either procedure for De Novo classification, FDA is required to classify the device by written order within 120 days. The classification will be according to the criteria under section 513(a)(1) of the FD&C Act. Although the device was automatically within class III, the De Novo classification is considered to be the initial classification of the device.

When FDA classifies a device into class I or II via the De Novo process, the device can serve as a predicate for future devices of that type, including for 510(k)s (see 21 U.S.C. 360c(f)(2)(B)(i)). As a result, other device sponsors do not have to submit a De Novo request or premarket approval application in order to market a substantially equivalent device (see 21 U.S.C. 360c(i), defining ''substantial equivalence''). Instead, sponsors can use the less-burdensome 510(k) process, when necessary, to market their device.

II. De Novo Classification

On July 15, 2019, FDA received Tandem Diabetes Care, Inc.'s request for De Novo classification of the Control-IQ Technology. FDA reviewed the request in order to classify the device under the criteria for classification set forth in section 513(a)(1) of the FD&C Act.

We classify devices into class II if general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls that, in combination with the general controls, provide reasonable assurance of the safety and effectiveness of the device for its intended use (see 21 U.S.C. 360c(a)(1)(B)). After review of the information submitted in the request, we determined that the device can be classified into class II with the establishment of special controls. FDA has determined that these special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

Therefore, on December 13, 2019, FDA issued an order to the requester classifying the device into class II. In this final order, FDA is codifying the classification of the device by adding 21 CFR 862.1356.[1] We have named the generic type of device interoperable automated glycemic controller, and it is identified as a device intended to automatically calculate drug doses based on inputs such as glucose and other relevant physiological parameters, and to command the delivery of such drug doses from a connected infusion pump. Interoperable automated glycemic controllers are designed to reliably and securely communicate with digitally connected devices to allow drug delivery commands to be sent, received, executed, and confirmed. Interoperable automated glycemic controllers are intended to be used in

[1] FDA notes that the ''ACTION'' caption for this final order is styled as ''Final amendment; final order,'' rather than ''Final order.'' Beginning in December 2019, this editorial change was made to indicate that the document ''amends'' the Code of Federal Regulations. The change was made in accordance with the Office of Federal Register's (OFR) interpretations of the Federal Register Act (44 U.S.C. chapter 15), its implementing regulations (1 CFR 5.9 and parts 21 and 22), and the Document Drafting Handbook.

conjunction with digitally connected devices for the purpose of maintaining glycemic control.

FDA has identified the following risks to health associated specifically with this type of device and the measures required to mitigate these risks in table 1.

TABLE 1—INTEROPERABLE AUTOMATED GLYCEMIC CONTROLLER RISKS AND MITIGATION MEASURES

Identified risks	Mitigation measures
Patient harm due to inappropriate drug delivery	Clinical data demonstrating device performance, Certain software validation testing, User training plan, and Certain drug compatibility information in labeling.
Risk due to poorer or different performance in pediatric populations	Clinical data demonstrating device performance in pediatric population; and Certain contraindications, warning statements, and precautions in labeling.
Risk due to the inability of the controller to handle different pharmacokinetic/pharmacodynamic characteristics of the drugs.	Clinical data demonstrating device performance, Drug compatibility information in labeling, User training plan, and Human factors testing.
Risk due to lack of compatibility of connected devices	Certain validation of communication specifications, processes, and procedures with digitally connected devices; and Limitations on interoperable devices.
Risk of connected devices having inadequate performance to allow safe use of the controller.	Specifications for performance of connected devices; Certain validation of communication specifications, processes, and procedures with digitally connected devices; and Limitations on interoperable devices.
Failure to report device malfunctions or adverse events to the device manufacturer.	Plans and procedures for assigning postmarket responsibilities.
Risk of latent flaws in software	Robust software validation testing; Certain validation of communication specifications, processes, and procedures with digitally connected devices; and Certain verification and validation of risk control measures.
Failure to provide appropriate treatment due to loss of communication with connected devices.	Certain verification and validation of risk control measures; and Certain validation of communication specifications, processes, and procedures with digitally connected devices.
Risk due to insecure transmission of data	Certain validation of communication specifications, processes, and procedures with digitally connected devices.
Failure to correctly operate the device	Human factors testing, User training plan, Compatible devices listed in labeling, and Certain warning statements and precautions in labeling.
Failure to correctly determine the root cause of device malfunctions	Certain verification and validation of logging capability.
Risk due to data transmission interference/electromagnetic disturbance	Certain verification and validation of electrical safety, electromagnetic compatibility, and radio frequency wireless testing.

FDA has determined that special controls, in combination with the general controls, address these risks to health and provide reasonable assurance of safety and effectiveness. In order for a device to fall within this classification, and thus avoid automatic classification in class III, it would have to comply with the special controls named in this final order. The necessary special controls appear in the regulation codified by this order. This device is subject to premarket notification requirements under section 510(k).

III. Analysis of Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Paperwork Reduction Act of 1995

This final order establishes special controls that refer to previously approved collections of information found in other FDA regulations and guidance. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the guidance document ''De Novo Classification Process (Evaluation of Automatic Class III Designation)'' have been approved under OMB control number 0910–0844; the collections of information in 21 CFR part 814, subparts A through E, regarding premarket approval, have been approved under OMB control number 0910–0231; the collections of information in part 807, subpart E, regarding premarket notification submissions, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 820, regarding quality system regulation, have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801 regarding labeling, have been approved under OMB control number 0910–0485.

List of Subjects in 21 CFR Part 862

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

■ 1. The authority citation for part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Add § 862.1356 to subpart B to read as follows:

§ 862.1356 Interoperable automated glycemic controller.

(a) *Identification.* An interoperable automated glycemic controller is a device intended to automatically calculate drug doses based on inputs such as glucose and other relevant physiological parameters, and to command the delivery of such drug doses from a connected infusion pump. Interoperable automated glycemic controllers are designed to reliably and securely communicate with digitally connected devices to allow drug delivery commands to be sent, received, executed, and confirmed. Interoperable automated glycemic controllers are

intended to be used in conjunction with digitally connected devices for the purpose of maintaining glycemic control.

(b) *Classification.* Class II (special controls). The special controls for this device are:

(1) Design verification and validation must include:

(i) An appropriate, as determined by FDA, clinical implementation strategy, including data demonstrating appropriate, as determined by FDA, clinical performance of the device for its intended use, including all of its indications for use.

(A) The clinical data must be representative of the performance of the device in the intended use population and in clinically relevant use scenarios and sufficient to demonstrate appropriate, as determined by FDA, clinical performance of the device for its intended use, including all of its indications for use.

(B) For devices indicated for use with multiple therapeutic agents for the same therapeutic effect (*e.g.,* more than one type of insulin), data demonstrating performance with each product or, alternatively, an appropriate, as determined by FDA, clinical justification for why such data are not needed.

(C) When determined to be necessary by FDA, the strategy must include postmarket data collection to confirm safe real-world use and monitor for rare adverse events.

(ii) Results obtained through a human factors study that demonstrates that an intended user can safely use the device for its intended use.

(iii) A detailed and appropriate, as determined by FDA, strategy to ensure secure and reliable means of data transmission with other intended connected devices.

(iv) Specifications that are appropriate, as determined by FDA, for connected devices that shall be eligible to provide input to (*e.g.,* specification of glucose sensor performance) or accept commands from (*e.g.,* specifications for drug infusion pump performance) the controller, and a detailed strategy for ensuring that connected devices meet these specifications.

(v) Specifications for devices responsible for hosting the controller, and a detailed and appropriate, as determined by FDA, strategy for ensuring that the specifications are met by the hosting devices.

(vi) Documentation demonstrating that appropriate, as determined by FDA, measures are in place (*e.g.,* validated device design features) to ensure that safe therapy is maintained when communication with digitally connected devices is interrupted, lost, or re-established after an interruption. Validation testing results must demonstrate that critical events that occur during a loss of communications (*e.g.,* commands, device malfunctions, occlusions, etc.) are handled and logged appropriately during and after the interruption to maintain patient safety.

(vii) A detailed plan and procedure for assigning postmarket responsibilities including adverse event reporting, complaint handling, and investigations with the manufacturers of devices that are digitally connected to the controller.

(2) Design verification and validation documentation must include appropriate design inputs and design outputs that are essential for the proper functioning of the device that have been documented and include the following:

(i) Risk control measures to address device system hazards;

(ii) Design decisions related to how the risk control measures impact essential performance; and

(iii) A traceability analysis demonstrating that all hazards are adequately controlled and that all controls have been validated in the final device design.

(3) The device shall include appropriate, as determined by FDA, and validated interface specifications for digitally connected devices. These interface specifications shall, at a minimum, provide for the following:

(i) Secure authentication (pairing) to connected devices;

(ii) Secure, accurate, and reliable means of data transmission between the controller and connected devices;

(iii) Sharing of necessary state information between the controller and any connected devices (*e.g.,* battery level, reservoir level, sensor use life, pump status, error conditions);

(iv) Ensuring that the controller continues to operate safely when data is received in a manner outside the bounds of the parameters specified;

(v) A detailed process and procedures for sharing the controller's interface specification with connected devices and for validating the correct implementation of that protocol; and

(vi) A mechanism for updating the controller software, including any software that is required for operation of the controller in a manner that ensures its safety and performance.

(4) The device design must ensure that a record of critical events is stored and accessible for an adequate period to allow for auditing of communications between digitally connected devices, and to facilitate the sharing of pertinent information with the responsible parties for those connected devices. Critical events to be stored by the controller must, at a minimum, include:

(i) Commands issued by the controller, and associated confirmations the controller receives from digitally connected devices;

(ii) Malfunctions of the controller and malfunctions reported to the controller by digitally connected devices (*e.g.,* infusion pump occlusion, glucose sensor shut down);

(iii) Alarms and alerts and associated acknowledgements from the controller as well as those reported to the controller by digitally connected devices; and

(iv) Connectivity events (*e.g.,* establishment or loss of communications).

(5) The device must only receive glucose input from devices cleared under § 862.1355 (integrated continuous glucose monitoring system), unless FDA determines an alternate type of glucose input device is designed appropriately to allow the controller to meet the special controls contained within this section.

(6) The device must only command drug delivery from devices cleared under § 880.5730 of this chapter (alternate controller enabled infusion pump), unless FDA determines an alternate type of drug infusion pump device is designed appropriately to allow the controller to meet the special controls contained within this section.

(7) An appropriate, as determined by FDA, training plan must be established for users and healthcare providers to assure the safety and performance of the device when used. This may include, but not be limited to, training on device contraindications, situations in which the device should not be used, notable differences in device functionality or features compared to similar alternative therapies, and information to help prescribers identify suitable candidate patients, as applicable.

(8) The labeling required under § 809.10(b) of this chapter must include:

(i) A contraindication for use in pediatric populations except to the extent clinical performance data or other available information demonstrates that it can be safely used in pediatric populations in whole or in part.

(ii) A prominent statement identifying any populations for which use of this device has been determined to be unsafe.

(iii) A prominent statement identifying by name the therapeutic agents that are compatible with the controller, including their identity and concentration, as appropriate.

(iv) The identity of those digitally connected devices with which the controller can be used, including descriptions of the specific system configurations that can be used, per the detailed strategy submitted under paragraph (b)(1)(iii) of this section.

(v) A comprehensive description of representative clinical performance in the hands of the intended user, including information specific to use in the pediatric use population, as appropriate.

(vi) A comprehensive description of safety of the device, including, for example, the incidence of severe hypoglycemia, diabetic ketoacidosis, and other relevant adverse events observed in a study conducted to satisfy paragraph (b)(1)(i) of this section.

(vii) For wireless connection enabled devices, a description of the wireless quality of service required for proper use of the device.

(viii) For any controller with hardware components intended for multiple patient reuse, instructions for safely reprocessing the hardware components between uses.

Dated: March 8, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–05303 Filed 3–11–22; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA–HQ–OLEM–2021–0946 FRL–9334–02–OLEM]

Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Standards and Practices for All Appropriate Inquiries to reference a standard practice recently made available by ASTM International, a widely recognized standards developing organization. Specifically, this direct final rule amends the All Appropriate Inquiries Rule to reference ASTM International's E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act.

DATES: This rule is effective on May 13, 2022, without further notice, unless EPA receives adverse comment by April 13, 2022. If EPA receives such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA–HQ–OLEM–2021–0946] at *https://www.regulations.gov.* Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI and multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this rule, contact Patricia Overmeyer, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460–0002, 202–566–2774, or *Overmeyer.patricia@epa.gov.*

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

Table of Contents

I. Why is the EPA using a direct final rule?

EPA is publishing this direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comment given that this action will provide flexibility for grant recipients and other entities that may benefit from the use of the ASTM E1527–21 standard. We believe that this action is reasonable and can be promulgated without consideration of public comment because it allows for the use of a generally accepted business standard developed by a recognized standards developing organization. The standard was reviewed by EPA and determined to be equivalent to the Agency's all appropriate inquiries requirements. This action does not disallow the use of the previously recognized standards (ASTM E1527–13 or ASTM E2247–16), and it does not alter the requirements of the previously promulgated All Appropriate Inquiries Rule. In addition, this action will potentially increase flexibility for some parties who may make use of the new standard, without placing any additional burden on those parties who prefer to use either the ASTM E1527–13 standard, the ASTM E2247–16 standard, or follow the requirements of the All Appropriate Inquiries Rule when conducting all appropriate inquiries.

Although we view this action as noncontroversial, in the ''Proposed Rules'' section in this issue of the **Federal Register,** we are publishing a separate proposed rule containing the clarification summarized above. That proposed rule will serve as the proposal to be revised if adverse comments are received. If EPA does not receive adverse comment in response to this direct final rule prior to April 13, 2022, this rule will become effective on May 13, 2022, without further notice. If EPA receives adverse comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register,** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time and before April 13, 2022.

II. Does this action apply to me?

This action offers certain parties the option of using an available industry standard to conduct all appropriate inquiries. Parties purchasing potentially contaminated properties may use the ASTM E1527–21 standard practice to comply with the all appropriate inquiries requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This rule does not require any entity to use this standard. Any party who wants to claim protection from liability under one of CERCLA's landowner liability

protections may follow the regulatory requirements of the All Appropriate Inquiries Rule at 40 CFR part 312, use the ASTM E1527–13 ''Standard Practice for Phase I Environmental Site Assessments,'' use the ASTM E2247–16 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property,'' or use the standard recognized in this direct final rule, the ASTM E1527–21 standard, to comply with the all appropriate inquiries provision of CERCLA.

Entities potentially affected by this action, or who may choose to use the newly referenced ASTM standard to perform all appropriate inquiries, include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, are purchasing potentially contaminated properties and wish to establish a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment on a property with funding from a brownfields grant awarded under CERCLA Section 104(k)(2)(B)(ii) may be affected by this action. This includes state, local, and Tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by North American Industry Classification System (NAICS) codes) is displayed in the table below.

Industry category	NAICS code
Real Estate	531
Insurance	52412
Banking/Real Estate Credit.	522292
Environmental Consulting Services.	54162
State, Local and Tribal Government.	926110, 925120
Federal Government	925120, 921190, 924120

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

III. What should I consider as I prepare my comments for the EPA?

Direct your comments to Docket ID No. EPA–HQ–OLEM–2021–0946. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

A. Submitting CBI: Do not submit any information through *www.regulations.gov* or email that you consider to be CBI or otherwise protected. You can only submit CBI to EPA via U.S. mail at: HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Clearly mark all information that you claim to be CBI. For CBI submitted on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted along with the comment that includes CBI. The version of the comment that does not include CBI will be included in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments: When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *https://www2.epa.gov/dockets/commenting-epa-dockets.*

C. *The docket:* All documents in the docket are listed in the *www.regulations.gov* index. Certain types of information claimed as CBI, and other information whose disclosure is restricted by statute, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material, such as ASTM International's E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' will not be placed in EPA's electronic public docket but will be publicly available only in printed form in the official public docket. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Please note: Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only, and walk-ins are not allowed. Visitors to the Reading Room must complete docket material requests in advance and then make an appointment to retrieve the material. Please contact the EPA Reading Room staff at (202) 566–1744 or via the Dockets Customer Service email at *docket-customerservice@epa.gov* to arrange material requests and appointments.

IV. Statutory Authority

This direct final rule amends the All Appropriate Inquiries Rule setting Federal standards for the conduct of ''all appropriate inquiries'' at 40 CFR part 312. The All Appropriate Inquiries Rule sets forth standards and practices necessary for fulfilling the requirements

of CERCLA section 101(35)(B) to obtain CERCLA liability protection and for conducting site characterizations and assessments with the use of brownfields grants per CERCLA section 104(k)(2)(B)(ii).

V. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (''the Brownfields Amendments''). In general, the Brownfields Amendments to CERCLA provide funds to assess and clean up brownfields sites; clarify existing and establish new CERCLA liability provisions related to certain types of owners of contaminated properties; and provide funding to establish or enhance State and Tribal cleanup programs. The Brownfields Amendments revised some of the provisions of CERCLA Section 101(35) and limited liability under Section 107 for bona fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner liability protection under CERCLA. The Brownfields Amendments clarified the requirement that parties purchasing potentially contaminated property undertake ''all appropriate inquiries'' into prior ownership and use of property before purchasing the property to qualify for protection from CERCLA liability.

The Brownfields Amendments of 2002 required EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiries. EPA promulgated regulations that set standards and practices for all appropriate inquiries on November 1, 2005 (70 FR 66070). In the final regulation, EPA referenced, and recognized as compliant with the rule, the ASTM E1527–05 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' In December 2008, EPA amended the All Appropriate Inquiries Rule to recognize another ASTM standard as compliant with the rule, ASTM E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.'' Both standards, the ASTM E1527–05 and the ASTM E2247–08, were subsequently revised by ASTM International. EPA referenced the revised ASTM E1527–13 standard on August 15, 2013 (78 FR 49690) and referenced the revised ASTM E2247–16 Standard on September 15, 2017 (82 FR 43310) as compliant with the All Appropriate Inquiries Rule. Currently, the All Appropriate Inquiries Rule (40 CFR part 312) allows for the use of the ASTM E1527–13 standard or the ASTM E2247–16 standard to conduct all appropriate inquiries, in lieu of following requirements included in the rule. Once this action is final, the All Appropriate Inquiries Rule also will allow for the use of the ASTM E1527–21 standard.

Recently, ASTM International published a revised standard for conducting Phase I environmental site assessments. This standard, ASTM E1527–21, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' was reviewed by EPA, and determined by EPA to be compliant with the requirements of the All Appropriate Inquiries Rule.

VI. What action is the EPA taking?

This direct final rule amends the All Appropriate Inquiries Rule to allow for the use of the recently revised ASTM International standard, ASTM E1527–21, to satisfy the all appropriate inquiries requirements under CERCLA for establishing the bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections.

With this action, parties seeking liability relief under CERCLA's landowner liability protections, as well as recipients of brownfields grants for conducting site assessments, will be considered in compliance with the requirements for all appropriate inquiries, if such parties comply with the procedures provided in the ASTM E1527–21, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' EPA determined that it is reasonable to promulgate this clarification as a direct final rule that is effective immediately, rather than delay promulgation of the clarification until after receipt and consideration of public comments. EPA made this determination based upon the Agency's finding that the ASTM E1527–21 standard is compliant with the All Appropriate Inquiries Rule, and the Agency sees no reason to delay allowing for its use in conducting all appropriate inquiries.

The Agency notes that this action does not require any party to use the ASTM E1527–21 standard. Any party conducting all appropriate inquiries to comply with CERCLA's bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections may continue to follow the provisions of the All Appropriate Inquiries Rule at 40 CFR part 312, use the ASTM E1527–13 standard or use the ASTM E2247–16 standard. This action merely allows for the option of using ASTM International's E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' by those parties purchasing potentially contaminated properties in lieu of following the specific requirements of the All Appropriate Inquiries Rule.

The Agency notes that there are no legally significant differences between the regulatory requirements and the ASTM E1527–21 standard. To facilitate an understanding of the slight differences between the All Appropriate Inquiries Rule and the revised ASTM E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' as well as the applicability of the E1527–21 standard to certain types of properties, EPA developed, and placed in the docket for this action, the document ''Comparison of All Appropriate Inquiries Regulation, the ASTM E1527–13 Phase I Environmental Site Assessment Process, and ASTM E1527–21 Phase I Environmental Site Assessment Process.'' The document provides a comparison of the two ASTM E1527 standards.

This action includes no changes to the All Appropriate Inquiries Rule other than to add an additional reference to the new ASTM E1527–21 standard. EPA is not seeking comments on the standards and practices included in the rule published at 40 CFR part 312. Also, EPA is not seeking comments on the ASTM E1527–21 standard. EPA's only action with this direct final rule is recognition of the ASTM E1527–21 standard as compliant with the all appropriate inquiries requirements and, therefore it is only this action on which the Agency is seeking comment.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. This action merely amends the All Appropriate Inquiries Rule to reference ASTM International's E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not contain any unfunded mandates or significantly or uniquely affect small governments as described in Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub. L. 104–4). This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this action is exempt from review under Executive Order 12866, this rule 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 of 1995 (PRA), 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).

This action does involve technical standards. Therefore, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) (NTTAA) apply. The NTTAA was signed into law on March 7, 1996, and, among other things, directs the National Institute of Standards and Technology (NIST) to bring together Federal agencies as well as state and local governments to achieve greater reliance on voluntary consensus standards and decrease dependence on in-house standards. It states that use of such standards, whenever practicable and appropriate, is intended to achieve the following goals: (a) Eliminate the cost to the government of developing its own standards and decrease the cost of goods procured and the burden of complying with agency regulations; (b) provide incentives and opportunities to establish standards that serve national needs; (c) encourage long-term growth for U.S. enterprises and promote efficiency and economic competition through harmonization of standards; and (d) further the policy of reliance upon the private sector to supply government needs for goods and services. The Act requires that Federal agencies adopt private sector standards, particularly those developed by standards developing organizations (SDOs), whenever possible in lieu of creating proprietary, non-consensus standards.

This action is compliant with the spirit and requirements of the NTTAA. This action allows for the use of the ASTM International standard known as Standard E1527–21 and entitled ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' By taking this action, EPA is fulfilling the intent and requirements of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. EPA submitted 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). This rule is effective on May 13, 2022 unless EPA receives adverse comment by May 13, 2022.

List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Barry N. Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

For the reasons set out in the preamble, 40 CFR part 312 is amended as follows:

PART 312—[AMENDED]

■ 1. The authority citation for part 312 continues to read as follows:

Authority: Section 101(35)(B) of CERCLA, as amended, 42 U.S.C. 9601(3)(B).

Subpart B—Definitions and References

■ 2. Section 312.11 is amended by adding paragraph (c) to read as follows:

§ 312.11 References.

* * * * *

(c) The procedures of ASTM International Standard E1527–21 entitled ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' This standard is available from ASTM International at *www.astm.org,* 1–610–832–9585.

[FR Doc. 2022–05259 Filed 3–11–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3160 and 9230

[212.LLHQ310000.L13100000.PP0000]

RIN 1004–AE85

Onshore Oil and Gas Operations and Coal Trespass—Annual Civil Penalties Inflation Adjustments

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule adjusts the level of civil monetary penalties contained in the Bureau of Land Management's (BLM) regulations governing onshore oil and gas operations and coal trespass as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and consistent with applicable Office of Management and Budget (OMB) guidance. The penalty adjustments made by this final rule constitute the 2022 annual inflation adjustments, accounting for one year of inflation spanning the period from October 2020 through October 2021.

DATES: This rule is effective on March 14, 2022.

FOR FURTHER INFORMATION CONTACT: For information regarding the BLM's Fluid Minerals Program, please contact Rebecca Good, Deputy Division Chief, Fluid Minerals Division, telephone: 307–251–3487; email: *rgood@blm.gov.* For information regarding the BLM's Solid Minerals Program, please contact Lindsey Curnutt, Division Chief, Solid Minerals Division, telephone: 775–824–2910; email: *lcurnutt@blm.gov.*

For questions relating to regulatory process issues, please contact Jennifer Noe, Division of Regulatory Affairs, email: *jnoe@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, 7 days a week to contact the above individuals.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (the 2015 Act) became law, amending the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410).

The 2015 Act requires agencies to:

1. Adjust the level of civil monetary penalties for inflation with an initial ''catch-up'' adjustment through an interim final rulemaking in 2016;

2. Make subsequent annual adjustments for inflation beginning in 2017; and

3. Report annually in Agency Financial Reports on these inflation adjustments.

The purpose of these adjustments is to maintain the deterrent effect of civil monetary penalties and promote compliance with the law (*see* Sec. 1, Pub. L. 101–410).

As required by the 2015 Act, the BLM issued an interim final rule that adjusted the level of civil monetary penalties in BLM regulations with the initial ''catch-up'' adjustment (RIN 1004–AE46, 81 FR 41860), which was published on June 28, 2016, and became effective on July 28, 2016. On January 19, 2017, the BLM published a final rule (RIN 1004–AE49, 82 FR 6305) updating the civil penalty amounts to the 2017 annual adjustment levels. Final rules updating the civil penalty amounts to 2018, 2019, 2020, and 2021 annual adjustment levels were published in subsequent years (RIN 1004–AE51, 83 FR 3992; RIN 1004–AE56, 84 FR 22379; RIN 1004–AE67, 85 FR 10617; and RIN 1004–AE77, 86 FR 30548, respectively).

OMB issued Memorandum M–22–07 on December 15, 2021, (Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015) explaining agency responsibilities for identifying applicable penalties and calculating the annual adjustment for 2022 in accordance with the 2015 Act.

II. Calculation of 2022 Adjustments

In accordance with the 2015 Act and OMB Memorandum M–22–07, the BLM has identified applicable civil monetary penalties in its regulations and calculated the annual adjustments. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, nor does it include fees for services, licenses, permits, or other regulatory review. The calculated annual inflation adjustments are based on the percentage change between the Consumer Price Index for all Urban Consumers (CPI–U) for the October preceding the date of the adjustment and the prior year's October CPI–U. Consistent with guidance in OMB Memorandum M–22–07, the BLM divided the October 2021 CPI–U by the October 2020 CPI–U to calculate the multiplier. In this case, October 2021 CPI–U (276.589)/October 2020 CPI–U (260.388) = 1.06222. OMB Memorandum M–22–07 confirms that this is the proper multiplier. (OMB Memorandum M–22–07 at 1 and n.4.)

The 2015 Act requires the BLM to adjust the civil penalty amounts in 43 CFR 3163.2 and 43 CFR 9239.5–3(f)(1). To accomplish this, the BLM multiplied the current penalty amounts in those paragraphs by the multiplier set forth in OMB Memorandum M–22–07 (1.06222) to obtain the adjusted penalty amounts. The 2015 Act requires that the resulting amounts be rounded to the nearest $1.00 at the end of the calculation process.

The adjusted penalty amounts will take effect immediately upon publication of this rule. Pursuant to the 2015 Act, the adjusted civil penalty amounts apply to civil penalties assessed after the date the increase takes effect, even if the associated violation predates such increase. This final rule adjusts the following civil penalties:

CFR citation	Description of the penalty	Current penalty	Adjusted penalty
43 CFR 3163.2(b)(1)	Failure to comply	$1,128	$1,198
43 CFR 3163.2(b)(2)	If corrective action is not taken	11,292	11,995
43 CFR 3163.2(d)	If transporter fails to permit inspection for documentation	1,128	1,198
43 CFR 3163.2(e)	Failure to permit inspection, failure to notify	22,584	23,989
43 CFR 3163.2(f)	False or inaccurate documents; unlawful transfer or purchase	56,460	59,973
43 CFR 9239.5–3(f)(1)	Coal exploration for commercial purposes without an exploration license	4,227	4,490

III. Procedural Requirements

A. Administrative Procedure Act

In accordance with the 2015 Act, agencies must adjust civil monetary penalties ''notwithstanding Section 553 of the Administrative Procedure Act'' (sec. 4(b)(2), 2015 Act). The BLM is promulgating this 2022 inflation adjustment for civil penalties as a final rule pursuant to the provisions of the 2015 Act and OMB guidance. A proposed rule is not required because the 2015 Act expressly exempts the annual inflation adjustments from the notice and comment requirements of the Administrative Procedure Act. In addition, since the 2015 Act does not give the BLM any discretion to vary the amount of the annual inflation adjustment for any given penalty to reflect any views or suggestions provided by commenters, it would serve no purpose to provide an opportunity for public comment on this rule.

B. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the OMB will review all significant rules. OIRA has determined that this rule is not significant. (*See* OMB Memorandum M–22–07)

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability and to reduce uncertainty and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. E.O. 13563 directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and

freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science, and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements to the extent permitted by the 2015 Act.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. *See* 5 U.S.C. 603(a) and 604(a). The 2015 Act expressly exempts these annual inflation adjustments from the requirement to publish a proposed rule for notice and comment (*see* sec. 4(b)(2), 2015 Act). Because the final rule in this case does not include publication of a proposed rule, the RFA does not apply to this final rule.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Will not have an annual effect on the economy of $100 million or more;

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

E. Unfunded Mandates Reform Act

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

F. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have takings implications under E.O. 12630. Therefore, a takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. Therefore, a federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined that it has no substantial direct effects on federally recognized Indian tribes and that consultation under the Department's tribal consultation policy is not required.

J. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

K. National Environmental Policy Act

A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because, as a regulation of an administrative nature, the rule is covered by a categorical exclusion (*see* 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. Therefore, a Statement of Energy Effects is not required.

List of Subjects

43 CFR Part 3160

Administrative practice and procedure, Government contracts, Indians—lands, Mineral royalties, Oil and gas exploration, Penalties, Public lands—mineral resources, Reporting and recordkeeping requirements.

43 CFR Part 9230

Penalties, Public lands.

For the reasons given in the preamble, the BLM amends chapter II of title 43 of the Code of Federal Regulations as follows:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

■ 1. The authority citation for part 3160 continues to read as follows:

Authority: 25 U.S.C. 396d and 2107; 30 U.S.C. 189, 306, 359, and 1751; 43 U.S.C. 1732(b), 1733, 1740; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

Subpart 3163—Noncompliance, Assessments, and Penalties

§ 3163.2 [Amended]

■ 2. In § 3163.2:
■ a. In paragraph (b)(1), remove ''$1,128'' and add in its place ''$1,198''.
■ b. In paragraph (b)(2), remove ''$11,292'' and add in its place ''$11,995''.
■ c. In paragraph (d), remove ''$1,128'' and add in its place ''$1,198''.
■ d. In paragraph (e) introductory text, remove ''$22,584'' and add in its place ''$23,989''.
■ e. In paragraph (f) introductory text, remove ''$56,460'' and add in its place ''$59,973''.

PART 9230—TRESPASS

■ 3. The authority citation for part 9230 continues to read as follows:

Authority: R.S. 2478 and 43 U.S.C. 1201.

Subpart 9239—Kinds of Trespass

§ 9239.5–3 [Amended]

■ 4. In § 9239.5–3(f)(1), remove ''$4,227'' and add in its place ''$4,490''.

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2022–05351 Filed 3–11–22; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 21–93; DA 22–176; FR ID 75675]

Establishing Emergency Connectivity Fund To Close the Homework Gap

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Wireline Competition Bureau (Bureau) grants, in part, the Petition for Waiver filed by a group of Emergency Connectivity Fund Program stakeholders by waiving and extending the service delivery date to June 30, 2023 for all applicants who applied for Emergency Connectivity Fund support for equipment, other non-recurring services, and recurring services during the first and second application filing windows. The Bureau finds that due to the concurrent timing of the funding request processing and other factors beyond Emergency Connectivity Fund Program participants' control, certain first and second window applicants may not be able to use their committed funding to the full extent possible. The Bureau modifies the procedural rule and directs the Universal Service Administrative Company (USAC), the Administrator of the Emergency Connectivity Fund Program, to use June 30, 2023 as the service delivery date for all requests for equipment, other non-recurring services, and recurring services submitted during the first and second Emergency Connectivity Fund Program application filing windows.

DATES: Effective March 14, 2022.

FOR FURTHER INFORMATION CONTACT: Molly O'Conor, Wireline Competition Bureau, (202) 418–7400 or by email at *Molly.OConor@fcc.gov.* The Federal Communications Commission (Commission) asks that requests for accommodations be made as soon as possible in order to allow the agency to satisfy such requests whenever possible. Send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Bureau's Order in WC Docket No. 21–93; DA 22–176, adopted February 22, 2022, and released February 22, 2022. Due to the COVID–19 pandemic, the Commission's headquarters will be closed to the general public until further notice. The full text of this document is available at the following internet address: *https://www.fcc.gov/document/wcb-extends-ecf-service-delivery-date-june-30-2023.*

I. Introduction

1. In this Order, the Bureau grants, in part, the Petition for Waiver filed by a group of Emergency Connectivity Fund Program stakeholders led by the Schools, Health & Libraries Broadband (SHLB) Coalition by waiving and extending the service delivery date to June 30, 2023 for all applicants who applied for Emergency Connectivity Fund support for equipment, other non-recurring services, and recurring services during the first and second application filing windows. The Bureau finds that due to the concurrent timing of the funding request processing and other factors beyond Emergency Connectivity Fund Program participants' control, certain first and second window applicants may not be able to use their committed funding to the full extent possible. Therefore, in providing this relief, the Bureau seeks to alleviate administrative burdens, streamline the process for Emergency Connectivity Fund Program participants, and ensure applicants are treated fairly and equitably regardless of when their applications are processed and funding commitment decision letters are issued. Accordingly, the Bureau modifies the procedural rule and directs USAC, the Administrator of the Emergency Connectivity Fund Program, to use June 30, 2023 as the service delivery date for all requests for equipment, other non-recurring services, and recurring services submitted during the first and second Emergency Connectivity Fund Program application filing windows.

II. Discussion

2. Generally, the Commission's rules may be waived for good cause shown. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.

3. To ensure first and second window applicants can use all of their Emergency Connectivity Fund support to connect students, school staff, and library patrons regardless of when their application was processed and funding commitment decision letter was issued, the Bureau finds that good cause exists to waive and extend the service delivery date to June 30, 2023 for all first and second window funding requests for equipment, other non-recurring services, and recurring services. In particular, the Bureau recognizes that in the swift implementation of this emergency program, the timing of application reviews, post-commitment change request processing, and the issuance of funding commitment decision letters may have inadvertently resulted in some applicants having less time to use the funded equipment and/or services during the July 1, 2021 through June 30, 2022 funding period. Moreover, other factors, such as disruptions in the global supply chain, logistical delays, and the ongoing impact of the COVID–19 pandemic on our nation's schools and libraries have contributed to the need for additional time and present compelling and unique circumstances that merit a waiver of our rules. As such, the Bureau extends the service delivery date for all Emergency Connectivity Fund Program requests for equipment, other non-recurring services, and recurring services submitted during the first and second application filing windows. This means that applicants will be able to receive Emergency Connectivity Fund support for the full requested twelve months of service, or for connected devices or other eligible equipment delivered by June 30, 2023.

4. The Bureau also concludes that extending the service delivery date will not lead to any undue advantage in funding as the first and second window applicants will not receive more funding than what is allowed under the Emergency Connectivity Fund Program rules. In addition, the Bureau finds that the public interest would not be served were these first and second window applicants to lose or not be able to fully use the committed Emergency Connectivity Fund support for the equipment and broadband services needed for these students, school staff, and library patrons to fully engage in remote learning during this unprecedented time. Rather, the action the Bureau takes will allow schools and libraries to provide and use the Emergency Connectivity Fund-supported equipment and services beyond the current June 30, 2022 service delivery date, thereby enhancing the off-campus connectivity available to students, school staff, and library patrons during the ongoing emergency period, consistent with the goals of the Emergency Connectivity Fund Program.

5. In granting the requested relief, the Bureau emphasizes that this Order does not impact funding requests for the construction of new networks or the provision of customer premises equipment for datacasting services. Unlike requests for equipment or

commercially available services, applicants seeking support for special construction or customer premises datacasting equipment are provided one year from the date of their funding commitment decision letter to demonstrate that construction is completed and the services have been provided. The one-year deadline for special construction and customer premises datacasting equipment was established to ensure the greatly needed services were provided as quickly as possible to these students, school staff, and library patrons with continuing unmet needs during the COVID–19 emergency period. Thus, in the interest of providing and fully using this emergency funding to meet the immediate connectivity needs of students, school staff, and library patrons nationwide, the Bureau limits the relief provided by this Order to requests for equipment, other non-recurring services, and recurring services requested during the first and second application filing windows.

6. The Bureau also acknowledges SECA's concerns about the potential impact that an extension of the service delivery date may have on future application filing windows. The Bureau is mindful that these funds are limited and have adopted safeguards to ensure the funds are fully used for their intended purpose. The Bureau further believes that taking a different approach than the one the Bureau adopts will contribute to further delays, impose additional administrative burdens on the affected first and second window applicants, and create confusion among program participants by switching from a consistent deadline to a more variable one. The Bureau concludes that extending the service delivery date to June 30, 2023 will streamline the process for all program participants and allow for the greater provision of affordable devices and connectivity to students, school staff, and library patrons in need during the ongoing pandemic and therefore, furthers the mission of the Emergency Connectivity Fund. The Bureau encourages applicants and service providers, who agree to invoice on behalf of the applicant, to continue to submit timely requests for reimbursement after receiving the requested eligible equipment or services, to allow any unused Emergency Connectivity Fund support to be made available to other students, school staff, and library patrons with continuing unmet needs during this pandemic.

7. The Bureau is also mindful that certain applicants may have modified their first or second application filing window recurring services requests to reflect the dates that the services could be delivered between July 1, 2021 and June 30, 2022, based on the date of their funding commitment decision letter. For example, applicants may only be able to use funding for 6 months of service based on a January 1, 2022 dated funding commitment decision letter. If an applicant has modified a first or second window recurring services funding request, they may submit a waiver to the Commission asking that the voluntarily reduced funds be restored to those funding requests and subject to the updated June 30, 2023 service delivery date.

8. The Bureau modifies § 54.1711(e) accordingly to extend the service delivery date to June 30, 2023. The Bureau makes this change without notice and comment in accordance with the exception to the Administrative Procedure Act (APA) for procedural rules. The updated rule will become effective March 14, 2022.

9. Finally, the Bureau finds no evidence of waste, fraud, or abuse is presented by waiving and extending the service delivery date to June 30, 2023. The Bureau emphasizes that the Commission is committed to guarding against waste, fraud, and abuse and ensuring that funds disbursed through the Emergency Connectivity Fund Program are used for their intended purposes to provide broadband connectivity and connected devices to students, school staff, and library patrons with unmet needs during the ongoing COVID–19 emergency period. Although the Bureau grants a waiver of and extends the service delivery date for the first and second application filing window funding requests for the Emergency Connectivity Fund Program, these actions do not affect the authority of the Commission or USAC to conduct audits or investigations to verify compliance with Emergency Connectivity Fund Program rules and requirements.

III. Ordering Clauses

10. *Accordingly, it is ordered,* pursuant to the authority contained in sections 1–4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C 151–154 and 254, and §§ 0.91, 0.291, and 1.3 of the Commission's rules, 47 CFR 0.91, 0.291, and 1.3, that 47 CFR 54.1711 of the Commission's rules *is waived* to the extent provided herein.

11. *It is further ordered,* that pursuant to § 1.102(b)(1) of the Commission's rules, 47 CFR 1.102(b)(1), this Order *shall be effective* upon release.

12. The amended rule adopted in this Order constitutes a rule of agency organization, procedure and practice and is not subject to the Administrative Procedure Act requirements. Accordingly, this amended rule is *effective* March 14, 2022.

List of Subjects in 47 CFR Part 54

Communications common carriers, Health facilities, Infants and children, internet, Libraries, Puerto Rico, Reporting and recordkeeping requirements, Schools, Telecommunications, Telephone, Virgin Islands.

Federal Communications Commission.

Cheryl Callahan,

Assistant Chief, Telecommunications Access Policy Division Wireline Competition Bureau.

Final Rule

For the reasons set forth above, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 155, 201, 205, 214, 219, 220, 229, 254, 303(r), 403, 1004, 1302, 1601–1609 and 1752 unless otherwise noted.

■ 2. Amend § 54.1711 by revising paragraph (e) to read as follows:

§ 54.1711 Emergency Connectivity Fund requests for reimbursement.

* * * * *

(e) *Service delivery date.* For the initial filing window set forth in § 54.1708(b) and any subsequent filing windows covering funding for purchases made between July 1, 2021 and June 30, 2022, the service delivery date for equipment, other non-recurring services, and recurring services is June 30, 2023.

[FR Doc. 2022–05242 Filed 3–11–22; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 87, No. 49
Monday, March 14, 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 AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. FSIS–2021–0004]

RIN 0583–AD84

Condemnation of Poultry Carcasses Affected With Any Form of Avian Leukosis Complex; Rescission

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the poultry products inspection regulations to rescind several regulations related to the inspection and condemnation of poultry carcasses affected with any of the forms of avian leukosis complex.

DATES: Submit comments on or before May 13, 2022.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *https://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Jamie L. Whitten Building, Room 350–E, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2021–004. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *https://www.regulations.gov.*

Docket: For access to background documents or comments received, call (202) 205–0495 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

The poultry products inspection regulations require that carcasses of poultry affected with any one or more of the several forms of the avian visceral leukosis complex be condemned (9 CFR 381.82). On March 1, 2019, FSIS received a petition from the National Chicken Council (NCC) *https://www.fsis.usda.gov/wps/wcm/connect/85ae4905-fcc3-4f76-9586-f158f2618c41/19-01-Petition-National-Chicken-Council-03012019.pdf?MOD=AJPERES* requesting that the Agency amend the regulations to designate avian leukosis as a trimmable condition rather than a condition that requires condemnation of the entire carcass. The petition also requests that FSIS rescind the regulations at 9 CFR 381.36(f)(3) that require young chicken establishments operating under the NPIS to provide a location at a point along the production line to permit an FSIS inspector to inspect for leukosis the first 300 carcasses of each flock, together with their corresponding viscera. In addition, the petition requests that FSIS rescind the regulations at 9 CFR 381.76(b)(6)(iv) that prescribe the 300-bird leukosis inspection procedure under the NPIS. The petition asserts that the current regulations related to leukosis are based on an outdated understanding of this poultry disease, impose unnecessary costs on industry, and present a potential barrier to young chicken establishments that may want to convert to NPIS.[1]

To determine its response to the petition, the Agency evaluated the available scientific information on avian leukosis and reviewed the original basis for the regulations requiring condemnation of young chicken carcasses affected with avian leukosis. Based on this evaluation, FSIS concluded that there is scientific support for treating avian leukosis as a trimmable condition under 9 CFR 381.87 in all poultry establishments operating under FSIS' mandatory and voluntary inspection. Therefore, on July 16, 2020, FSIS issued a response granting the NCC petition, stating that FSIS has ''determined that current scientific evidence supports treating avian leukosis as a trimmable condition and that the actions requested in your petition would reduce regulatory burdens on the industry.''

Avian Leukosis Complex (also referred to as avian leukosis) is a rare condition in chickens that includes three virally-induced, tumor-causing diseases, none of which are transmissible to humans.[2] Avian Leukosis Complex may also be referred to as avian oncogenic viruses. The three characterized diseases are Marek's Disease, Lymphoid Leukosis, and Reticuloendotheliosis.[3] The most common of the avian oncogenic viruses is Marek's Disease caused by Marek's Disease Virus (MDV), a DNA herpesvirus that is ubiquitous in the environment.[4] Lymphoid Leukosis, caused by the Avian Leukosis Virus (ALV), an RNA retrovirus, is the second most common disease of the avian oncogenic viruses.[5] Reticuloendotheliosis also a RNA retrovirus is the third of the avian oncogenic viruses.[6] Additionally, avian visceral leukosis is a rare manifestation of the viral disease leukosis in young chickens, and also not transmissible to humans. Also, if visceral leukosis does

[1] Currently, three fowl establishments have waivers to operate under NPIS. If this proposed rule becomes final, FSIS will update their waivers to make them consistent with the final rule.

[2] Schat, K A. and Erb, H.N. Lack of evidence that avian oncogenic viruses are infectious for humans: A review. *Avian Diseases,* 2014; 58: 345–358.

[3] Avian Leukosis Complex also includes Lymphoproliferative Disease of Turkeys, a disease that does not occur in the United States.

[4] Dunn, J. Marek's Disease in poultry. *Merck's Veterinary Manual.* 2016; Available from: *Marek's Disease in Poultry—Poultry—Merck Veterinary Manual (merckvetmanual.com).*

[5] Dunn, J. Lymphoid Leukosis in poultry. *Merck's Veterinary Manual.* 2016; Available from: *http://www.merckvetmanual.com/poultry/neoplasms/lymphoid-leukosis-in-poultry.*

[6] Dunn, J. Reticuloendotheliosis in Poultry. *Merck's Veterinary Manual.* 2016; Available from: *http://www.merckvetmanual.com/poultry/neoplasms/reticuloendotheliosis-in-poultry.*

occur in young chickens it usually occurs on a flock basis.

Although avian leukosis does not present a human health concern, the poultry post-mortem inspection regulations cited above currently require the condemnation of carcasses affected with leukosis because the condition had historically rendered carcasses unwholesome or otherwise unfit for human food, and thus adulterated under the Poultry Products Inspection Act (PPIA; 21 U.S.C. 453(g)(3)). The current regulations at 9 CFR 381.82 require condemnation of the entire carcass and corresponding viscera if one or more lesions consistent with avian leukosis are observed on the viscera or carcass. Significantly, avian leukosis is the only condemnable disease in which lesions may develop on the viscera without necessarily manifesting itself on other parts of the carcass.

When the post-mortem avian leukosis inspection regulations were enacted, avian oncogenic (tumor-causing) viruses were a major cause of mortality to the poultry industry and birds affected with these viruses were covered in tumors and often paralyzed. Thus, the carcasses of these birds were considered unwholesome due to the extent of disease progression. However, because it is now common commercial practice to vaccinate each chicken flock for Marek's Disease and to breed leukosis-resistant birds, the occurrence of the condition described above is rare. As FSIS explained in the proposed rule ''Modernization of Poultry Slaughter Inspection,'' nationwide data from 1984 revealed that all forms of leukosis (skin, visceral, other viral leukoses) resulted in the condemnation of 0.017 percent of the approximately 7.4 billion young chickens slaughtered (77 FR 4408, 4422). While it is possible for a vaccinated bird to develop Marek's Disease, especially if the virus is highly virulent, the presentation of the disease is usually restricted to a few enlarged feather follicles, possibly a few lymphoid tumors on an organ, or an enlarged spleen. These are localized lesions that do not affect other parts of the carcass. In addition, these types of lesions are not specific to Marek's Disease, and the diagnosis cannot be confirmed by further testing because all birds that have been vaccinated will test positive for the disease. Since all birds are vaccinated for MDV with a modified-live vaccine, the virus is present in the tissues regardless of the presence of lesions. Thus, a positive test result for Marek's Disease is not necessarily an indicator of a diseased state that would render the carcass unwholesome.

History

The first evidence of Avian Leukosis and its viral etiology in poultry was documented in 1908.[7] At the time, viral oncology was a foreign concept and not much research progressed until the 1920s through the 1940s. During this time, the avian oncogenic viruses (still an unknown etiology, other than an unidentified virus) became a major cause of mortality to the expanding poultry industry, especially with the poultry industry shifting from low-density, low-producing backyard flocks to high-density, high-producing farms.[8] The birds infected with any of the avian oncogenic viruses were unhealthy, covered in tumors, and often paralyzed. The United States, as well as other groups across the world, started devoting more resources into researching the cause of the avian oncogenic viruses.[9]

The research on the avian oncogenic viruses proliferated during the 1950s and 1960s; however, the exact etiology was still unknown at the time the PPIA was passed. Thus, when the regulations implementing the PPIA were promulgated, the presence of Avian Leukosis deemed a whole carcass condemnable, based on the typical extent of disease progression at that time. However, as discussed above, because of current commercial practices, Avian Leukosis is now rare and, if present, is usually restricted to a few localized lesions such as enlarged feather follicles, possibly a few lymphoid tumors on an organ, or an enlarged spleen, which do not render other parts of the carcass unwholesome or unfit for human food.

Continued Support for Lack of Public Health Significance

In August 2014, FSIS published the final rule that established the NPIS and required FSIS to inspect the first 300-birds from each flock of young chickens to determine whether leukosis is present in the flock (79 FR 49566, 49586). The preamble to the final rule noted that leukosis does not present a human health concern; however, under the final rule FSIS continued to require condemnation of the entire carcass of birds affected by visceral leukosis under the NPIS and other inspection systems, based on the past determination that the disease rendered poultry unsound or otherwise unfit for human food.

In response to a waiver request, FSIS conducted an evaluation on issues associated with avian leukosis in young chickens. The results of the evaluation show that avian leukosis does not present a human health concern. The literature review [10] found that while several studies confirmed the presence of antibodies to MDV, Avian Lymphoid Leukosis, and Reticuloendotheliosis viruses in people working in poultry slaughter and processing establishments, there have been no indications that these poultry diseases are involved in human disease, including cancer or Multiple Sclerosis. Furthermore, experimental laboratory studies have been unable to establish that any of the avian oncogenic viruses have the ability to infect and replicate

[7] Payne, L.N. and Nair, V. The long view: 40 years of Avian Leukosis research. Avian Pathology, 2012; 41(1): 11–19.

[8] Nair, V. Evolution of Marek's disease—a paradigm for incessant race between the pathogen and the host, *The Veterinary Journal,* 2005; 170:175–183.

[9] Payne, L.N. and Nair, V. The long view; 40 years of Avian Leukosis research. *Avian Pathology,* 2012; 41(1):11–19.

[10] Included below is the list of citations to the literature that was reviewed:

1. Schat, K.A. and Erb, H.N. Lack of evidence that avian oncogenic viruses are infectious for humans: A review. *Avian Diseases,* 2014;58:345–358.

2. Purchase HG, Witter RL. Public health concerns from human expose to oncogenic avian herpesviruses. *JAVMA* 1986; 189(11):1430–1436.

3. Choudat D, Dambrine G, Delemotte B, Coudert F. Occupational exposure to poultry and prevalence of antibodies against Marek's disease virus and avian leukosis retroviruses. *Occup Environ Med* 1996; 53:403–410.

4. Zur Hausen H. Viruses in Human Cancers. *Eur J of Cancer* 1999; 35(8): 1174–1181.

5. Nair, V. Evolution of Marek's disease—a paradigm for incessant race between the pathogen and the host, *The Veterinary Journal,* 2005; 170:175–183.

6. Payne, L.N. and Nair, V. The long view: 40 years of Avian Leukosis research. *Avian Pathology,* 2012; 41(1): 11–19.

7. Kenzy, S.G. and Cho, B.R. Transmission of classical Marek's Disease by affected and carrier birds. *Avian Diseases,* 1969; 13(10: 211–214. Available from: *http://www.jstor.org/stable/1588430?seq=1#page_scan_tab_contents.*

8. *Office International des Epizooties* (*OIE*). 2018 OIE Terrestrial Manual. Chapter 3.3.13.—Marek's Disease. Available at: *Terrestrial Manual Online Access—OIE—World Organisation for Animal Health.*

9. Dunn, J. Marek's Disease in Poultry. *Merck's Veterinary Manual.* 2016; Available from: *http://www.merckvetmanual.com/poultry/neoplasms/marek's-disease-in-poultry.*

10. Dunn, J. Lymphoid Leukosis in poultry. *Merck's Veterinary Manual.* 2016; Available from: *http://www.merckvetmanual.com/poultry/neoplasms/lymphoid-leukosis-in-poultry.*

11. Dunn, J. Reticuloendotheliosis in Poultry. *Merck's Veterinary Manual.* 2016; Available from: *http://www.merckvetmanual.com/poultry/neoplasms/reticuloendotheliosis-in-poultry.*

12. Payne, L.N. and Venugopal, K. Neoplastic diseases: Marek's disease, avian leukosis and reticulendotheliosis. *Revue Scientifique et Technique (Office International des Epizooties),* 2000; 19(2): 544–564.

in mammalian cells, including humans.[11]

This recent research is consistent with findings extending back into the 1950's that assessed the public health risk of the three oncogenic viruses that occur in United States poultry.[12] The majority of research examined the public health risk of MDV because this virus is ubiquitous in the poultry farm environment and the vaccine for MDV is a modified live vaccine. A modified live vaccine of the MDV herpesvirus means that the virus infiltrates the cells and is persistently present in all cells of the bird. Everyone who raises, slaughters, processes, or eats chicken is exposed to the virus in the vaccine, regardless of the presence of any lesions. This level of profound exposure enabled researchers to conduct numerous epidemiological studies to assess the association between human disease and MDV. An extensive literature review on the public health impact related to MDV exposure performed in 1986 concluded that ''[t]he large body of experimental evidence in both avian and human virology, serology, pathology, and epidemiology strongly supports the conclusion that no etiologic relationship exists between avian herpesviruses and human cancer.'' [13] Additional studies after 1986 demonstrated the presence of antibodies against MDV in human populations, especially populations that are heavily exposed to MDV in poultry.[14] However, seroconversion, which is ''the development of detectable antibodies in the blood that are directed against an infectious agent'',[15] is not a remarkable finding alone and is not unexpected considering the high prevalence of MDV in the environment. The presence of antibodies does not prove a causal relationship between the virus and human disease.[16]

Current Practices

Under the NPIS, carcasses are presented to the online inspector after the carcasses have been sorted, washed, and trimmed by establishment employees. The carcasses are presented to the online inspector without the corresponding viscera because all poultry diseases and conditions, except for avian visceral leukosis, are readily identified by observing the carcass alone. To address avian visceral leukosis under the NPIS, an offline inspector observes the viscera of the first 300 birds slaughtered from each young chicken flock to determine whether the disease is present in the flock. As noted above, it is common commercial practice to vaccinate each chicken flock for Marek's Disease. On rare occasions, the vaccine is not effective. If the vaccine is not effective, visceral leukosis will be present on a flock basis. In the rare event that the disease is present, FSIS will adjust the NPIS inspection procedures and slow the line to inspect each carcass with its corresponding viscera and, if one or more lesions consistent with leukosis are observed in the viscera, the entire carcass must be condemned. However, if FSIS rescinds the regulations that require condemnation of carcasses affected by the avian leukosis complex, the 300-bird leukosis check for NPIS young chicken establishments would no longer be necessary because the carcasses of birds with leukosis lesions on their viscera would not be considered adulterated and any tumors present on the carcass, regardless of the cause, would be trimmed and removed by establishment employees before the carcass is presented to the FSIS online inspector.

Currently, under traditional inspection, FSIS inspection personnel perform inspection on each carcass and condemn carcasses affected by the avian leukosis complex. Under the proposed regulations in establishments under traditional inspection, after identifying lesions on young chicken viscera or carcasses, FSIS inspection personnel would direct establishment employees to trim and remove any tumors present on carcasses. If the disease has metastasized or if the entire carcass is otherwise affected, FSIS inspection personnel would condemn the entire carcass.

Proposed Changes

FSIS is proposing to rescind 9 CFR 381.82, the regulation that requires condemnation of poultry carcasses affected with one or more of the forms of the avian leukosis complex. Under the proposed rule, carcasses affected with avian leukosis would be addressed by 9 CFR 381.87, which provides that any organ or other carcass part affected with tumors may be trimmed and that the unaffected parts of the carcass may be inspected and passed. FSIS is also proposing to rescind 9 CFR 381.36(f)(3), the regulation that requires NPIS young chicken establishments to provide a leukosis inspection area along the slaughter line, as well as 9 CFR 381.76(b)(6)(iv), the regulation that prescribes inspection procedures for avian visceral leukosis in NPIS young chicken establishments. These regulations do not apply to turkey establishments operating under the NPIS because avian visceral leukosis is extremely rare in turkeys.

Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated as a ''non-significant'' regulatory action under section 3(f) of E.O. 12866. Accordingly, the proposed rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Economic Impact Analysis

This proposed rule would benefit young chicken slaughter establishments by decreasing the number of carcasses condemned for leukosis. An average of 62,445 young chicken carcasses, which represents less than 0.01 percent of total young chickens slaughtered,[17] are condemned every year for leukosis, based on Agency data from 2015 to 2019.[18] Based on data from the NCC and the USDA Economic Research Service, the average market weight of a young chicken is 6.21 pounds [19] and the wholesale price is 0.91 cents per pound.[20] As such, these chickens would have a wholesale value of roughly $352,883 per year. Allowing establishments to address leukosis by

[11] Schat, K A. and Erb, H.N. Lack of evidence that avian oncogenic viruses are infectious for humans: A review. *Avian Diseases,* 2014; 58: 345–358.

[12] Ibid.

[13] Purchase HG, Witter RL. Public health concerns from humans exposed to oncogenic avian herpesviruses. *JAVMA* 1986; 189(11):1430–1436.

[14] Choudat D, Dambrine G, Delemotte B, coudert F. Occupational exposure to poultry and prevalence of antibodies against Marek's disease virus and avian leukosis retroviruses. *Occup Environ Med* 1996; 53 403–410.

[15] *www.medicinenet.com.*

[16] Zur Hausen H. Viruses in Human Cancers. *Eur J of Cancer* 1999; 35(8): 1174–1181.

[17] From 2015 to 2019, approximately 9 billion young chickens were slaughtered annually.

[18] FSIS used data from the Public Health Information System (PHIS). PHIS is FSIS' electronic data analytic system, used to collect, consolidate, and analyze data in order to improve public health.

[19] National Chicken Council: Market Weight pounds, live weight: *https://www.nationalchickencouncil.org/statistic/us-broiler-performance/.* Accessed on January 6, 2021.

[20] USDA: Economic Research Service: Live Stock Meat: Domestic Data Whole sale price: 2015–2019 Average: Broilers (cents/lb.) National Comp.: *https://www.ers.usda.gov/data-products/livestock-meat-domestic-data/livestock-meat-domestic-data/#Wholesale%20Prices.* Accessed on July 22, 2020.

trimming affected areas, rather than condemning the entire carcass, would result in industry cost savings of approximately $352,883 per year.

This proposed rule would also remove a potential barrier for young chicken establishments that want to convert to the NPIS by eliminating the need to reconfigure lines and make other changes to provide an inspection area for FSIS to conduct the 300-bird leukosis check. Converting to NPIS would benefit these establishments because they would have more flexibility to design and implement production measures tailored to their operations. The proposed rule would also reduce production costs for NPIS young chicken establishments by removing the inefficiencies associated with the current 300-bird leukosis checks, such as slowing the line if a leukosis positive flock is identified. Eliminating the 300-bird leukosis checks would also allow FSIS to shift inspection resources currently required for performing leukosis checks to other offline activities ensuring food safety.

This proposed rule is deregulatory and is not expected to result in additional costs to industry, consumers, or FSIS.

Regulatory Flexibility Act Assessment

The FSIS Administrator has made a preliminary determination that this proposed rule would not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). FSIS does not expect this proposed rule to result in costs to small entities because only large and high-volume establishments are expected to operate under NPIS and need to hire and train additional employees to sort and trim carcasses. In non-NPIS establishments, FSIS inspectors would continue to direct establishment employees to trim localized defects. If finalized, FSIS expects that this proposed rule would lead to minimal cost savings across the industry. In 2018, total poultry industry revenue was estimated at $65.2 billion,[21] as such, the estimated cost savings of $352,883 would be less than .01 percent of industry revenue and would be considered an insignificant economic impact.

From 2015 to 2019, about 28 percent of the establishments that had poultry carcasses condemned for leukosis were classified as Hazard Analysis and Critical Control Point (HACCP) size small and about 15 percent were HACCP size very small.[22] Small and very small poultry establishments would benefit from the expected cost savings associated with trimming, if this proposed rule is finalized.

Paperwork Reduction Act

There are no paperwork or recordkeeping requirements associated with this proposed rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' E.O. 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.

FSIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O.13175. If a Tribe requests consultation, FSIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified herein are not expressly mandated by Congress.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the 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/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 (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. 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 of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by: (1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) fax: (202) 690–7442; or (3) email: *program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will

[21] United States Census Bureau: Annual Survey of Manufactures: Summary Statistics for Industry Groups and Industries in the U.S.: 2018. Annual Economic Surveys: ASMAREA2017: NAICS 311615: Poultry Processing. Accessed on January 6, 2021: *https://data.census.gov/cedsci/table?q=311615&tid=ASMAREA2017.AM1831BASIC01&hidePreview=false.*

[22] FSIS used data from the Public Health Information System (PHIS) to identify these establishments by HACCP category.

announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to it through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

List of Subjects in 9 CFR Part 381

Poultry inspection, Poultry and poultry products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, FSIS is proposing to amend 9 CFR part 381 as follows:

PART 381—POULTRY PRODUCTS INSPECTIONS REGULATIONS

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 1633, 1901–1906; 21 U.S.C. 451–472; 7 CFR 2.7, 2.18, 2.53.

§ 381.36 [Amended]

■ 2. Amend Section 381.36 by removing and reserving paragraph (f)(3).

§ 381.76 [Amended]

■ 3. Amend section 381.76 by removing paragraph (b)(6)(iv).

§ 381.82 [Removed and Reserved]

■ 4. Remove and reserve § 381.82.

■ 5. Revise § 381.87 to read as follows:

§ 381.87 Tumors.

(a) Tumors, including those possibly caused by avian leukosis complex, may be trimmed from any affected organ or other part of a carcass where there is no evidence of metastasis or that the general condition of the bird has been affected by the size, position, or nature of the tumor. Trimmed carcasses otherwise found to be not adulterated shall be passed as human food.

(b) Any organ or other part of a carcass which is affected by a tumor where there is evidence of metastasis or that the general condition of the bird has been affected by the size, position, or nature of the tumor, shall be condemned.

Paul Kiecker,

Administrator.

[FR Doc. 2022–05294 Filed 3–11–22; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY

10 CFR Part 431

[EERE–2018–BT–STD–0003]

RIN 1904–AE42

Energy Conservation Program: Energy Conservation Standards for Variable Refrigerant Flow Multi-Split Air Conditioners and Heat Pumps; Clarification

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

ACTION: Notice of proposed rulemaking and request for comment; clarification.

SUMMARY: On February 10, 2022, the U.S. Department of Energy (''DOE'' or ''the Department'') submitted a notice of proposed rulemaking (''NOPR'') to the **Federal Register** proposing amended energy conservation standards for variable refrigerant flow (''VRF'') multi-split air conditioners and VRF multi-split heat pumps, collectively referred to as ''VRF multi-split systems'' (''2022 VRF NOPR''). After submission of the NOPR to the Office of the Federal Register for publication, the U.S. District Court for the Western District of Louisiana issued a preliminary injunction on February 11, 2022, in the case of *State of Louisiana* v. *Biden,* which prohibits certain actions relating to the monetization of benefits associated with greenhouse gas emissions reductions. Through this clarification document, DOE is clarifying its response to a public comment in the 2022 VRF NOPR so as to avoid any confusion or ambiguity of DOE's response in light of the court's preliminary injunction and to reiterate that no emissions analysis (or related monetization) was conducted for this proposed rulemaking.

DATES: This clarification goes into effect on March 14, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5827. Email: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pursuant to the Energy Policy and Conservation Act (42 U.S.C. 6291 *et seq.*), DOE must periodically review its energy conservation standards for covered consumer products and certain industrial equipment, including VRF multi-split systems (*see specifically* 42 U.S.C. 6313(a)(6)(A)–(C)). DOE initiated a review of its existing standards for VRF multi-split systems through a notice of data availability and request for information (''NODA/RFI'') published in the **Federal Register** on July 8, 2019 (''2019 VRF NODA/RFI''). 84 FR 32328. The 2022 VRF NOPR was issued (signed) on February 9, 2022, *see* 87 FR 11335, 11354 (noting the document's signature date), after which DOE forwarded it to the Office of the Federal Register on February 10, 2022, for publication, and then the Office of the Federal Register placed it for public inspection on February 28, 2022, before ultimately publishing it in the **Federal Register** on March 1, 2022. 87 FR 11335.

In the 2022 VRF NOPR, DOE explained that because it lacks clear and convincing evidence to support adoption of standard levels more stringent than those contained in the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (''ASHRAE'') Standard 90.1,[1] the Department is proposing to adopt the ASHRAE levels, as required by statute. DOE concluded that it did not need to prepare an emissions analysis or monetization of emissions for this rulemaking in order to support the adoption of the ASHRAE levels.

In this NOPR, DOE also responded to a number of public comments submitted on the 2019 VRF NODA/RFI. One such comment was submitted by the Institute for Policy Integrity at New York University (''NYU'') School of Law (hereafter ''Policy Integrity''), in which it commented that DOE should monetize the full benefits of emissions reductions and use the global estimate

[1] ASHRAE Standard 90.1 is titled ''Energy Standards for Buildings Except Low-Rise Residential Buildings.''

of the social cost of greenhouse gases (''GHG''). In responding to that comment, in the 2022 VRF NOPR, DOE noted generally DOE's practice to that point had been to use the social cost of greenhouse gases from the most recent update of the United States Government's Interagency Working Group (''IWG'') on Social Cost of Greenhouse Gases, which recommends global values be used for regulatory analysis, when DOE analyzes efficiency levels (*i.e.,* referencing its then-current practice). DOE continued its response by stating: ''Because DOE is not conducting an economic analysis of levels more stringent than the ASHRAE Standard 90.1 levels in this notice, there is no corresponding consideration of emission reductions or the associated monetary benefits. As DOE is required by EPCA to adopt the levels set forth in ASHRAE Standard 90.1, DOE did not conduct an economic analysis or corresponding emissions analysis for the levels in ASHRAE Standard 90.1–2019.'' 87 FR 11335, 11348.

The purpose of DOE's discussion of the IWG was simply to explain in the context of responding to Policy Integrity's comment how, at the time of the signing of the 2022 VFR NOPR (namely, on February 9, 2022), DOE routinely analyzed emissions reductions in those circumstances where DOE was analyzing efficiency levels more stringent than those contained in ASHRAE Standard 90.1. But, as noted, DOE's 2022 VRF NOPR simply made clear DOE's position that because the Department is proposing to adopt the standard levels in ASHRAE Standard 90.1, no emissions analysis or related monetization of emissions was being performed for this proposed rulemaking. Consequently, Policy Integrity's comment recommending how to appropriately monetize GHG emissions had no direct application or other effect in this proposed rulemaking.

The previous excerpt from the 2022 VRF NOPR was an accurate statement at the time the document was signed. After that document was signed and transmitted to the **Federal Register**, but before publication in the **Federal Register**, however, the U.S. District Court for the Western District of Louisiana in *Louisiana* v. *Biden,* No. 21–cv–1074–JDC–KK (Feb. 11, 2022) issued a preliminary injunction enjoining Federal agencies from utilizing the social cost of greenhouse gases values developed by the IWG for monetization of emissions impacts. Since that preliminary injunction was issued, out of an abundance of caution, DOE has ceased using greenhouse gas emissions monetization across its rulemakings. To avoid confusion, DOE concludes that clarification of the 2022 VRF NOPR comment response may therefore be necessary.

As stated in the 2022 VRF NOPR, DOE has not conducted any monetization of emission reduction in this rulemaking. Should circumstances arise in this or other rulemaking records where DOE would need to analyze standards more stringent than the levels in ASHRAE Standard 90.1, DOE acknowledges that any such analysis necessarily would comply with the prohibitions of the injunction issued in *Louisiana* v. *Biden* as long as that injunction remains in effect.

Accordingly, DOE clarifies its comment response in the 2022 VRF NOPR by noting that DOE is adhering to the prohibitions in the preliminary injunction issued on February 11, 2022, in *Louisiana* v. *Biden,* and reiterates that DOE did not monetize the benefits of reducing greenhouse gas emissions as part of the 2022 VRF NOPR. This clarification does not affect any of the proposed energy conservation standards, related analyses, and tentative conclusions contained in the 2022 VRF NOPR.

II. Need for Clarification

As published, a response to a comment in the 2022 VRF NOPR may result in ambiguity or confusion as to DOE's compliance with the preliminary injunction issued on February 11, 2022, in *Louisiana* v. *Biden.* Because this document simply clarifies the response to a public comment without making any substantive changes to the proposed energy conservation standards or related analyses, DOE finds that there is good cause under 5 U.S.C. 553(b)(B) to not issue prior notice to solicit public comment on the changes contained in this document. Issuing a separate document to solicit public comment would be unnecessary and contrary to the public interest.

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the 2022 VRF NOPR remain unchanged for this proposed rule technical clarification. These determinations are set forth in the 2022 VRF NOPR. 87 FR 11335, 11349–11352.

Signing Authority

This document of the Department of Energy was signed on March 9, 2022, by Kelly J. Speakes-Backman, Principal Deputy Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on March 9, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–05292 Filed 3–11–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0153; Project Identifier MCAI–2021–01051–A]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2016–26–08, which applies to all Pilatus Aircraft Ltd. Model PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes. AD 2016–26–08 requires incorporating revisions into the airworthiness limitations section (ALS) of the maintenance program and inspecting the main landing gear (MLG) attachment bolts for cracks and corrosion. Since the FAA issued AD 2016–26–08, the European Union Aviation Safety Agency (EASA) superseded its mandatory continuing airworthiness information (MCAI) to add a new life limit for certain MLG actuator bottom attachment bolts and then superseded it again to add new life limits for the rudder bellcrank. This proposed AD would require incorporating new revisions to the ALS of the existing airplane maintenance manual (AMM) or Instructions for Continued Airworthiness (ICA) to establish a 5-year life limit for certain MLG actuator bottom attachment bolts and new life

limits for the rudder bellcrank. 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 April 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 Pilatus Aircraft Ltd., CH–6371, Stans, Switzerland; phone: +41848247365; email: *techsupport.ch@pilatus-aircraft.com*; website: *https://www.pilatus-aircraft.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–2022–0153; 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: Doug Rudolph, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; email: *doug.rudolph@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–2022–0153; Project Identifier MCAI–2021–01051–A'' 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 Doug Rudolph, Aviation Safety Engineer, FAA, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106. 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 2016–26–08, Amendment 39–18766 (82 FR 10859, February 16, 2017) (AD 2016–26–08) for all Pilatus Aircraft Ltd. Model PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes. AD 2016–26–08 was prompted by MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA AD 2016–0083, dated April 28, 2016, to require new maintenance tasks for the MLG attachment bolts and replacement of each MLG attachment bolt before exceeding its life limit.

AD 2016–26–08 requires incorporating revisions into the ALS of the existing FAA-approved maintenance program and inspecting the MLG attachment bolts for cracks and corrosion. The FAA issued AD 2016–26–08 to ensure the continued operational safety of the affected airplanes.

Actions Since AD 2016–26–08 Was Issued

Since the FAA issued AD 2016–26–08, Pilatus received reports of failure of MLG actuator bottom attachment bolts, part number (P/N) 532.10.12.218, identified with ''VLG'' on the bolt head. These parts are from a specific vendor and are subject to hydrogen embrittlement. Accordingly, EASA superseded EASA AD 2016–0083, dated April 28, 2016, and issued EASA AD 2021–0005, dated January 7, 2021, to require a new 5 year life limit for the MLG actuator bottom attachment bolt identified with ''VLG.''.

Pilatus subsequently added new life limits for the rudder bellcrank. As a result, EASA superseded its AD again and issued EASA AD 2021–0214, dated September 17, 2021 (the MCAI). The MCAI states:

> The airworthiness limitations and certification maintenance instructions for Pilatus PC–12 aeroplanes, which are approved by EASA, are currently defined and published in Pilatus PC–12 AMM Chapter 04–00–00. These instructions have been identified as mandatory for continued airworthiness.
>
> Failure to accomplish these instructions could result in an unsafe condition.
>
> Previously, EASA issued [EASA] AD 2021–0005, requiring the actions described in the Pilatus PC–12 AMM Chapter 04–00–00, Document Number 02049 Issue 01 Revision 40, Document Number 02300 Issue 01 Revision 24 and Document Number 02436 Issue 01 Revision 02.
>
> Since that [EASA] AD was issued, Pilatus published the applicable ALS, as defined in this [EASA] AD, which contains new and/or more restrictive tasks and limitations, as specified in the Component Limitations section, to introduce a new life limit for the rudder bellcrank. Due to the introduction of this life limit, the repetitive eddy current inspections are no longer required and deleted from the Supplemental Structural Inspection section.
>
> For the reason described above, this [EASA] AD retains the requirements of EASA AD 2021–0005, which is superseded, and requires accomplishment of the actions as specified in the applicable ALS.

You may examine the MCAI at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0153.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following revisions, which contain the new life limit for certain MLG actuator bottom attachment bolts and new life limits for the rudder bellcrank.

• Pilatus PC–12, PC–12/45 and PC–12/47 Structural, Component and Miscellaneous Limitations-AMM Document No. 02049, Airworthiness Limitations, 12–A–04–00–00–00A–000A–A, Revision 41, dated July 5, 2021;

• Pilatus PC–12/47E Structural, Component and Miscellaneous Limitations-AMM Document No. 2300, Airworthiness Limitations, 12–B–04–00–00–00A–000A–A, Issue 01, Revision 25, dated July 8, 2021; and

• Pilatus PC–12/47E Structural, Component and Miscellaneous Limitations-AMM Document No. 02436, Airworthiness Limitations, 12–C–04–00–00–00A–000A–A, Issue 01, Revision 03, dated July 8, 2021.

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 not retain any of the actions of AD 2016–26–08. Instead, this proposed AD would require incorporating new revisions into the ALS of the existing AMM or the FAA-approved ICA. This AD would allow the owner/operator (pilot) to incorporate these revisions. Revising an AMM is not considered a maintenance action and may be done by a pilot holding at least a private pilot certificate. This proposed action would need to be recorded in the airplane's maintenance records to show compliance with this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,030 airplanes of U.S. registry. The FAA also estimates that it would take 1 work-hour per airplane to incorporate the revised ALS into the AMM or ICA. The average labor rate is $85 per work-hour.

Based on these figures, the FAA estimates the cost on U.S. operators to be $87,550 or $85 per airplane.

In addition, the FAA estimates that replacing a MLG actuator bottom attachment bolt, if necessary, would take 1 work-hour and would require parts costing $2,140 for a cost of $2,225 per airplane.

Replacing the rudder bellcrank, if necessary, would take 3 work-hours and would require parts costing $550 for a cost of $805 per airplane.

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 2016–26–08, Amendment 39–18766 (82 FR 10859, February 16, 2017), and

■ b. Adding the following new airworthiness directive:

Pilatus Aircraft Ltd.: Docket No. FAA–2022–0153; Project Identifier MCAI–2021–01051–A.

(a) Comments Due Date

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

(b) Affected ADs

This AD replaces AD 2016–26–08, Amendment 39–18766 (82 FR 10859, February 16, 2017).

(c) Applicability

This AD applies to Pilatus Aircraft Ltd. Model PC–12, PC–12/45, PC–12/47, and PC–12/47E airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2722, Rudder Actuator; 3210, Main Landing Gear; and 3211, Main Landing Gear Attach Section.

(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 unsafe condition in the MCAI is failure of main landing gear (MLG) actuator bottom attachment bolts and failure to accomplish a new life limit for the rudder bellcrank. The FAA is issuing this AD to prevent MLG collapse during all phases of airplane operations, including take-off and landing and also to prevent rudder bellcrank failure, which could lead to loss of airplane control.

(f) Actions and Compliance

(1) Before further flight, unless already done, revise the Airworthiness Limitations section of the existing airplane maintenance manual or Instructions for Continued Airworthiness for your airplane by incorporating the following documents.

(i) For Model PC–12, PC–12/45, and PC–12/47 airplanes: Pilatus PC–12, PC–12/45 and PC–12/47 Structural, Component and Miscellaneous Limitations-AMM Document No. 02049, Airworthiness Limitations, 12–A–04–00–00–00A–000A–A, Revision 41, dated July 5, 2021.

(ii) For Model PC–12/47E airplanes with serial numbers 545, 1001 through 1719, and

1721 through 1999: Pilatus PC–12/47E Structural, Component and Miscellaneous Limitations-AMM Document No. 2300, Airworthiness Limitations, 12–B–04–00–00–00A–000A–A, Issue 01, Revision 25, dated July 8, 2021.

(iii) For Model PC–12/47E airplanes with serial numbers 1720 and 2001 and larger: Pilatus PC–12/47E Structural, Component and Miscellaneous Limitations-AMM Document No. 02436, Airworthiness Limitations, 12–C–04–00–00–00A–000A–A, Issue 01, Revision 03, dated July 8, 2021.

(2) The actions required by paragraph (f)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a)(1) through (4), and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(3) After revising the airworthiness limitations required by paragraph (f)(1) of this AD, no alternative life limits or inspection intervals may be used unless they are approved as provided in paragraph (g) of this AD.

(g) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (h)(1) of this AD and email to: *9-AVS-AIR-730-AMOC@faa.gov*.

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

(h) Related Information

(1) For more information about this AD, contact Doug Rudolph, Aviation Safety Engineer, General Aviation & Rotorcraft Section, International Validation Branch, 901 Locust, Room 301, Kansas City, MO 64106; phone: (816) 329–4059; email: *doug.rudolph@faa.gov*.

(2) Refer to MCAI European Union Aviation Safety Agency (EASA) AD 2021–0214, dated September 17, 2021, for related information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0153.

(3) For service information identified in this AD, contact Pilatus Aircraft Ltd., CH–6371, Stans, Switzerland; phone: +41848247365; email: *techsupport.ch@pilatus-aircraft.com;* website: *http://www.pilatus-aircraft.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.

Issued on March 7, 2022.

Derek Morgan,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05223 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0173; Airspace Docket No. 19–AAL–59]

RIN 2120–AA66

Proposed Amendment of United States Area Navigation (RNAV) Route T–223; Cape Newenham, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) route T–223 in the vicinity of Cape Newenham, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

DATES: Comments must be received on or before April 28, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0173; Airspace Docket No. 19–AAL–59 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov*.

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/*. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC, 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessening the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0173; Airspace Docket No. 19–AAL–59) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0173; Airspace Docket No. 19–AAL–59.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may

be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L., 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan enroute navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. Due to Cape Newenham, AK, (EHM) NDB being on the list for decommissioning, the FAA proposes to amend RNAV route T–223 by replacing EHM with the ZIKNI, AK, waypoint (WP). The proposal would also remove the NONDA, AK, Fix from the legal description since it is not a turn point along the route.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route T–223 in the vicinity of Cape Newenham, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. The proposed route is described below.

T–223: The FAA proposes to amend T–223 by replacing the navigation point EHM with newly established ZIKNI, AK WP. Additionally the NONDA, AK, Fix will not be included in the legal description due to it not being a turn point along the route. The rest of the route will remain unchanged.

United States Area Navigation Routes are published in paragraph 6011 of FAA Order JO 7400.11F dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes

* * * * *

T–223 ZIKNI, AK to Anchorage, AK (TED) [Amended]

ZIKNI, AK	WP	(Lat. 58°39′21.68″ N, long. 162°04′13.87″ W)
Dillingham, AK (DLG)	VOR/DME	(Lat. 58°59′39.24″ N, long. 158°33′07.99″ W)
Anchorage, AK (TED)	VOR/DME	(Lat. 61°10′04.32″ N, long. 149°57′36.51″ W)

* * * * *

Issued in Washington, DC, on March 8, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–05218 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0120; Airspace Docket No. 22–AAL–15]

RIN 2120–AA66

Proposed Revocation of Colored Federal Airway Red 51 (R–51); Level Island, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke Colored Federal airway Red 51 (R–51) due to the decommissioning of the Sumner Strait, AK, (SQM) Non-Directional Beacon (NDB).

DATES: Comments must be received on or before April 28, 2022.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0120; Airspace Docket No. 22–AAL–15 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0120; Airspace Docket No. 22–AAL–15) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0120; Airspace Docket No. 22–AAL–15.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from the dependency on NDBs. The advances in technology have allowed for alternate

navigation methods to support decommissioning of high cost ground navigation equipment. The FAA has included Sumner Strait NDB in the vicinity of Level Island, AK on the schedule to be decommissioned. A non-rulemaking study was conducted in 2021 and the FAA received no objections to the removal of the NDB.

Colored Federal airway R–51 is dependent upon SQM and will result in the airway being unusable once the decommissioning occurs. The FAA proposes to revoke R–51 as a result.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revoke Colored Federal airway R–51 due to the decommissioning of SQM in the vicinity of Level Island, AK.

R–51: R–51 currently navigates between the Sumner Strait, AK, NDB and the Sitka, AK, NDB. The FAA proposes to revoke the route in its entirety.

Colored Federal airways are published in paragraph 6009(b) of FAA Order JO 7400.11F dated August 10, 2021 and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Colored Federal airway listed in this document would be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11, Airspace Designations and Reporting Points, is published yearly and effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6009(b) Colored Federal Airway

* * * * *

R–51 [Remove]

* * * * *

Issued in Washington, DC, on March 8, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–05214 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0122]

RIN 1625–AA08

Special Local Regulation; Nanticoke River, Sharptown, MD

AGENCY: Coast Guard, Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary special local regulation for certain waters of the Nanticoke River. This action is necessary to provide for the safety of life on these navigable waters located at Sharptown, MD, during a high-speed power boat racing event on May 13, 2022, May 14, 2022, and May 15, 2022. This proposed rulemaking would prohibit persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Event Patrol Commander. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 13, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0122 using the Federal Decision Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email *D05-DG-SectorMD-NCR-MarineEvents@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
PATCOM Coast Guard Patrol Commander
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

The Carolina Virginia Racing Association of Newport News, VA, notified the Coast Guard that it will be conducting the Sharptown Regatta from 10 a.m. to 5 p.m. on May 14, 2022 and those same hours on May 15, 2022. The high-speed power boat racing event consists of approximately 100 participating racing boats—including hydroplanes and runabouts of various classes—9 to 12 feet in length. The vessels will be competing in a counter-clockwise direction along a marked approximately 1-mile long course located on the Nanticoke River, adjacent to the Cherry Beach Park and Boat Ramp at Sharptown, MD. In addition, a non-race day of practice and testing will be conducted in the waterway from noon to 5 p.m. on May 13, 2022. Event planners have stated they will not have any spectators areas identified on the water for this 3-day event. Hazards from

the power boat racing event include risks of injury or death resulting from near or actual contact among participant vessels and waterway users if normal vessel traffic were to interfere with the event. Additionally, such hazards include participants operating within designated navigation channels, as well as operating near approaches to a local public boat ramps, public recreation and fishing areas, and waterfront businesses and residences. The COTP Maryland-National Capital Region has determined that potential hazards associated with the power boat races would be a safety concern for anyone intending to participate in this event and for vessels that operate within specified waters of the Nanticoke River.

The purpose of this rulemaking is to protect event participants, non-participants and transiting vessels before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70041.

III. Discussion of Proposed Rule

The COTP Maryland-National Capital Region is proposing to establish special local regulation from 11 a.m. on May 13, 2022, through 6 p.m. on May 15, 2022. The regulations would be enforced from 11 a.m. to 6 p.m. on May 13, 2022, from 9 a.m. to 6 p.m. on May 14, 2022, and from 9 a.m. to 6 p.m. on May 15, 2022. The regulated area would cover all navigable waters of the Nanticoke River within an area bounded by a line connecting the following points: From the shoreline downriver from the Maryland S.R. 313 (Sharptown Road) Highway Bridge, at position latitude 38°32′42″ N, longitude 075°43′19″ W, thence southeast across the Nanticoke River to the shoreline at latitude 38°32′38″ N, longitude 075°43′12″ W, thence north and east along the shoreline to latitude 38°33′08″ N, longitude 075°42′33″ W, thence northwest across the Nanticoke River to the shoreline at latitude 38°33′13″ N, longitude 075°42′42″ W, thence south and west along the shoreline to and terminating at the point of origin. The regulated area is approximately 1,500 yards in length and 300 yards in width.

This proposed rule provides additional information about areas within the regulated area, their definitions, and the restrictions that would apply to mariners. These areas include ''Race Area,'' ''Buffer Area,'' and ''Milling Area.''

The proposed duration of the special local regulation and size of the regulated area is intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat racing event, scheduled to take place from noon to 5 p.m. on May 13, 2022, from 10 a.m. to 5 p.m. on May 14, 2022, and, from 10 a.m. to 5 p.m. on May 15, 2022. The COTP and the Coast Guard Event PATCOM would have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area would be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Sharptown Regatta participants and vessels already at berth, a vessel or person would be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators would be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF–FM channel 16. Vessel traffic would be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant or assigned as official patrols would be considered a spectator. Official Patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer onboard and displaying a Coast Guard ensign. Official Patrols enforcing this regulated area can be contacted on VHF–FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel would be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels would be required to operate at a safe speed that minimizes wake while within the regulated area in a manner that would not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while within the regulated area. Only participant vessels and official patrol vessels would be allowed to enter the race area and milling area. The Coast Guard would publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size and duration of the regulated area, which would impact a small designated area of the Nanticoke River for 25 total enforcement hours. This waterway supports tug and barge traffic year round and recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule would allow vessels and persons to seek permission to enter the regulated area, and vessel traffic able to do so safely would be able to transit the regulated area as instructed by the Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the status of the regulated area.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the

reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities in the event area for 25 total enforcement hours. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0122 in the ''SEARCH'' box and click ''SEARCH.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1.

■ 2. Add § 100.T05–0122 to read as follows:

§ 100.T05–0122 Sharptown Regatta, Nanticoke River, Sharptown, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of the Nanticoke River, within an area bounded by a line connecting the following points: From the shoreline downriver from the Maryland S.R. 313 (Sharptown Road) Highway Bridge, at position latitude 38°32′42″ N, longitude 075°43′19″ W, thence southeast across the Nanticoke River to the shoreline at latitude 38°32′38″ N, longitude 075°43′12″ W, thence north and east along the shoreline to latitude 38°33′08″ N, longitude 075°42′33″ W, thence northwest across the Nanticoke River to the shoreline at latitude 38°33′13″ N, longitude 075°42′42″ W, thence south and west along the shoreline to and terminating at the point of origin. The race area, buffer area, and milling area are within the regulated area.

(2) *Race area.* Located within the waters of the Nanticoke River, between the Maryland S.R. 313 (Sharptown Road) Highway Bridge and Nanticoke River Channel Light 43 (LLNR 24175) in position 38°33′07.79″ N, 075°42′44.93″ W, at Sharptown, MD. The race area is within the buffer area.

(3) *Buffer area.* The buffer area is a polygon in shape measuring approximately 300 feet in all directions surrounding the entire race area described in the preceding paragraph of this section. The area is bounded by a line commencing at the shoreline at position latitude 38°32′47″ N, longitude 075°43′13″ W, thence southeast along the northern extent of the Maryland S.R. 313 (Sharptown Road) Highway Bridge to latitude 38°32′41″ N, longitude 075°43′06″ W, thence northeast to latitude 38°33′01″ N, longitude 075°42′39″ W, thence northwest to latitude 38°33′08″ N, longitude 075°42′44″ W, thence southwest to and terminating at the point of origin.

(4) *Milling area.* The milling area is a polygon in shape measuring approximately 200 yards in length by 200 yards in width. The area is southwest and down river from the Maryland S.R. 313 (Sharptown Road) Highway Bridge, bounded by a line commencing at the shoreline at position latitude 38°32′47″ N, longitude 075°43′13″ W, thence southeast along the northern extent of the Maryland S.R. 313 (Sharptown Road) Highway Bridge to latitude 38°32′42″ N, longitude 075°43′07″ W, thence southeast to latitude 38°32′38″ N, longitude 075°43′12″ W, thence northwest to latitude 38°32′42″ N, longitude 075°43′19″ W, thence northeast to and terminating at the point of origin.

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

Buffer area is a neutral area that surrounds the perimeter of the race area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed power boats and nearby transiting vessels. This area provides separation between a race area and other vessels that are operating in the vicinity of the regulated area established by the special local regulations in this section.

Captain of the Port (COTP) Maryland-National Capital Region means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

Event Patrol Commander or *Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

Milling area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a milling area within the regulated area defined by this section. The area is used before a race start to assemble teams and warm up the participating boats engines while operating off plane.

Official patrol means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

Participant means all persons and vessels registered with the event sponsor as participating in the ''Sharptown Regatta'' event, or otherwise designated by the event sponsor as having a function tied to the event.

Race area is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

Spectator means a person or vessel not registered with the event sponsor as a participant or assigned as official patrols.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on marine band radio VHF–FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter and remain within the race area and milling area.

(5) Only participant vessels and official patrol vessels are allowed to enter and transit directly through the buffer area in order to arrive at or depart from the race area.

(6) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410–576–2693 or on Marine Band Radio, VHF–FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF–FM channel 16 (156.8 MHz).

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF–FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement periods.* This section will be enforced from 11 a.m. to 6 p.m. on May 13, 2022, from 9 a.m. to 6 p.m.

on May 14, 2022, and from 9 a.m. to 6 p.m. on May 15, 2022.

Dated: March 8, 2022.

David E. O'Connell,

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

[FR Doc. 2022–05258 Filed 3–11–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2022–OESE–0006]

Proposed Priorities, Requirements, Definitions, and Selection Criteria—Expanding Opportunity Through Quality Charter Schools Program (CSP)—Grants to State Entities (SE Grants); Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO Grants); and Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer Grants)

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Proposed priorities, requirements, definitions, and selection criteria.

SUMMARY: The Department of Education proposes priorities, requirements, definitions, and selection criteria for CSP SE Grants, CMO Grants, and Developer Grants, Assistance Listing Numbers (ALNs) 84.282A, 84.282B, 84.282E, and 84.282M. We may use one or more of these priorities, requirements, definitions, and selection criteria for grant competitions under these programs in fiscal year (FY) 2022 and later years. We take this action to create results-driven policies to help promote positive student outcomes, student and staff diversity, educator and community empowerment, promising practices, and accountability, including fiscal transparency and responsibility, in charter schools supported with CSP funds, which can serve as models for other charter schools.

DATES: We must receive your comments on or before April 13, 2022.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Help.''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed priorities, requirements, definitions, and selection criteria, address them to Porscheoy Brice, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E209, Washington, DC 20202–5970.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Porscheoy Brice, U.S. Department of Education, 400 Maryland Avenue SW, Room 3E209, Washington, DC 20202–5970. Telephone: (202) 260–0968. Email: *charterschools@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, definitions, and selection criteria. To ensure that your comments have maximum effect in developing the notice of final priorities, requirements, definitions, and selection criteria, we urge you to clearly identify the specific section of the proposed priority, requirement, definition, or selection criteria that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, definitions, and selection criteria. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about the proposed priorities, requirements, definitions, and selection criteria by accessing *Regulations.gov.* You may also inspect the comments in person. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT** to make arrangements to inspect the comments in person.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record: On request, we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for the proposed priorities, requirements, definitions, and selection criteria. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Programs: SE Grants, CMO Grants, and Developer Grants are three of six CSP grant programs that support various activities critical to the successful creation and implementation of charter schools. The major purposes of the CSP are to expand opportunities for all students, particularly traditionally underserved students, to attend charter schools and meet challenging State academic standards; provide financial assistance for the planning, program design, and initial implementation of charter schools; increase the number of high-quality charter schools available to students across the United States; evaluate the impact of charter schools on student achievement, families, and communities; share best practices between charter schools and other public schools; aid States in providing facilities support to charter schools; and support efforts to strengthen the charter school authorizing process.

SE Grants (ALN 84.282A) comprise the largest portion of CSP funds. These competitive grants are awarded to State entities (SEs) that, in turn, award competitive subgrants to eligible applicants for the purpose of opening new charter schools and replicating and expanding high-quality charter schools. Eligible applicants are charter school developers that have applied to an authorized public chartering agency to operate a charter school and have provided adequate and timely notice to that authority. A developer is an individual or group of individuals (including a public or private nonprofit organization), which may include teachers, administrators and other school staff, parents, or other members

of the local community in which a charter school project will be carried out.[1] For-profit organizations are ineligible to apply for grants or subgrants under the CSP.

In addition to making subgrants to eligible applicants to open new charter schools and to replicate or expand high-quality charter schools, SE grantees may use grant funds to provide technical assistance to eligible applicants and authorized public chartering agencies in opening new charter schools and replicating and expanding high-quality charter schools; and work with authorized public chartering agencies in the State to improve authorizing quality, including developing capacity for, and conducting, fiscal oversight and auditing of charter schools. SE Grant funds may also be used for grant administration, which may include technical assistance and monitoring of subgrants for performance and fiscal and regulatory compliance, as required under 2 CFR 200.332(d).

If a State does not have an active CSP SE Grant, the Department may award Developer Grants (ALNs 84.282B and 84.282E) to eligible applicants in the State on a competitive basis to enable them to open new charter schools or to replicate or expand high-quality charter schools. Through CMO Grants (ALN 84.282M), the Department provides funds to non-profit charter management organizations (CMOs) on a competitive basis to enable them to replicate or expand one or more high-quality charter schools.

CSP SE Grants, CMO Grants, and Developer Grants are intended to support charter schools that serve elementary or secondary school students. Funds also may be used to serve students in early childhood education programs or postsecondary students. Section 4310 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), defines ''replicate'' as opening a new charter school, or a new campus of a high-quality charter school, based on the educational model of an existing high-quality charter school; and ''expand'' as significantly increasing enrollment or adding one or more grades to a high-quality charter school (20 U.S.C. 7221i(9) and (7)). Section 4310 defines ''high-quality charter school,'' in pertinent part, as a charter school that shows evidence of strong academic results, which may include strong student academic growth, as determined by a State; has no significant issues in the areas of student safety, financial and operational management, or statutory or regulatory compliance; and has demonstrated success in significantly increasing student academic achievement, including graduation rates where applicable, for all students served by the charter school and for each of the subgroups of students defined in section 1111(c)(2) of the ESEA (20 U.S.C. 7221i(8)).

For CMO Grants and Developer Grants, these proposed priorities, requirements, definitions, and selection criteria are intended to supplement the regulatory priorities, requirements, definitions, and selection criteria in: Final Priorities, Requirements, Definitions, and Selection Criteria—Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter Management Organizations for the Replication and Expansion of High-Quality Charter Schools (CMO NFP), published in the **Federal Register** on November 30, 2018 (83 FR 61532), and Final Priorities, Requirements, Definitions, and Selection Criteria—Expanding Opportunity Through Quality Charter Schools Program; Grants to Charter School Developers for the Opening of New Charter Schools and for the Replication and Expansion of High-Quality Charter Schools (Developer NFP), published in the **Federal Register** on July 3, 2019 (84 FR 31726).

Program Authority: Title IV, part C of the ESEA (20 U.S.C. 7221–7221j).

Proposed Priorities

Proposed Priorities Applicable to CMO Grants and Developer Grants: We propose two priorities for CMO Grants and Developer Grants.

Proposed Priority 1—Promoting High-Quality Educator- and Community-Centered Charter Schools to Support Underserved Students.

Background: Charter schools were envisioned to drive the creation of innovative approaches to teaching and learning for all students while being held accountable for academic performance.[2] The original proponents of charter schools anticipated that charter schools would be shaped by educators and offer opportunities for developing and sharing new instructional methods and resources that address the needs of students and families in the community. While that is the case in some charter schools, in others, teachers, parents, and community leaders have expressed concerns about not being included as active participants in charter school decision-making.[3] Such concerns may be due, in part, to limited requirements for community engagement. According to the National Resource Center on Charter School Finance and Governance, ''most laws require only peripheral participation, such as garnering parent support for the school during the application process or keeping parents informed of student performance. These participation requirements do not take full advantage of charter schools' potential to draw on the knowledge and expertise of their parent community.'' [4] Similarly, some charter schools may not fully engage other community members and organizations that are also well-positioned to help assess the educational aspirations and needs of students living in their neighborhoods and can offer important contributions to help improve the academic, financial, and organizational or operational performance of the school.[5] Charter schools and CMOs may have needs that community members and organizations can help meet, including, for example, specific teacher areas of expertise; facilities for activities such as arts, sports, or enrichment; or serving their students' well-being and readiness to learn. Similarly, community partnerships can expand options for courses that may not be available in a school, enhance independent study or skill development opportunities (*e.g.,* career and technical education or work-based learning), and build sustainability of program offerings. Community partnerships can also assess the receptiveness of a community to a new charter school.

Educator- and community-centered charter schools can provide opportunities to meet the needs of all students, particularly underserved students. Studies show that when teachers are engaged in educational decision-making and are given an

[1] Section 4310(5) and (6) of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7221i(5) and (6)) (*www.congress.gov/114/plaws/publ95/PLAW–114publ95.pdf*).

[2] Kahlenberg, Richard D. & Potter, Halley (2014). Restoring Shanker's Vision for Charter Schools | American Federation of Teachers (*aft.org*) *www.aft.org/ae/winter2014–2015/kahlenberg_potter.*

[3] Baker, Timberly L., Wise, Jillian, Kelley, Gwendolyn, and Skiba, Russell J. (2016). Identifying Barriers: Creating Solutions *https://files.eric.ed.gov/fulltext/EJ1124003.pdf.*

[4] National Resource Center on Charter School Finance & Governance. Enhancing_Charter_Schools Through Parent Involvement *https://charterschoolcenter.ed.gov/sites/default/files/files/field_publication_attachment/Enhancing_Charter_Schools-AmyBiehlHS.pdf.*

[5] National Charter School Resource Center (2021). How Charter Schools Can Leverage Community Assets through Partnerships *https://charterschoolcenter.ed.gov/sites/default/files/files/field_publication_attachment/How Charter Schools Can LeverageCommunity Assets through Partnerships.pdf.*

opportunity to collaborate with administrators, it promotes a better learning environment for students that leads to increased student achievement and college and career readiness.[6] For example, charter schools can ensure meaningful input of educators by appointing multiple educators to their governing boards or purposefully developing instructional and operational models that proactively solicit and respond to educators' feedback. Additionally, community-centered charter schools are built on relationships that may enable them to be more transparent and collaborative in their design and practices, including proactively recruiting, enrolling, and retaining students of diverse backgrounds and abilities.[7] Community-centered charter schools may have established partnerships with local organizations and informal and formal processes to engage with and solicit input from local stakeholders on a regular basis.

Proposed Priority:

(a) Under this priority, an applicant must propose to open a new charter school, or replicate or expand a high-quality charter school, that is developed and implemented—

(1) With meaningful and ongoing engagement with current and former educators, including current and former teachers, including in founding the school, board governance, school-level decision-making related to curriculum and instruction, and day-to-day operations of the school; and

(2) Using a community-centered approach that includes an assessment of community assets, informs the development of the charter school, and includes the implementation of protocols and practices designed to ensure that the charter school will use and interact with community assets on an ongoing basis to create and maintain strong community ties.

(b) In its application, an applicant must provide a high-quality plan that demonstrates how its proposed project would meet the requirements in paragraph (a) of this priority, accompanied by a timetable with milestones.

[6] Rimm-Kaufman, Sara and Sandilos, Lia (2010). Improving students' relationships with teachers (*apa.org*) *www.apa.org/education-career/k12/relationships.*

[7] Safal Partners: Kern, Nora (2016). Intentionally Diverse Charter Schools: A Toolkit for Charter School Leaders *https://charterschoolcenter.ed.gov/sites/default/files/files/field_publication_attachment/NCSRC%20Intentionally%20Diverse%20Charter%20School%20Toolkit.pdf.*

Proposed Priority 2—Charter School and Traditional Public School or District Collaborations That Benefit Students and Families

Background: Research has shown that collaborations among charter schools and traditional public schools or traditional school districts (charter-traditional collaborations) have the potential to improve the quality of charter schools and traditional public schools.[8] In order to benefit the public school system as a whole, and students and families in the community, charter-traditional collaborations require significant investments of time and resources to address commonly shared barriers and challenges in both charter schools and traditional public schools. Successful charter-traditional collaborations can lead to information-sharing about best practices for developing systems and processes that benefit all families and students served by the members of the collaboration.[9]

Some examples of charter-traditional collaborations that benefit students and families include: Sharing curriculum resources and instructional materials, including opportunities for students to have increased access to a more comprehensive set of course offerings; creating systems and structures for the delivery of shared, effective teacher and leader professional development and instructional practices, including through professional learning communities; developing strong principal pipeline programs; and shared transportation systems that increase student access to and diversity within schools while lessening the financial burden all schools encounter when providing transportation.[10]

Under the proposed priority, an applicant must propose to collaborate with at least one traditional public school or traditional school district in an activity that would be beneficial to all partners in the collaboration and lead to increased educational opportunities and improved student outcomes.

Proposed Priority:

(a) Under this priority, an applicant must propose to collaborate with at least one traditional public school or traditional school district in an activity that is designed to benefit students and families served by each member of the collaboration, designed to lead to increased educational opportunities and improved student outcomes, and includes implementation of—

(1) One or more of the following services and resources:

(i) Curricular and instructional resources or academic course offerings.

(ii) Professional development opportunities for teachers and leaders, which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high need area or National Board Certification, and partnerships with educator preparation programs to support teaching residencies.

(iii) Evidence-based (as defined in section 8101(21) of the ESEA) practices to improve academic performance for underserved students.

(iv) Policies and practices to create safe, supportive, and inclusive learning environments, including systems of positive behavioral intervention and support; and

(2) One or more of the following initiatives:

(i) Transparent enrollment and retention practices and processes that include clear and consistent disclosure of policies or requirements (*e.g.,* discipline policies, purchasing and wearing specific uniforms and other fees, or caregiver participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled (*e.g.,* transportation services or participation in the National School Lunch Program).

(ii) A shared transportation plan and system that reduces transportation costs for partners in the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(iii) Other collaborations designed to address a significant barrier or challenge faced by both charter schools and traditional public schools and improve student outcomes.

(b) In its application, an applicant must provide a letter from each partnering traditional public school or school district demonstrating a commitment to participate in the proposed charter-traditional collaboration. Within 45 days of receiving a grant award, the applicant must submit to the Department a written

[8] Chait, Robin (2019). Bridging the Divide: Collaboration Between Traditional Public Schools and Charter Schools. *www.ested.org/wested-insights/collaboration-between-traditional-public-schools-and-charter-schools/.*

[9] DeArmond, Michael, Cooley Nelson, Elizabeth, and Bruns, Angela (2015). The Best of Both Worlds: Can District-Charter Co-Location Be a Win-Win? *https://files.eric.ed.gov/fulltext/ED559807.pdf.*

[10] Yatsko, Sarah, Cooley Nelson, Elizabeth, and Lake, Robin (2013). District-Charter Collaboration Compact: Interim Report. *https://crpe.org/district-charter-collaboration-compact-interim-report/.*

agreement (*e.g.,* Memorandum of Understanding), signed by officials authorized to sign on behalf of the charter school and each partnering traditional public school or school district, that—

(1) Identifies and describes each member of the collaboration;

(2) States the purpose and duration of the collaboration;

(3) Describes the roles and responsibilities of each member of the collaboration, including key staff responsible for completing specific tasks;

(4) Describes how the collaboration will benefit each member, including how it will benefit students and families affiliated with each member and lead to increased educational opportunities and improved student outcomes, and specific and measurable, if applicable, goals;

(5) Describes the resources each member of the collaboration will contribute; and

(6) Contains any other relevant information.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Application Requirements

Background: The ESEA requires SE Grant, CMO Grant, and Developer Grant applications to include specific information. In particular, SE Grant applications must address the application requirements in section 4303(f) of the ESEA, CMO Grant applications must address the application requirements in section 4305(b)(3) of the ESEA, and Developer Grant applications must address relevant application requirements in section 4303(f) of the ESEA. In addition to these statutory application requirements, we established additional application requirements for CMO Grants and Developer Grants in the CMO NFP and Developer NFP, respectively.

As a supplement to the application requirements in the ESEA, CMO NFP, and Developer NFP, the Department proposes new application requirements and assurances to help ensure the creation of new charter schools, and the replication and expansion of high-quality charter schools, that are: (1) Racially and socio-economically diverse; (2) driven by the needs of students and families in the community in which the charter school is or will be located; and (3) fiscally responsible and transparent, particularly with respect to contractual relationships with for-profit management organizations (also referred to as education management organizations (EMOs)). We reiterate that a charter school is, by definition, ''a public school that . . . is operated under public supervision and direction,'' and for-profit entities are ineligible to receive funding as a CSP project grantee or subgrantee (see section 4310(2)(B), (3), (4), and (5) of the ESEA). It is also a violation of CSP requirements for a grantee or subgrantee to relinquish full or substantial control of the charter school (and, thereby, the CSP project) to a for-profit management organization or other for-profit entity because, among other things, a grantee or subgrantee receiving CSP funds must establish and maintain proper internal controls and directly administer or supervise the administration of the project. See 2 CFR 200.302–303; and 34 CFR 75.701 and 76.701. A grantee or subgrantee that enters into a contract for goods or services must comply with the Federal procurement standards at 2 CFR 200.317–200.327, and applicable conflict of interest requirements, including that no employee, officer, or agent of the charter school may participate in the selection, award, or administration of a contract supported by Federal funds if he or she has a real or apparent conflict of interest.

Generally, the Department believes, based on experience administering the CSP, that the proposed application requirements and assurances would help facilitate the proper review and evaluation of CSP grant applications, thereby increasing the likelihood of successful grant and subgrant implementation. These proposed requirements and assurances would also help ensure that all students have access to high-quality, diverse, and equitable learning opportunities in their communities, which should be a goal of all public schools.

High-performing charter school authorizers generally require applicants for a charter (*i.e.,* to create a charter school) to present data on the academic achievement, demographics, and enrollment and retention rates of students in all surrounding public schools. These data help with assessing the extent to which the proposed charter school will meet the needs of, and enroll students that are representative of, the students in the community. Consistent with this part of the charter application process, we propose to require applicants for CMO Grants, Developer Grants, and subgrants under the SE Grant program to conduct a community impact analysis to inform the need, number, and types of charter schools to be created in a given community. The community impact analysis must describe how the plan for the proposed charter school takes into account the student demographics of the schools from which students are, or would be, drawn to attend the charter school. The community impact analysis must also describe the steps the charter school has taken or will take to ensure that the proposed charter school would not hamper, delay, or in any manner negatively affect any desegregation efforts in the public school districts from which students are, or would be, drawn or in which the charter school is or would be located, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools, and that it would not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school. The focus of the community impact analysis on racial and socio-economic diversity builds on existing statutory and regulatory provisions that give priority to applicants that plan to operate or manage high-quality charter schools with racially and socio-economically diverse student bodies (see section 4305(b)(5)(A) of the ESEA; CMO NFP at 61542; and Developer NFP at 31734). Please note that an applicant that proposes to operate or manage a charter school in a racially or socio-economically segregated or isolated community still would be eligible to apply for funding, even if the student body of the charter school would be racially or socio-economically segregated or isolated due to community

demographics. Such an applicant, like all other applicants, would be required to provide a community impact analysis describing how the plan for the proposed charter school takes into account the student demographics of the schools from which students are, or would be, drawn to attend the charter school, and the steps the applicant has taken or will take to ensure that the proposed charter school would not increase racial or socio-economic segregation or isolation in those schools.

Further, as autonomous public schools that create their operational, curricular, and policy procedures, charter schools are well positioned to draw on the knowledge and expertise of families and other stakeholders in the community to help shape school practices. As with Proposed Priority 1, the proposed community impact analysis requirements are designed to ensure that families play an active role in informing decision-making regarding the need for charter schools in a specific community and to strengthen requirements regarding how the community is engaged and integrated in the charter school planning and approval process.

Under section 4310(2)(B) of the ESEA, charter schools receiving CSP funds must be created by a developer as a public school or adapted by a developer from an existing public school and operated under public supervision and direction. While for-profit organizations are ineligible to apply for direct grants or subgrants under the CSP, some charter schools enter into contracts with for-profit EMOs for services. It is the responsibility of the grantee or subgrantee to ensure that such an agreement with an EMO is a contract, and not a subaward or subgrant, in accordance with 2 CFR 200.331. Arrangements under which a for-profit EMO, including a non-profit CMO operated by or on behalf of a for-profit entity, exercises full or substantial administrative control over the charter school (and, thereby, the CSP project) or over programmatic decisions are not permissible under CSP-funded projects, pursuant to 34 CFR 75.701 and 76.701, which require grantees and subgrantees, respectively, to directly administer or supervise the administration of their projects. EMOs provide a variety of services to charter schools—from limited management and financial support services to whole-school package offerings. Some examples of impermissible delegations of administrative control include situations in which the EMO controls all or a substantial portion of grant or subgrant funds and expenditures, including making programmatic decisions (also referred to as ''sweeps contracts''); the EMO employs the school principal and a large proportion of the teachers; or the EMO makes decisions about curricula and instructional practices.

We propose application requirements designed to ensure that any charter school that receives CSP funds and enters, or plans to enter, into a contract with an EMO complies with all statutory and regulatory requirements, including applicable Federal procurement and conflict of interest standards in 2 CFR 200.317–200.327, and Federal regulations requiring grantees and subgrantees to establish and maintain effective internal and administrative control over the Federal award (2 CFR 200.303; and 34 CFR 75.701 and 76.701). The proposed application requirements also are designed to ensure fiscal transparency surrounding these contracts by requiring applicants to address whether they have entered or plan to enter into a contract with a for-profit management organization and, if so, to provide detailed information regarding the terms of the contract. This includes the amount of any CSP funding that would be used to pay for services under the contract and information about the governing board members, individuals who have a financial interest in the management organization, and any perceived or actual conflicts of interests. Applicants would also address how the applicant will ensure that it makes all programmatic decisions, maintains control over all program funds, directly administers or supervises the administration of the grant or subgrant in accordance with 34 CFR 75.701 and 76.701, and complies with the conflict of interest standards in 2 CFR 200.317–200.327.

Under section 4310(6) of the ESEA, an eligible applicant is defined as a charter school developer that has (1) applied to an authorized public chartering agency to operate a charter school and (2) provided adequate and timely notice to that authority. As noted above, eligible applicants in States that do not have an active SE Grant may apply to the Department for a direct grant under the Developer Grant program. Non-profit CMOs are the only eligible entities under the CMO Grant program and usually serve as the developer and apply for the charter on behalf of the charter schools that they fund through their grant. Because an applicant need not have received a charter to be eligible to apply for a CSP grant, there is inherent risk of an applicant receiving a CSP grant but ultimately not having its charter application approved. Given this risk, we propose requirements to better inform the Department of these situations, including by providing the expected timeline from the authorized public chartering agency to provide a final decision on the charter application and identifying any planning costs expected to be incurred before such decision. This information can, in turn, be used by the Department to establish guardrails, such as through grant conditions, to minimize risk.

Finally, to reinforce the proposed application requirements, we also propose assurances related to charter schools' contracts with EMOs; subgrant awards; reporting requirements; racial and socio-economic diversity of students and teachers in the charter school, and the impact of the charter school on racial and socio-economic diversity in the public school district and schools from which students are, or will be, drawn to attend the charter school; and ensuring that CSP funding for implementation of a charter school is provided only when a charter has been approved and a school facility has been secured.

We propose to apply one or more of the following application requirements in any year in which a competition is held under one or more of the following CSP grant programs: SE Grants, CMO Grants, or Developer Grants. We identify the program applicability for each proposed application requirement.

Proposed Requirements Applicable to CMO Grants and Developer Grants.

Proposed Requirement 1 for CMO Grants and Developer Grants:

Each applicant must provide a community impact analysis that demonstrates that there is sufficient demand for the proposed project and that the proposed project would serve the interests and meet the needs of students and families in the community or communities from which students are, or will be, drawn to attend the charter school, and that includes the following:

(a) Descriptions of the community support and unmet demand for the charter school, including any over-enrollment of existing public schools or other information that demonstrates demand for the charter school, such as evidence of demand for specialized instructional approaches.

(b) Descriptions of the targeted student and staff demographics and how the applicant plans to establish and maintain racially and socio-economically diverse student and staff populations, including proposed strategies (that are consistent with applicable legal requirements) to recruit,

enroll, and retain a diverse student body and to recruit, hire, develop, and retain a diverse staff and talent pipeline at all levels (including leadership positions).

(c) Analyses of publicly available information and data, including citations and sources, on academic achievement, demographics, and enrollment trends of students in the public schools and school districts from which students are, or will be, drawn to attend the charter school, and an explanation of how the area from which the proposed charter school would reasonably expect to draw students was determined.

(d) An analysis of the proposed charter school's demographic projections and a comparison of such projections with the demographics of public schools and school districts from which students are, or will be, drawn to attend the charter school.

(e) Evidence that demonstrates that the number of charter schools proposed to be opened, replicated, or expanded under the grant does not exceed the number of public schools needed to accommodate the demand in the community, including projected enrollment for the charter schools based on analysis of community needs and unmet demand and any supporting documents for the methodology and calculations used to determine the number of schools proposed to be opened, replicated, or expanded.

(f) A robust family and community engagement plan designed to ensure the active participation of families and the community and that includes the following:

(1) How families and the community are or were engaged in determining the vision and design for the charter school, including specific examples of how families' and the community's input was, or is expected to be, incorporated into the vision and design for the charter school.

(2) How the charter school will meaningfully engage with both families and the community to create strong and ongoing partnerships.

(3) How the charter school will foster a collaborative culture that involves the families of all students, including underserved students, in school decision-making on an ongoing basis.

(4) How the charter school's enrollment and recruitment process will engage and accommodate families from various backgrounds, including by holding enrollment and recruitment events on weekends or during non-standard work hours, making translators available, and providing enrollment and recruitment information in widely accessible formats (*e.g.,* hard copy and online in multiple languages, large print or braille for visually-impaired individuals) through widely available and transparent means (*e.g.,* online and at community locations).[11]

(5) How the charter school has engaged or will engage families and the community to develop an instructional model that will serve the targeted diverse student population and their families effectively.

(g) How the plans for the operation of the charter school will support and reflect the needs of students and families in the community, including considerations for how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted diverse student population (*e.g.,* access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(h) A description of the steps the applicant has taken or will take to ensure that the proposed charter school would not hamper, delay, or in any manner negatively affect any desegregation efforts in the public school districts from which students are, or would be, drawn to attend the charter school, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools, and that it would not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school.

Proposed Requirement 2 for CMO Grants and Developer Grants:

For any existing or proposed contract with a for-profit management organization (including a non-profit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization exercises full or substantial administrative control over the charter school or the CSP project, the applicant must include—

(a) The name and contact information of the management organization;

(b) A detailed description of the terms of the contract, including the cost (*i.e.,* fixed costs and estimates of any ongoing costs or fees) and percentage such cost represents of the school's total funding, amount of CSP funds proposed to be used towards such cost (with an explanation of why such cost is reasonable), duration, roles and responsibilities of the management organization, and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant in accordance with 34 CFR 75.701;

(c) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities that will be used by the charter school;

(d) The name and contact information for each member of the governing board of the proposed charter school;

(e) A list of all individuals who have a financial interest in the management organization, including—

(1) Descriptions of any affiliations or conflicts of interest for charter school staff, board members, and management organization staff;

(2) A list of all related individuals or entities providing contractual services to the charter school and the nature of those services; and

(3) Detailed descriptions of any actual or perceived conflicts of interest, the steps the applicant took or will take to avoid any actual or perceived conflicts of interest, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(f) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(g) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school, including due to closure

[11] Please note that all public schools are obligated under Federal civil rights laws to ensure meaningful communication with limited English proficient parents and effective communication with individuals with disabilities. 28 CFR 35.160. *See generally Lau* v. *Nichols,* 414 U.S. 563 (1974); 34 CFR part 100.

of the charter school, in accordance with section 4308 of the ESEA.

Proposed Requirement 3 for CMO Grants and Developer Grants:

An applicant that has applied to an authorized public chartering agency to operate a new, expanded, or replicated charter school, and has not yet received approval, must provide—

(a) A signed and dated copy of its application to the authorized public chartering agency;

(b) Documentation that it has provided notice to the authorized public chartering agency that it has applied for a CSP grant;

(c) A timeline from the authorized public chartering agency for providing a final decision on the charter application; and

(d) Any planning costs in its proposed budget that are expected to be incurred prior to the date the authorized public chartering agency expects to issue a decision on the applicant's charter application.

Proposed Requirements Applicable to SE Grants:

Background: Applicants for subgrants under the CSP SE Grant program are required to provide, as part of their subgrant application, a description of the roles and responsibilities of eligible applicants, partner organizations, and CMOs, including the administrative and contractual roles and responsibilities of such partners (section 4303(f)(1)(C)(i)(II) of the ESEA). Another goal of these proposed requirements is to ensure that CSP SE grantees are well positioned to oversee a high-quality peer review process as they make subgrant awards in their respective States to support opening new charter schools and replicating and expanding high-quality charter schools. Also, we want to ensure that, after making subgrant awards in their States, SE grantees fulfill their responsibility to monitor charter school subgrant award recipients, as required under 2 CFR 200.332(d). SEs are required to provide descriptions of how the SE will review applications from eligible applicants (section 4303(f)(1)(C)(ii) of the ESEA) as well as its plan to adequately monitor subgrant recipients under the SE's program (section 4303(g)(1)(D)(i) of the ESEA). The CSP SE Grant program supports many charter schools nationally, and the proposed new requirements for SE applicants to create subgrant application review and subgrantee monitoring plans present an opportunity for peer reviewers to evaluate the quality of these plans not only to inform funding decisions, but also to enhance the quality of charter schools in the areas of transparency, oversight, and accountability.

The proposed application requirements, which would supplement existing statutory requirements for SEs, would: Require subgrant applicants to provide a community impact analysis and submit more detailed information regarding the nature of any management contracts with for-profit EMOs, including non-profit CMOs operated by or on behalf of for-profit entities, as we are proposing to require of applicants for CMO Grants and Developer Grants; require SEs to give priority in making subgrants to charter schools that are educator-led and community-centered or that participate in collaborations among charter schools and traditional public schools or school districts (charter-traditional-district collaborations), as with the above priorities for CMO and Developer; require SEs to provide justification and supporting evidence for the planned number of subgrants and subgrant award amounts to ensure proposed projects are reasonable; and, as discussed in the previous paragraph, strengthen the requirements related to SEs' review of subgrant applications and monitoring of subgrants in their States.

Proposed Requirement 1 for SE Grants:

Each subgrant applicant must provide a community impact analysis that demonstrates that there is sufficient demand for the proposed project and that the proposed project would serve the interests and meet the needs of students and families in the community or communities from which the students are, or will be, drawn to attend the charter school, and that includes the following:

(a) Descriptions of the community support and unmet demand for the charter school, including any over-enrollment of existing public schools or other information that demonstrates demand for the charter school, such as evidence of demand for specialized instructional approaches.

(b) Descriptions of the targeted student and staff demographics and how the applicant plans to establish and maintain racially and socio-economically diverse student and staff populations, including proposed strategies (consistent with applicable legal requirements) to recruit, enroll, and retain a diverse student body and to recruit, hire, develop, and retain a diverse staff and talent pipeline at all levels (including leadership positions).

(c) Analyses of publicly available information and data on student academic achievement, demographics, and enrollment trends of students in schools in the public school district and schools from which students are, or will be, drawn or in which the charter school is or will be located, including citations and sources and an explanation of how the area from which the proposed charter school would reasonably expect to draw students was determined.

(d) An analysis of the proposed charter school's demographic projections and a comparison of such projections with the demographics of public schools and school districts from which students are, or will be, drawn to attend the charter school.

(e) Evidence that demonstrates that the number of charter schools proposed to be opened, replicated, or expanded under the grant does not exceed the number of public schools needed to accommodate the demand in the community, including projected enrollment for the charter schools based on analysis of community needs and unmet demand and any supporting documents for the methodology and calculations used to determine the number of schools proposed to be opened, replicated, or expanded.

(f) A robust family and community engagement plan designed to ensure the active participation of families and the community that includes the following:

(1) How families and the community are or were engaged in determining the vision and design for the charter school, including specific examples of how families' and the community's input was, or is expected to be, incorporated into the vision and design for the charter school.

(2) How the charter school will meaningfully engage with both families and the community to create strong and ongoing partnerships.

(3) How the charter school will foster a collaborative culture that involves the families of all students, including underserved students, in school decision-making on an ongoing basis.

(4) How the charter school's enrollment and recruitment processes will engage and accommodate families from various backgrounds, including by holding enrollment and recruitment events on weekends or non-standard work hours, making translators available, and providing enrollment and recruitment information in widely accessible formats (*e.g.,* hard copy and online in multiple languages, large print or braille for visually-impaired individuals) through widely available and transparent means (*e.g.,* online and at community locations).[12]

[12] Please note that all public schools are obligated under Federal civil rights laws to ensure

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(5) How the charter school has engaged or will engage families and the community to develop an instructional model to best serve the targeted diverse student population and their families.

(g) How the plans for the operation of the charter school will support and reflect the needs of students and families in the community, including considerations for how the school's location, or anticipated location if a facility has not been secured, will facilitate access for the targeted diverse student population (*e.g.,* access to public transportation or other transportation options, the demographics of neighborhoods within walking distance of the school, and transportation plans and costs for students who are not able to walk or use public transportation to access the school).

(h) A description of the steps the applicant has taken or will take to ensure that the proposed charter school would not hamper, delay, or in any manner negatively affect any desegregation efforts in the public school districts from which students are, or would be, drawn to attend the charter school, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools, and that it would not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school.

Proposed Requirement 2 for SE Grants:

For any existing or proposed contract with a for-profit management organization (including a non-profit management organization operated by or on behalf of a for-profit entity), without regard to whether the management organization exercises full or substantial administrative control over the charter school or the CSP project, the subgrant applicant must include—

(a) The name and contact information of the management organization;

(b) A detailed description of the terms of the contract, including the cost (*i.e.,* fixed costs and estimates of any ongoing costs or fees) and percentage such cost represents of the school's total funding, amount of CSP funds proposed to be used towards such cost (with an explanation of why such cost is reasonable), duration, roles and responsibilities of the management organization, and steps the applicant will take to ensure that it pays fair market value for any services or other items purchased or leased from the management organization, makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the subgrant in accordance with 34 CFR 76.701;

(c) A description of any business or financial relationship between the charter school developer and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the charter school;

(d) The name and contact information for each member of the governing board of the proposed charter school;

(e) A list of all individuals who have a financial interest in the management organization, including—

(1) Descriptions of any affiliations or conflicts of interest for charter school staff, board members, and management organization staff;

(2) A list of all related individuals or entities providing contractual services to the charter school and the nature of those services; and

(3) Detailed descriptions of any actual or perceived conflicts of interest, the steps the applicant took or will take to avoid any actual or perceived conflicts of interest, and how the applicant resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c);

(f) An explanation of how the applicant will ensure that the management contract is severable, severing the management contract will not cause the proposed charter school to close, the duration of the management contract will not extend beyond the expiration date of the school's charter, and renewal of the management contract will not occur without approval and affirmative action by the governing board of the charter school; and

(g) A description of the steps the applicant will take to ensure that it maintains control over all student records and has a process in place to provide those records to another public school or school district in a timely manner upon the transfer of a student from the charter school to another public school in accordance with section 4308 of the ESEA.

Proposed Requirement 3 for SE Grants:

Each SE applicant must provide a detailed description of how it will review applications from eligible applicants, including—

(a) How eligibility will be determined;

(b) How peer reviewers will be recruited and selected, including efforts the applicant will make to recruit peer reviewers from diverse backgrounds and underrepresented groups;

(c) How subgrant applications will be reviewed and evaluated;

(d) How cost analyses and budget reviews will be conducted to ensure that costs are necessary, reasonable, and allocable to the subgrant;

(e) How applicants will be assessed for risk (*i.e.,* fiscal, programmatic, compliance); and

(f) How funding decisions will be made.

Proposed Requirement 4 for SE Grants:

Each SE applicant must provide a detailed description, including a timeline, of how the SE will monitor and report on subgrant performance in accordance with 2 CFR 200.329, and address and mitigate subgrantee risk, including—

(a) How subgrantees will be selected for in-depth monitoring, including factors that indicate higher risk (*e.g.,* charter schools that have management contracts with for-profit EMOs, virtual charter schools, and charter schools with a history of poor performance);

(b) How identified subgrantee risk will be addressed;

(c) How subgrantee expenditures will be monitored;

(d) How monitoring for progress and compliance will be conducted and who will conduct the monitoring;

(e) How monitors will be trained;

(f) How monitoring findings will be shared with subgrantees;

(g) How corrective action plans will be used to resolve monitoring findings; and

(h) How the SE will ensure transparency so that monitoring findings and corrective action plans are available to families and the public.

Proposed Requirement 5 for SE Grants:

Each SE applicant must provide explanations and supporting documents for the methodology and calculations used to determine the number of proposed subgrant awards and the average subgrant award amount.

Proposed Requirement 6 for SE Grants:

Each SE applicant must describe how the SE will give priority in awarding subgrants to eligible applicants that propose projects that include one or more of the following:

(a) A community-centered approach that informs the planning, design, and implementation of the charter school and includes—

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meaningful communication with limited English proficient parents and effective communication with individuals with disabilities. 28 CFR 35.160. *See generally Lau* v. *Nichols,* 414 U.S. 563 (1974); 34 CFR part 100.

(1) An assessment of community assets;

(2) Meaningful and ongoing engagement with families, educators, and other members of the community, including in areas related to board governance and school-level decision-making related to curriculum and instruction; and

(3) The implementation of protocols and practices designed to ensure that the charter school will use and interact with community assets on an ongoing basis to create and maintain strong community ties.

(b) A collaboration with at least one traditional public school or school district in an activity that is designed to benefit students and families served by each member of the collaboration, designed to lead to increased educational opportunities and improved student outcomes, and includes implementation of—

(1) One or more of the following services and resources:

(i) Curricular and instructional resources or academic course offerings.

(ii) Professional development opportunities for teachers and leaders, which may include professional learning communities, opportunities for teachers to earn additional certifications, such as in a high need area or National Board Certification, and partnerships with educator preparation programs to support teaching residencies.

(iii) Evidence-based (as defined in section 8101 of the ESEA) practices to improve academic performance for underserved students.

(iv) Policies and practices to create safe, supportive, and inclusive learning environments, including systems of positive behavioral intervention and support; and

(2) One or more of the following initiatives:

(i) Common enrollment and retention practices that include, as part of the enrollment process, disclosure of policies or requirements (*e.g.,* discipline policies, purchasing and wearing specific uniforms and other fees, or caregiver participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled (*e.g.,* transportation services or participation in the National School Lunch Program).

(ii) A shared transportation plan and system that reduces transportation costs for partners in the collaboration and takes into consideration various transportation options, including public transportation and district-provided or shared transportation options, cost-sharing or free or reduced-cost fare options, and any distance considerations for prioritized bus services.

(iii) Other collaborations designed to address a significant barrier or challenge faced by both charter schools and traditional public schools and improve student outcomes.

Proposed Assurances

Background: The ESEA requires CSP SE Grant, CMO Grant, and Developer Grant applications to include applicable assurances from section 4303(f)(2) of the ESEA. In addition, CMO Grant applications must include the assurance required under section 4305(b)(3)(C) of the ESEA.

As discussed in the background for the *Proposed Application Requirements* section, for-profit EMOs are ineligible to apply for direct grants or subgrants under the CSP. The Department is aware, however, that some charter schools enter into contracts with EMOs. Under these circumstances, it is the responsibility of the grantee or subgrantee to ensure that an agreement with an EMO is a contract, and not a subaward or subgrant as per 2 CFR 200.331. In addition, a contract for goods or services with a for-profit entity must comply with the Federal procurement standards at 2 CFR 200.317–327, and applicable conflict of interest requirements, including that no employee, officer, or agent of the charter school may participate in the selection, award, or administration of any contract supported by Federal funds if a real or apparent conflict of interest exists. EMOs provide a variety of services to charter schools—from supplemental management and financial support services to whole-school package offerings. Under these management contracts between charter schools and EMOs, the EMO often exercises full administrative control over the charter school project, which, as noted above, violates CSP requirements. Examples of impermissible delegations of administrative control include situations where the EMO controls all or a substantial portion of subgrant funds and expenditures, including making programmatic decisions (also referred to as ''sweeps contracts''); the EMO employs the school principal and a large proportion of the teachers; or the EMO makes decisions about curricula and instructional practices. Such arrangements under which a for-profit EMO, including a non-profit management organization operated by or on behalf of a for-profit entity, exercises full administrative control over the charter school (and, thereby, the CSP project) are not permissible under CSP-funded projects, pursuant to 34 CFR 75.701 and 76.701, which require that the grantee or subgrantee directly administer or supervise the administration of the project; and 2 CFR 200.303, which requires that the grantee or subgrantee establish and maintain proper internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the grant. See also 2 CFR 200.302 (financial management).

Consistent with the proposed application requirements for CMO Grants and Developer Grants, and for subgrants under the SE Grant program, we propose assurances to ensure that any charter school that receives CSP funds and enters, or plans to enter, into a contract with an EMO, including a non-profit CMO operated by or on behalf of a for-profit entity, complies with all relevant statutory and regulatory requirements, including applicable Federal procurement standards in 2 CFR 200.317–327, Federal regulations governing conflicts of interest, and Department regulations requiring grantees and subgrantees to directly administer or supervise the administration of the project and retain control over programmatic decisions. The proposed assurances also are designed to ensure transparency, including fiscal transparency, surrounding these contracts.

In addition, CSP applicants (including CSP SE subgrant applicants) may receive CSP funds for planning a charter school before receiving an approved charter or securing a facility—factors that may prevent a charter school from ever opening. Accordingly, we are also proposing assurances to provide greater public transparency with CSP funding decisions and to address the risk of CSP implementation funds supporting grantees and subgrantees that are unable to open the charter school or secure a facility for the charter school in a timely manner.

Also, we are proposing an assurance relating to transparency in admission and enrollment policies, such as requirements for uniforms, volunteer hours, fees, or other obligations, that may create barriers that impact a family's ability to enroll or remain enrolled in the charter school. This assurance is designed to ensure that families are aware of financial and other obligations prior to enrolling in the charter school.

Proposed Assurances Applicable to SE Grants, CMO Grants, and Developer Grants:

(a) Each charter school receiving CSP funding must provide an assurance that it has not and will not enter into a contract with a for-profit management organization, including a non-profit management organization operated by or on behalf of a for-profit entity, under which the management organization exercises full or substantial administrative control over the charter school and, thereby, the CSP project.

(b) Each charter school receiving CSP funding must provide an assurance that any management contract between the charter school and a for-profit management organization, including a non-profit CMO operated by or on behalf of a for-profit entity, guarantees or will guarantee that—

(1) The charter school maintains control over all CSP funds, makes all programmatic decisions, and directly administers or supervises the administration of the grant or subgrant;

(2) The management organization does not exercise full or substantial administrative control over the charter school (and, thereby, the CSP project), except that this does not limit the ability of a charter school to enter into a contract with a management organization for the provision of services that do not constitute full or substantial control of the charter school project funded under the CSP (*e.g.,* food services or payroll services) and that otherwise comply with statutory and regulatory requirements;

(3) The charter school's governing board has access to financial and other data pertaining to the charter school, the EMO, and any related entities; and

(4) The charter school is in compliance with applicable Federal and State laws and regulations governing conflicts of interest, and there are no actual or perceived conflicts of interest between the charter school and the management organization.

(c) Each SE or CMO that has provided CSP funding to a charter school, and each charter school receiving CSP funding, must provide an assurance that it will post on its website, on an annual basis, a copy of any management contract between the charter school and a for-profit management organization, including a non-profit CMO operated by or on behalf of a for-profit entity, and report information on such contract to the Department (or, in the case of a charter school that receives CSP funding through an SE Grant, to the SE), including—

(1) The name and contact information of the management organization;

(2) A detailed description of the terms of the contract, including the cost and percentage such cost represents of the charter school's total funding, amount of CSP funds proposed to be used towards such cost (with an explanation of why such cost is reasonable), duration, roles and responsibilities of the management organization, and the steps the charter school is taking to ensure that it makes all programmatic decisions, maintains control over all CSP funds, and directly administers or supervises the administration of the grant or subgrant in accordance with 34 CFR 75.701 and 76.701;

(3) A description of any business or financial relationship between the charter school developer or CMO and the management organization, including payments, contract terms, and any property owned, operated, or controlled by the management organization or related individuals or entities to be used by the charter school;

(4) The names and contact information of members of the boards of directors of the charter school;

(5) A list of all individuals who have a financial interest in the management organization, including descriptions of any affiliations or conflicts of interest for charter school staff, board members, and management organization staff, and a list of all related individuals or entities providing contractual services to the charter school and the nature of those services;

(6) A detailed description of any actual or perceived conflicts of interest, the steps the charter school took or will take to avoid any actual or perceived conflicts of interest, and how the charter school resolved or will resolve any actual or perceived conflicts of interest to ensure compliance with 2 CFR 200.318(c); and

(7) A description of how the charter school ensured that such contract is severable and that a change in management companies will not cause the proposed charter school to close.

(d) Each charter school receiving CSP funding must provide an assurance that it will disclose, as part of the enrollment process, any policies or requirements (*e.g.,* purchasing and wearing specific uniforms and other fees, or requirements for family participation), and any services that are or are not provided, that could impact a family's ability to enroll or remain enrolled (*e.g.,* transportation services or participation in the National School Lunch Program).

(e) Each applicant for a CMO Grant, Developer Grant, or subgrant under the SE Grant program, without regard to whether there are any desegregation efforts in the public school districts in the surrounding area, must provide an assurance that it (or, in the case of an applicant for a CMO Grant, each charter school it proposes to fund) will hold or participate in a public hearing in the school districts or communities in which the proposed charter school will be located to obtain information and feedback regarding the potential impact of the charter school, including the steps the charter school has taken or will take to ensure that the proposed charter school would not hamper, delay, or in any manner negatively affect any desegregation efforts in the public school districts from which students are, or would be, drawn to attend the charter school, including efforts to comply with a court order, statutory obligation, or voluntary efforts to create and maintain desegregated public schools, and that it would not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school. Applicants must ensure that the hearing (and notice thereof) is accessible to individuals with disabilities and limited English proficient individuals as required by law, actively solicit participation in the hearing (*i.e.,* provide widespread and timely notice of the hearing), make good faith efforts to accommodate as many people as possible (*e.g.,* hold the hearing at a convenient time for families and provide virtual participation options), and submit a summary of the comments received as part of the application.

(f) Each applicant for an SE Grant or subgrant, CMO Grant, or Developer Grant must provide an assurance that it will not use or provide implementation funds for a charter school until after the charter school has received a charter from an authorized public chartering agency and has a contract, lease, mortgage, or other documentation indicating that it has a facility in which to operate.

Proposed Assurances Applicable to CSP SE Grants and CMO Grants:

Each applicant must provide an assurance that, within 30 days of the date of the grant award notification (GAN), or the date of the subgrant award notification for SE Grants, the grantee or subgrantee will post on its website a list of the charter schools slated to receive CSP funds, including the following for each school:

(a) The name, address, and grades served.

(b) A description of the educational model.

(c) If the charter school has contracted with a for-profit management organization, the name of the

management organization, the amount of CSP funding the management organization will receive from the school, and a description of the services to be provided.

(d) The grant or subgrant award amount, including any funding that has been approved for the current year and any additional years of the CSP grant for which the school will receive support.

(e) The grant or subgrant application (redacted as necessary).

(f) The peer review materials, including reviewer comments and scores (redacted as necessary) from the grant or subgrant competition.

Proposed Definitions

In addition to the definitions in section 4310 of the ESEA, the CMO NFP, and the Developer NFP, we propose the following definitions for CSP SE Grants, CMO Grants, and Developer Grants. We may apply one or more of these definitions in any year in which a competition for new awards is held under one of these programs.

Background: In order to ensure a common understanding of the proposed priorities and requirements, we propose definitions that are critical to the policies and statutory purposes of the CSP SE Grant, Developer Grant, and CMO Grant programs, including proposed definitions for ''disconnected youth,'' ''educator,'' and ''underserved student'' that are based on definitions of those terms from the Secretary's Supplemental Priorities published in the **Federal Register** on December 10, 2021 (86 FR 70612). We propose these definitions to clarify expectations for eligible entities applying for SE Grants, Developer Grants, and CMO Grants, and to ensure that the review process for applications for such grants is as transparent as possible.

Proposed Definitions Applicable to SE Grants, CMO Grants, and Developer Grants:

Community assets means resources that can be identified and mobilized to improve conditions in the charter school and community. These assets may include—

(1) Human assets, including capacities, skills, knowledge base, and abilities of individuals within a community;

(2) Social assets, including networks, organizations, businesses, and institutions that exist among and within groups and communities; and

(3) Political assets, such as a group's ability to influence the distribution of resources, financial and otherwise.

Disconnected youth means an individual, between the ages 14 and 24, who may be from a low-income background, experiences homelessness, is in foster care, is involved in the justice system, or is not working or not enrolled in (or at risk of dropping out of) an educational institution.

Educator means an individual who is an early learning educator, teacher, principal or other school leader, specialized instructional support personnel (*e.g.,* school psychologist, counselor, school social worker, early intervention service personnel), paraprofessional, or faculty.

Underserved student means a student in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner (as defined in section 8101 of the ESEA).

(e) A child or student with a disability (as defined in section 8101 of the ESEA).

(f) A disconnected youth.

(g) A migrant student.

(h) A student experiencing homelessness or housing insecurity.

(i) A student who is in foster care.

(j) A pregnant, parenting, or caregiving student.

(k) A student impacted by the justice system, including a formerly incarcerated student.

(l) A student performing significantly below grade level.

Proposed Definition Applicable to SE Grants:

Background: In addition to the proposed definitions for SE Grants, CMO Grants, and Developer Grants, we propose the following definition for CSP SE Grants only. We may apply this definition in any year in which a competition for new awards is held under the SE Grant program.

We are proposing to adopt the definition of ''educationally disadvantaged student'' established in the CMO NFP and Developer NFP for use in the CSP SE Grants program. The proposed definition for ''educationally disadvantaged student'' is based on section 1115(c)(2) of the ESEA.

Proposed Definition:

Educationally disadvantaged student means a student in one or more of the categories described in section 1115(c)(2) of the ESEA, which include children who are economically disadvantaged, children with disabilities, migrant students, English learners, neglected or delinquent students, homeless students, and students who are in foster care.

Proposed Selection Criteria

Background: We propose selection criteria that align with the proposed requirements and assurances, identify for peer reviewers the factors considered to be essential to conducting a high-quality peer review, and are designed to aid in identifying the applicants most likely to succeed with implementing high-quality charter schools that are driven by the needs of families and their communities. These selection criteria would be used in addition to selection criteria in sections 4303(g)(1) and 4305(b)(4) of the ESEA, the CMO NFP, the Developer NFP, and 34 CFR 75.210, as appropriate. We may apply one or more of these proposed selection criteria to applicable grant competitions in fiscal year (FY) 2022 and later years. In the notices inviting applications we will announce the maximum possible points assigned to each criterion.

Proposed Selection Criteria for CMO Grants and Developer Grants:

(a) *Quality of the Community Impact Analysis.* The Secretary considers the quality of the community impact analysis for the proposed project. In determining the quality of the community impact analysis, the Secretary considers one or more of the following factors:

(1) The extent to which the community impact analysis demonstrates that the proposed charter school will address the needs of all students and families in the community, including underserved students; will ensure equitable access to diverse learning opportunities; and will not otherwise increase racial or socio-economic segregation or isolation in the schools from which the students are, or would be, drawn to attend the charter school.

(2) The extent to which the community impact analysis demonstrates that the proposed charter school has considered and mitigated, whenever possible, potential barriers to application, enrollment, and retention of students and families from diverse backgrounds.

(3) The extent to which the proposed charter school is supported by families and the community, including the extent to which parents and other members of the community were engaged in determining the need and vision for the school and will continue to be engaged on an ongoing basis in school decision-making, including the academic, financial, organizational, and operational performance of the charter school.

(b) *Quality of the Charter School's Management Plan.* The Secretary

considers the quality of the management plan for the proposed project. In determining the quality of the management plan, the Secretary considers one or more of the following factors:

(1) The adequacy of the applicant's plan to maintain control over all CSP grant funds.

(2) The adequacy of the applicant's plan to make all programmatic decisions.

(3) The adequacy of the applicant's plan to administer or supervise the administration of the grant and maintain significant management or oversight responsibilities over the grant.

Proposed Selection Criterion for SE Grants:

(a) *Quality of the Project Design.* The Secretary considers the quality of the project design for the proposed project. In determining the quality of the project design for the proposed project, the Secretary considers the quality of the SE's process for awarding subgrants, including—

(1) The extent to which the number of subgrant awards anticipated for each grant project year is supported by evidence of demand and need; and

(2) The extent to which the proposed average subgrant award amount is supported by evidence of the need of applicants.

Final Priorities, Requirements, Definitions, and Selection Criteria:

We will announce the final priorities, requirements, definitions, and selection criteria in a document in the **Federal Register**. We will determine the final priorities, requirements, definitions, and selection criteria after considering responses to this document and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these proposed priorities, requirements, definitions, and selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, it must be determined whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We believe that the benefits of this regulatory action outweigh any associated costs, which we believe would generally be minimal. While this action would impose cost-bearing application requirements on participating SE Grant, Developer Grant, and CMO Grant applicants and on SE subgrant applicants, we expect that applicants would include requests for funds to cover such costs in their proposed project budgets. We believe this regulatory action would strengthen accountability for the use of Federal funds by helping to ensure that CSP grants and subgrants are awarded to the entities that are most capable of expanding the number of high-quality charter schools available to our Nation's students.

We estimate costs associated with information collection requirements in the *Paperwork Reduction Act* section of this document.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: the public understands the Department's collection instructions,

respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The proposed application requirements and selection criteria relating to a community impact analysis, management contracts, and management plans contain information collection requirements. The Department is requesting paperwork clearance on the OMB 1810–NEW data collection associated with these proposed application requirements and selection criteria. That request will account for all burden hours and costs discussed within this section. Under the PRA, the Department has submitted these requirements to OMB for its review.

A Federal agency may not conduct or sponsor a collection of information unless OMB approves the collection under the PRA and the corresponding information collection instrument displays a currently valid OMB control number. Notwithstanding any other provision of law, no person is required to comply with, or is subject to penalty for failure to comply with, a collection of information if the collection instrument does not display a currently valid OMB control number.

In the notice of final priorities, requirements, definitions, and selection criteria we will display the control numbers assigned by OMB to any information collection requirements proposed in this NPP and adopted in the notice of final priorities, requirements, definitions, and selection criteria.

For the years that the Department holds SE Grant, CMO Grant, and Developer Grant competitions and that SEs hold subgrant competitions, we estimate that 365 applicants will apply and submit an application. We estimate that it will take each applicant 60 hours to complete and submit the application, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total burden hour estimate for this collection is 21,900 hours. At $97.28 per hour (using mean wages for Education and Childcare Administrators [13] and assuming the total cost of labor, including benefits and overhead, is equal to 200 percent of the mean wage rate), the total estimated cost for 365 applicants to complete a SE grant application, CMO grant application, Developer grant application, or SE subgrant application is approximately $2,130,432.

Consistent with 5 CFR 1320.8(d), the Department is soliciting comments on the information collection through this document. Between 30 and 60 days after publication of this document in the **Federal Register,** OMB is required to make a decision concerning the collections of information contained in these proposed priorities, requirements, definitions, and selection criteria. Therefore, to ensure that OMB gives your comments full consideration, it is important that OMB receives your comments on these Information Collection Requests by April 13, 2022. Comments related to the information collection requirements for these proposed priorities, requirements, definitions, and selection criteria must be submitted electronically through the Federal eRulemaking Portal at *www.regulations.gov* by selecting the Docket ID number ED–2022–OESE–0006 or via postal mail, commercial delivery, or hand delivery by referencing the docket ID number and the title of the information collection request at the top of your comment. Comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

Note: The Office of Information and Regulatory Affairs in OMB and the Department review all comments related to the information collections requirements posted at *www.regulations.gov.*

Collection of Information

Information collection activity	Estimated number of responses	Hours per response	Total estimated burden hours	Estimated cost at an hourly rate of $97.28
Application	365	60	21,900	$2,130,432

We consider your comments on these proposed collections of information in—

- Deciding whether the proposed collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the proposed collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Regulatory Flexibility Act Certification:

The Secretary certifies that this proposed regulatory action would not have a significant economic impact on a substantial number of small entities. The U.S. Small Business Administration Size Standards define proprietary institutions as small businesses if they are independently owned and operated, are not dominant in their field of operation, and have total annual revenue below $7,000,000. Nonprofit institutions are defined as small entities if they are independently owned and operated and not dominant in their field of operation. Public institutions are defined as small organizations if they are operated by a government overseeing a population below 50,000.

The small entities that this proposed regulatory action would affect are charter schools, including charter schools that operate as LEAs under State law; and public or private nonprofit organizations. We believe that the costs imposed on an applicant by the proposed priorities, requirements, definitions, and selection criteria would be limited to paperwork burden related to preparing an application and that the benefits of these proposed priorities, requirements, definitions, and selection criteria would outweigh any costs incurred by the applicant.

Participation in the CSP is voluntary. For this reason, the proposed priorities, requirements, definitions, and selection criteria would impose no burden on small entities unless they applied for funding under the program. We expect

[13] *See www.bls.gov/oes/current/oes_nat.htm.*

that in determining whether to apply for CSP funds, an eligible entity would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving CSP grant. An eligible entity will probably apply only if it determines that the likely benefits exceed the costs of preparing an application.

The proposed priorities, requirements, definitions, and selection criteria would impose some additional burden on a small entity applying for a grant relative to the burden the entity would face in the absence of the proposed action.

This proposed regulatory action would not have a significant economic impact on a small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or another accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Ruth E. Ryder,

Deputy Assistant Secretary for Policy and Programs, Office of Elementary and Secondary Education.

[FR Doc. 2022–05463 Filed 3–11–22; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2020–0730; EPA–R05–OAR–2020–0731; EPA–R05–OAR–2022–0004; FRL–9629–01–R5]

Air Plan Approval; Michigan; Redesignation of the Detroit, MI Area to Attainment of the 2015 Ozone Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Detroit, Michigan area is attaining the 2015 primary and secondary ozone National Ambient Air Quality Standards (NAAQS), and to act in accordance with a request from the Michigan Department of Environment, Great Lakes, and Energy (EGLE) to redesignate 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 Detroit area includes Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties. EGLE submitted this request on January 3, 2022. EPA is proposing to approve, as a revision to the Michigan State Implementation Plan (SIP), the State's plan for maintaining the 2015 ozone NAAQS through 2035 in the Detroit area. EPA is also proposing to approve Michigan's 2025 and 2035 volatile organic compound (VOC) and oxides of nitrogen (NO_X) motor vehicle emissions budgets (budgets) for the Detroit area and initiating the adequacy review process for these budgets. Finally, EPA is proposing to approve portions of separate December 18, 2020, submittals as meeting the applicable requirements for a base year emissions inventory and emissions statement program.

DATES: Comments must be received on or before April 13, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2020–0730, EPA–R05–OAR–2020–0731, or EPA–R05–OAR–2022–0004 at *http://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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Eric Svingen, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4489, *svingen.eric@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.

I. What is EPA proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that the Detroit nonattainment area is attaining the 2015 ozone NAAQS, based on quality-assured and certified monitoring data for 2019–2021, and that the Detroit area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Detroit area

from nonattainment to attainment for the 2015 ozone NAAQS. EPA is also proposing to approve, as a revision to the Michigan SIP, the State's maintenance plan for the area. The maintenance plan is designed to keep the Detroit area in attainment of the 2015 ozone NAAQS through 2035. EPA is proposing to approve the newly established 2025 and 2035 motor vehicle emissions budgets for the Detroit area and is initiating the adequacy process for these budgets. Finally, EPA is proposing to approve portions of Michigan's separate December 18, 2020, submittals, because they satisfy the applicable CAA requirements for a base year emissions inventory and emissions statement program for the Detroit area.

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 65292 (October 26, 2015). Under EPA's regulations at 40 CFR part 50, the 2015 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 50.19 and appendix U 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 Detroit 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 policy memoranda.

IV. What is EPA's analysis of Michigan's redesignation request?

A. Has the Detroit area attained the 2015 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 50.19 and appendix U 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 2015 ozone NAAQS, the 3-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% of the days within the ozone monitoring seasons,[1] on average, for the 3-year period, with a minimum data completeness of 75% during the ozone monitoring season of any year during the 3-year period. See section 4 of appendix U to 40 CFR part 50.

EPA has reviewed the available ozone monitoring data from EGLE's monitoring sites in the Detroit area for the 2019–2021 period. These data have been quality assured, are recorded in the AQS, and were certified in advance of EPA's publication of this proposal. These data demonstrate that the Detroit 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 all monitoring sites are summarized in Table 1.

TABLE 1—ANNUAL FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS AND 3-YEAR AVERAGE OF THE FOURTH-HIGHEST DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR THE DETROIT AREA

County	Monitor	2019 4th high (ppm)	2020 4th high (ppm)	2021 4th high (ppm)	2019–2021 average (ppm)
Macomb	26–099–0009	0.063	0.074	0.068	0.068
	26–099–1003	0.062	0.070	0.067	0.066
Oakland	26–125–0001	0.066	0.074	0.068	0.069
St. Clair	26–147–0005	0.070	0.069	0.072	0.070
Washtenaw	26–161–0008	0.060	0.072	0.066	0.066
	26–161–9991	0.058	0.067	0.063	0.062
Wayne	26–163–0001	0.062	0.070	0.069	0.067
	26–163–0019	0.068	0.073	0.069	0.070

[1] The ozone season is defined by state in 40 CFR 58, appendix D. The ozone season for Michigan is March-October. *See* 80 FR 65292, 65466–67 (October 26, 2015).

The Detroit area's 3-year ozone design value for 2019–2021 is 0.070 ppm,[2] which meets the 2015 ozone NAAQS. Therefore, in today's action, EPA proposes to determine that the Detroit area is attaining the 2015 ozone NAAQS.

EPA will not take final action to determine that the Detroit area is attaining the NAAQS nor to approve the redesignation of this area if the design value of a monitoring site in the area violates the NAAQS prior to final approval of the redesignation. As discussed in section IV.D.3. below, EGLE has committed to continue monitoring ozone in this area to verify maintenance of the 2015 ozone NAAQS.

B. Has Michigan met all applicable requirements of section 110 and part D of the CAA for the Detroit area, and does Michigan have a fully approved SIP for the area under section 110(k) of the CAA?

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 Michigan has met all applicable SIP requirements for purposes of redesignation under section 119 and part D of title I of the CAA (requirements specific to nonattainment areas for the 2015 ozone NAAQA). Additionally, with the exception of the base year emissions inventory requirement of section 182(a)(1) of the CAA and the emissions statement requirement of section 182(a)(3)(B) of the CAA, EPA proposes to find that Michigan has a fully approved SIP under section 110(k) of the CAA. As discussed in sections VI. and VII. below, EPA is proposing to approve Michigan's base year emissions inventory and emissions statement program as meeting the requirements of sections 182(a)(1) and 182(a)(3), respectively, for the 2015 ozone NAAQS. Upon final approval of these SIP elements, all applicable requirements of the Michigan SIP for the area will have been fully approved under section 110(k) of the CAA. In making these proposed determinations, EPA ascertained which requirements are applicable for purposes of redesignation, and whether the required Michigan SIP elements are fully approved under section 110(k) and part D of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to these applicable requirements of the CAA.

The September 4, 1992, memorandum from John Calcagni, Director, Air Quality Management Division, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' describes EPA's interpretation of which requirements are ''applicable'' for purposes of redesignation under section 107(d)(3)(E) of the CAA. Under this interpretation, a requirement is not ''applicable'' unless it was due prior to the state's submittal of a complete redesignation request for the area. *See also* the September 17, 1993, memorandum from Michael H. Shapiro, entitled ''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,'' and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1hour 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.[3] *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 1hour ozone NAAQS).

1. Michigan has met all applicable requirements of section 110 and part D of the CAA applicable to the Detroit 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, the Clean Air Interstate Rule (CAIR), and the Cross State Air Pollution Rule (CSAPR). 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 the 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

[2] The monitor ozone design value for the monitor with the highest 3-year averaged concentration.

[3] EPA is, in a separate action, proposing to find that the Detroit area failed to attain the 2015 ozone NAAQS by its attainment date. If that determination were finalized, the area would be reclassified to Moderate by operation of law. However, because of EPA's interpretation and the date by which Michigan submitted its request, those Moderate area requirements are not considered applicable requirements for purposes of redesignating the Detroit area. Specifically, at the time Michigan submitted its request, EPA had not yet determined that the area failed to attain and had not yet reclassified the area. Per CAA section 182(i) and consistent with CAA section 179(d), EPA typically adjusts the deadlines for SIP submissions that are required for newly reclassified areas. Therefore, even if EPA were to finalize today the determination that the area failed to attain and reclassify the area, the deadline for the requirements associated with the reclassification would be set at some point in the future. Michigan submitted its request to redesignate well in advance of any hypothetical due date associated with Moderate area requirements.

applicable requirements for purposes of redesignation. The 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 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 Michigan's SIP and propose to find that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation. In any case, on September 28, 2021 (86 FR 53550), EPA approved elements of the SIP submitted by Michigan to meet the requirements of section 110 for the 2015 ozone standard.

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 Detroit 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).

i. Subpart 1 Section 172 Requirements

As provided in subpart 2, for Marginal ozone nonattainment areas such as the Detroit 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 Michigan's NSR program on December 16, 2013 (78 FR 76064), and most recently approved revisions to Michigan's NSR program on May 12, 2021 (86 FR 25954). 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 the October 14, 1994, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' *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). Michigan's PSD program will become effective in the Detroit area upon redesignation to attainment. EPA conditionally approved Michigan's PSD program on September 16, 2008 (73 FR 53366), fully approved Michigan's PSD program on March 25, 2010 (75 FR 14352), and most recently approved revisions to Michigan's PSD program on May 12, 2021 (86 FR 25954).

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 Michigan 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 that federally supported or funded projects conform to 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, Michigan has an approved conformity SIP for the Detroit area. See 61 FR 66609 (December 18, 1996) and 82 FR 17134 (April 10, 2017).

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 NO_X and VOC emitted within the boundaries of the ozone nonattainment area within two years of designation. On December 18, 2020, Michigan submitted emissions inventories for the Detroit area for the 2017 base year. As described in section VI. below, EPA is proposing to approve Michigan's base year emissions inventory as meeting the requirements

[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 emissions budgets, such as control strategy SIPs and maintenance plans.

of section 182(a)(1) for the 2015 ozone NAAQS.

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 Detroit 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, in any case, Michigan complied with this requirement for the Detroit area under the prior 1-hour ozone NAAQS. See 60 FR 46182 (September 7, 1994).

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 NAAQS and the consideration of Michigan's redesignation request for this standard, the Detroit area is not subject to the section 182(a)(2)(B) requirement because the Detroit area was designated as nonattainment for the 2015 ozone NAAQS after the enactment of the 1990 CAA amendments and because Michigan complied with this requirement for the Detroit area under the prior 1-hour ozone NAAQS.

Regarding the source permitting and offset requirements of section 182(a)(2)(C) and section 182(a)(4), Michigan currently has a fully approved part D NSR program in place. EPA approved Michigan's NSR program on December 16, 2013 (78 FR 76064), and most recently approved revisions to Michigan's NSR program on May 12, 2021 (86 FR 25954). In addition, EPA conditionally approved Michigan's PSD program on September 16, 2008 (73 FR 53366), fully approved Michigan's PSD program on March 25, 2010 (75 FR 14352), and most recently approved revisions to Michigan's PSD program on May 12, 2021 (86 FR 25954). The state's PSD program will become effective in the Detroit area upon redesignation to attainment.

Section 182(a)(3)(A) requires states to submit periodic emission inventories and section 182(a)(3)(B) requires states to submit a revision to the SIP to require the owners or operators of stationary sources to annually submit emissions statements documenting actual NO_X and VOC emissions. As discussed below in section IV.D.4. of this proposed rule, Michigan will continue to update its emissions inventory at least once every three years. With regard to stationary source emissions statements, EPA approved Michigan's emissions statement program on March 8, 1994 (49 FR 10752). On December 18, 2020, Michigan submitted a separate request to strengthen its SIP-approved emissions statement program by adding, removing, and updating certain statutes and reporting forms. As described in section VII. below, EPA is proposing to approve most portions of Michigan's emissions statement submittal as meeting the requirements of section 182(a)(3)(B) for the 2015 ozone NAAQS.

Upon approval of Michigan's emissions inventory and emissions statements rules, the Detroit area will have satisfied all applicable requirements for purposes of redesignation under section 110 and part D of title I of the CAA.

2. The Detroit area has a fully approved SIP for purposes of redesignation under section 110(k) of the CAA.

At various times, Michigan has adopted and submitted, and EPA has approved, provisions addressing the various SIP elements applicable for the ozone NAAQS. As discussed above, if EPA finalizes approval of Michigan's section 182(a)(1) base year inventory requirements and section 182(a)(3)(B) emission statement requirements, EPA will have fully approved the Michigan SIP for the Detroit 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). Additional measures may also be approved in conjunction with a redesignation action (*see* 68 FR 25426 (May 12, 2003) and citations therein).

C. Are the air quality improvements in the Detroit 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 enforceable emission reductions. EPA proposes to determine that Michigan has demonstrated that that the observed ozone air quality improvement in the Detroit 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 several regulatory control measures that the Detroit area and upwind areas have implemented in recent years. In addition, Michigan provided an analysis to demonstrate the improvement in air quality was not due to unusually favorable meteorology. Based on the information summarized below, EPA proposes to find that Michigan 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

CAIR/CSAPR. Under the ''good neighbor provision'' of CAA section 110(a)(2)(D)(i)(I), states are required to address interstate transport of air pollution. Specifically, the good neighbor provision provides that each state's SIP must contain provisions prohibiting emissions from within that state which will contribute significantly to nonattainment of the NAAQS, or interfere with maintenance of the NAAQS, in any other state.

On May 12, 2005, EPA published CAIR, which required eastern states, including Michigan, to prohibit emissions consistent with annual and ozone season NO_X budgets and annual sulfur dioxide (SO_2) budgets (70 FR 25152). CAIR addressed the good neighbor provision for the 1997 ozone NAAQS and 1997 fine particulate matter ($PM_{2.5}$) NAAQS and was designed to mitigate the impact of transported NO_X emissions, a precursor of both ozone and $PM_{2.5}$, as well as transported SO_2 emissions, another precursor of $PM_{2.5}$. The United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) remanded CAIR to EPA for replacement in 2008. *North Carolina* v. *EPA,* 531 F.3d 896, *modified,* 550 F.3d 1176 (2008). While EPA worked on

developing a replacement rule, implementation of the CAIR program continued as planned with the NO_X annual and ozone season programs beginning in 2009 and the SO_2 annual program beginning in 2010.

On August 8, 2011 (76 FR 48208), acting on the D.C. Circuit's remand, EPA published CSAPR to replace CAIR and to address the good neighbor provision for the 1997 ozone NAAQS, the 1997 $PM_{2.5}$ NAAQS, and the 2006 $PM_{2.5}$ NAAQS.[5] Through Federal Implementation Plans, CSAPR required electric generating units (EGUs) in eastern states, including Michigan, to meet annual and ozone season NO_X budgets and annual SO_2 budgets implemented through new trading programs. After delays caused by litigation, EPA started implementing the CSAPR trading programs in 2015, simultaneously discontinuing administration of the CAIR trading programs. On October 26, 2016, EPA published the CSAPR Update, which established, starting in 2017, a new ozone season NO_X trading program for EGUs in eastern states, including Michigan, to address the good neighbor provision for the 2008 ozone NAAQS (81 FR 74504). The CSAPR Update was estimated to result in a 20% reduction in ozone season NO_X emissions from EGUs in the eastern United States, a reduction of 80,000 tons in 2017 compared to 2015 levels. On April 30, 2021, EPA published the Revised CSAPR Update, which fully resolved the obligations of eastern states, including Michigan, under the good neighbor provision for the 2008 ozone NAAQS (82 FR 23054). The Revised CSAPR Update is estimated to reduce ozone season NO_X emissions from EGUs by 17,000 tons beginning in 2021, compared to emissions without the rule. The reduction in NO_X emissions from the implementation of CAIR and then CSAPR occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

b. Federal Emission Control Measures

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, which were phased in between 2004 and 2006. By 2006, refiners and importers 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. At the time of promulgation of Tier 2 standards, EPA estimated that this rule would cut NO_X and VOC emissions from light-duty vehicles and light-duty trucks by approximately 76% and 28%, respectively. NO_X and VOC reductions from medium-duty passenger vehicles included as part of the Tier 2 vehicle program were estimated to be approximately 37,000 and 9,500 tons per year, respectively, when fully implemented. As projected by these estimates and demonstrated in the on-road emission modeling for the Detroit area, a portion of these emission reductions occurred during the period 2014 through 2016, *i.e.,* after the area was designated nonattainment for the 2015 ozone NAAQS. As discussed below, the Tier 2 vehicle and gasoline sulfur standards were replaced by the Tier 3 emission standards for vehicles and gasoline sulfur standards beginning on January 1, 2017.

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 reduce both tailpipe and evaporative emissions and to further reduce the sulfur content in fuels. The rule is being phased in between 2017 and 2025. Tier 3 sets new tailpipe standards for non-methane organic gases (NMOG) and NO_X, presented as NMOG+NO_X, and for particulate matter. The VOC and NO_X tailpipe standards for light-duty vehicles represent approximately an 80% reduction in fleet average NMOG+NO_X and a 70% reduction in per-vehicle particulate matter (PM) standards, relative to the fleet average at the time of phase-in. Heavy-duty tailpipe standards represent about a 60% reduction in both fleet average NMOG+NO_X and per-vehicle PM standards. The evaporative emissions requirements in the rule will result in approximately a 50% reduction from previous standards and apply to all light-duty and on-road gasoline-powered heavy-duty vehicles. Finally, the rule lowered the sulfur content of gasoline to an annual average of 10 ppm starting in January 2017. As projected by these estimates and demonstrated in the on-road emission modeling for the Detroit 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-road 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. EPA estimated that by 2015 NO_X and VOC emissions would decrease nationally by 1,260,000 tons and 54,000 tons, respectively, and that by 2030 NO_X and VOC emissions will decrease nationally 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 Detroit 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 were phased in for the 2008 through 2015 model years based on engine size. The sulfur 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%. As projected by these estimates and demonstrated in the nonroad emission modeling for the Detroit area, some of these emission reductions occurred by the attainment years and additional

[5] In a December 27, 2011 rulemaking, EPA included Michigan in the ozone season NO_X program, addressing the 1997 ozone NAAQS (76 FR 80760).

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 were phased in from model years 2004 through 2012. When fully implemented, EPA estimates an overall 72% reduction in national VOC emissions from these engines and an 80% reduction in national NO_X emissions. As projected by these estimates and demonstrated in the nonroad emission modeling for the Detroit area, 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% 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% reduction in NO_X from these engines. As projected by these estimates and demonstrated in the nonroad emission modeling for the Detroit area, some of these emission reductions occurred by the attainment years and additional emission reductions will occur throughout the maintenance period.

c. Detroit Point Source NO_X Reductions.

The DTE Energy River Rouge power plant ceased operations in May 2021. In its submittal, EGLE estimated this shutdown would reduce annual point source NO_X emissions by 2,716 tons.

d. Detroit Low Reid Vapor Pressure (RVP) Program.

RVP is a measure of a fuel's volatility and thereby affects the rate at which gasoline evaporates and emits VOCs. The lower a fuel's RVP, the lower the rate of evaporation of the fuel. Lowering RVP in the summer months can offset the effect of summer temperature upon the evaporation of gasoline, which in turn lowers emissions of VOCs. Michigan's Low RVP program requires the sale of 7.0 psi RVP gasoline in the Detroit area during the summer months, as compared to the 9.0 psi RVP originally required under Federal RVP controls. EPA approved Michigan's Low RVP program for the Detroit area on January 31, 2007 (72 FR 4432).

2. Emission Reductions

Michigan is using a 2014 emissions inventory to represent nonattainment level emissions (nonattainment year inventory or nonattainment inventory), which is appropriate because it was one of the years used to designate the area as nonattainment due to an exceedance of the NAAQS. Michigan is using a 2019 emissions inventory to represent attainment level emissions (attainment year inventory or attainment inventory), which is appropriate because it is one of the years in the 2019–2021 period used to demonstrate monitored attainment with the NAAQS.

For both 2014 and 2019, Michigan has provided inventories for point, nonpoint, on-road, and nonroad sources. The point source category includes facilities that report their emissions directly to EGLE, as well as sources such as airports and rail yards. Nonpoint sources, sometimes called area sources, include emissions from sources that are more ubiquitous, such as consumer products or architectural coatings. On-road sources are vehicles that are primarily used on public roadways, such as cars, trucks, and motorcycles. Nonroad sources include engine-based emissions that do not occur on roads, such as trains or boats.

For its on-road emissions inventory, Michigan submitted an analysis by the Southeast Michigan Council of Governments (SEMCOG). This analysis used EPA's MOVES3 model to generate July weekday on-road emissions for both 2014 and 2019. SEMCOG's analysis relied on local travel inputs including demographic data, travel demand forecasting, road types, Vehicle Miles of Travel (VMT), Vehicle Hours of Travel, vehicle population, and vehicle age, as well as meteorological data. In Attachment B of its submittal, Michigan has included a detailed narrative of SEMCOG's methods.

For its point, nonpoint, and nonroad emissions inventories, Michigan's primary data sources were EPA's 2014 National Emissions Inventory (NEI)—Version 2 dataset and EPA's 2016v2 modeling platform. The 2014 NEI includes emissions data only for the year 2014, and the 2016v2 modeling platform includes emissions data for the years 2016, 2023, 2026 and 2032. EGLE used the 2014 NEI as the basis of its point, nonpoint, and nonroad inventories for 2014. To derive point, nonpoint, and nonroad inventories for 2019, EGLE interpolated between 2016 and 2023 data from the 2016v2 modeling platform. The 2016v2 modeling platform and 2014 NEI have been quality-assured, and documentation regarding these datasets and their methods is available on EPA's website.[6] In Attachment B of its submittal, Michigan has included a detailed listing of the facilities used to create the point source inventory for 2014.

To obtain the inventories for source categories other than on-road, EGLE summed the annual totals of NO_X and VOC emissions for each county and each source category. Then, to convert the annual totals to a value of tons per ozone season day, EGLE calculated a conversion factor for each county and each source category, using outputs from the 2016v2 modeling platform. This conversion factor was generated by taking the July category emissions and dividing them by the annual category emissions, and then dividing by 31 to represent the number of days in July. It was not necessary to determine a conversion factor for on-road emissions because SEMCOG provided results for a July weekday. EGLE selected July as the standard ozone season month, due to an analysis showing that July had the most days with high ozone values in recent years.

Because Michigan's inventory for 2019 relies on data from the 2016v2 modeling platform, EPA compared EGLE's inventory of point source emissions against records of actual point source emissions available to EPA through the Emissions Inventory System (EIS). To ensure that the two agencies' calculations for point source emissions for 2019 would be comparable, EPA converted annual totals of NO_X and VOC emissions to a value of tons per ozone season day using the same conversion factors calculated by EGLE. Both EGLE's analysis and EPA's analysis show a decrease in point source emissions from 2014 to 2019.[7]

Using the inventories described above for all categories of sources, Michigan's submittal documents changes in NO_X and VOC emissions from 2014 to 2019

[6] *https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-technical-support-document-tsd* and *https://www.epa.gov/air-emissions-modeling/2016-version-2-technical-support-document.*

[7] For both NO_X and VOC, EGLE's 2019 inventory shows emissions levels that are lower than the levels of actual emissions derived by EPA from EIS. By relying on the lower level of point source emissions from the 2016v2 modeling platform in setting the level of its attainment inventory, Michigan's inventories for the maintenance period, described in section IV.D.2. below, are more cautious than necessary in setting levels of emissions that are sufficient to attain the standard.

for the Detroit area. Emissions data are shown in Table 2. Data are expressed in terms of tons per ozone season day.

TABLE 2—NO_X AND VOC EMISSIONS IN THE DETROIT AREA FOR THE 2014 NONATTAINMENT YEAR AND 2019 ATTAINMENT YEAR

[Tons per ozone season day]

	NO_X			VOC		
	2014	2019	Net change (2014–2019)	2014	2019	Net change (2014–2019)
Point	166.86	97.01	−69.85	32.24	13.74	−18.50
Nonpoint	36.69	27.98	−8.71	149.93	134.77	−15.16
On-road	192.70	105.80	−86.90	83.20	51.70	−31.50
Nonroad	60.26	22.51	−37.75	69.63	30.46	−39.17
Total	456.51	253.30	−203.21	335.00	230.67	−104.33

As shown in Table 2, Michigan's inventories demonstrate that NO_X and VOC emissions in the Detroit area declined by 203.21 tons per ozone season day and 104.33 tons per ozone season day, respectively, between 2014 and 2019.

3. Meteorology and Temporary Adverse Economic Conditions

Michigan performed several analyses to further support its demonstration that the improvement in air quality is due to permanent and enforceable emission reductions, and not unusually favorable meteorology or temporary adverse economic conditions.

EGLE conducted a meteorological analysis based on 22 years of data collected at the three monitors that have historically monitored the highest ozone concentrations in the Detroit area. Michigan analyzed ozone values for May, June, July, August, and September, for years 2000 to 2021. First, the maximum 8-hour ozone concentration at each monitor was compared to the number of days where the maximum temperature was greater than or equal to 80 °F. Second, EGLE examined the relationship between the average summer temperature for each year of the 2000–2021 period and the fourth-highest 8-hour ozone concentration. Third, the number of days with an 8-hour average greater than 70 ppb was compared to the number of days where the maximum temperature was greater than or equal to 80 °F. These analyses show that over the last 22 years, ozone concentrations at the Detroit monitors have decreased substantially. In contrast, temperatures have increased, with the area showing an overall warming trend. Because the correlation between temperature and ozone formation is well established, these data suggest that reductions in precursors are responsible for the reductions in ozone concentrations in the area, and not unusually favorable summer temperatures.

To further support EGLE's demonstration that the improvement in air quality is not due to unusually 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 2019 data from Detroit area ozone sites. 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 Detroit 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.

Michigan conducted an additional analysis to assess whether the improvement in air quality was caused by temporary adverse economic conditions, especially the economic conditions associated with the COVID–19 pandemic which first impacted Michigan in 2020. First, EGLE charted point source VOC emissions in the Detroit area from 2012 to 2020. Second, EGLE charted point source NO_X emissions in the Detroit area for the same period. These two charts show the overall downward trend in point source emissions from 2012 to 2020. Third, for 2014 to 2021, EGLE compared the maximum 8-hour ozone concentration against VMT and employment. This chart shows that VMT and employment had a direct correlation to one another, but these economic indicators had no correlation to ozone values. The impacts of the COVID–19 pandemic are apparent in data showing a decrease in point source emissions, VMT, and employment between 2019 and 2020. But these decreases were not associated with a corresponding decline in ozone values from 2019 to 2020. Instead, there was an increase in the fourth-highest 8-hour ozone concentration from 2019 to 2020. Together, these analyses show that economic conditions associated with the COVID–19 pandemic were not correlated with the improved air quality and strengthen Michigan's demonstration that the improved air quality is due to permanent and enforceable emissions reductions.

As discussed above, Michigan identified numerous Federal rules that resulted in the reduction of VOC and NO_X emissions from 2014 to 2019. In addition, Michigan's analyses of meteorological variables associated with ozone formation demonstrate that the improvement in air quality in the area between the year violations occurred and the year attainment was achieved is not due to unusually favorable meteorology. Michigan also showed that emissions reductions were not due to temporary adverse economic conditions, but rather were consistent with a longer-term trend. Therefore, EPA proposes to find that Michigan has shown that the air quality improvements in the Detroit area are due to permanent and enforceable emissions reductions.

D. Does Michigan have a fully approvable ozone maintenance plan for the Detroit area?

To redesignate an area from nonattainment 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 Detroit area to attainment for the 2015 ozone NAAQS, Michigan submitted a SIP revision to provide for maintenance of the 2015 ozone NAAQS through 2035, more than 10 years after the expected effective date of the redesignation to attainment. As discussed below, EPA proposes to find that Michigan's ozone maintenance plan includes the necessary components and to approve the maintenance plan as a revision of the Michigan SIP.

1. Attainment Inventory

EPA is proposing to determine that the Detroit area has attained the 2015 ozone NAAQS based on monitoring data for the period of 2019–2021. Michigan 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 Detroit area that are sufficient to attain the 2015 ozone NAAQS. The derivation of the attainment year emissions is discussed above in section IV.C.2. of this proposed rule. The emissions for the 2019 attainment year, by source category, are summarized in Table 2 above.

2. Has the state demonstrated maintenance of the ozone standard in the Detroit area?

Michigan has demonstrated maintenance of the 2015 ozone NAAQS through 2035 by projecting that current and future emissions of VOC and NO_X for the Detroit 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).

Michigan is using emissions inventories for the years 2025 and 2035 to demonstrate maintenance. 2035 was selected because it is more than 10 years after the expected effective date of the redesignation to attainment, and 2025 was selected to demonstrate that emissions are not expected to spike in the interim between the 2019 attainment year and the 2035 final maintenance year.

To develop emissions inventories for the years 2025 and 2035, Michigan used the same data sources discussed above in section IV.C.2. of this proposed rule.

For its on-road emissions inventory, Michigan again relied upon the SEMCOG analysis, which used EPA's MOVES3 model to generate July weekday on-road emissions for 2025 and 2035. SEMCOG's analysis relied on local travel inputs including demographic data, travel demand forecasting, road types, VMT, Vehicle Hours of Travel, vehicle population, and vehicle age, as well as meteorological data. In Attachment B of its submittal, Michigan has included a detailed narrative of SEMCOG's methods.

For its point, nonpoint, and nonroad emissions inventories, Michigan again used EPA's 2016v2 modeling platform. To derive inventories for 2025, EGLE interpolated between 2023 and 2026 data from the 2016v2 modeling platform. To derive inventories for 2035, EGLE extrapolated forward from the 2016v2 modeling platform data using the 2026 and 2032 years. For both the 2025 and 2035 inventories, to convert annual emissions totals into a value of tons per ozone season day, EGLE calculated conversion factors using the same methodology described in section IV.C.2. of this proposed rule.

By calculating its inventories through interpolation and extrapolation, EGLE projects that changes within a source category and county are linearly constant. For point sources, actual reductions may not align with inventories derived from linear interpolation, because shutdowns and the operation of new control equipment may be staggered across several years. However, given the magnitude of the reductions in other categories of sources, any uncertainty caused by linear interpolation would be outweighed by the emissions reductions in other sectors. Similarly, inventories derived from extrapolation may not align with actual reductions for some types of sources. However, even if Michigan as a cautious measure had projected that emissions from the 2016v2 modeling platform for the year 2032 would remain constant through 2035, this level of emissions would still have been sufficient to show that the area would maintain the standard through 2035. Although the 2016v2 modeling platform does not project emissions beyond 2032, some amount of additional reductions into future years is likely.

Emissions data for the 2014 nonattainment year, 2019 attainment year, 2025 interim year, and 2035 maintenance year are shown in Tables 3 and 4 below. Data are expressed in terms of tons per ozone season day.

TABLE 3—NO_X EMISSIONS IN THE DETROIT AREA FOR THE 2014 NONATTAINMENT YEAR, 2019 ATTAINMENT YEAR, 2025 INTERIM YEAR, AND 2035 MAINTENANCE YEAR

[Tons per ozone season day]

	2014	2019	2025	2035	Net change (2019–2035)
Point	166.86	97.01	80.83	76.44	−20.57
Nonpoint	36.69	27.98	27.39	25.84	−2.14
On-road	192.70	105.80	61.20	40.30	−65.50

TABLE 3—NO_X EMISSIONS IN THE DETROIT AREA FOR THE 2014 NONATTAINMENT YEAR, 2019 ATTAINMENT YEAR, 2025 INTERIM YEAR, AND 2035 MAINTENANCE YEAR—Continued

[Tons per ozone season day]

	2014	2019	2025	2035	Net change (2019–2035)
Nonroad	60.26	22.51	17.49	15.17	−7.34
Total	456.51	253.30	186.91	157.75	−95.55

TABLE 4—VOC EMISSIONS IN THE DETROIT AREA FOR THE 2014 NONATTAINMENT YEAR, 2019 ATTAINMENT YEAR, 2025 INTERIM YEAR, AND 2035 MAINTENANCE YEAR

[Tons per ozone season day]

	2014	2019	2025	2035	Net change (2019–2035)
Point	32.24	13.74	14.06	14.12	+0.38
Nonpoint	149.93	134.77	134.12	133.11	−1.66
On-road	83.20	51.70	34.40	22.00	−29.70
Nonroad	69.63	30.46	27.39	26.56	−3.90
Total	335.00	230.67	209.97	195.79	−34.88

As shown in Tables 3 and 4, NO_X and VOC emissions in the Detroit area are projected to decrease by 95.55 tons per ozone season day and 34.88 tons per ozone season day, respectively, between the 2019 attainment year and 2035 maintenance year. Michigan's maintenance demonstration for the Detroit area shows maintenance of the 2015 ozone NAAQS 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 considering both future source growth and implementation of future controls.

In addition, EPA's 2016v2 modeling platform includes updated air quality modeling of the contiguous United States, projecting ozone concentrations at all air quality monitors in 2023, 2026, and 2032.[8] That modeling incorporates the most recent updates to emissions inventories, including on-the-books emissions reductions, and meteorology. This modeling indicates that EPA does not project the Detroit area to be in nonattainment of the 2015 ozone NAAQS, nor does EPA expect the area to struggle with maintenance, in those modeled future years. We propose to find that EPA's ozone transport air quality modeling further supports Michigan's demonstration that the Detroit area will continue to maintain the 2015 ozone NAAQS.

3. Continued Air Quality Monitoring

Michigan has committed to continue to operate its ozone monitors in the Detroit area for the duration of the maintenance period. Michigan remains obligated to meet monitoring requirements, to continue to quality assure monitoring data in accordance with 40 CFR part 58, and to enter all data into the AQS in accordance with Federal guidelines.

4. Verification of Continued Attainment

Michigan has confirmed that it has the legal authority to enforce and implement the requirements of its SIP. Michigan has further committed that it has the authority to implement the requested SIP revision, which would include the maintenance plan for the Detroit 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. Michigan will continue to operate the ozone monitors located in the Detroit 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 EPA.

In addition, to track future levels of emissions, Michigan 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 on December 17, 2008 (73 FR 76539). The most recent triennial inventory for Michigan was compiled for 2017, and 2020 is in progress. Point source facilities covered by Michigan's emission statement program, described below in section VII., will continue to submit VOC and NO_X emissions on an annual basis.

5. What is the contingency plan for the Detroit area?

Section 175A of the CAA requires that the state 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.

[8] *https://www.epa.gov/air-emissions-modeling/2016v2-platform.*

As required by section 175A of the CAA, Michigan has adopted a contingency plan for the Detroit area to address possible future ozone air quality problems. The contingency plan adopted by Detroit has two levels of response, a warning level response and an action level response.

In Michigan's plan, a warning level response will be triggered when an annual fourth-highest monitored value of 0.074 ppm or higher is monitored within the maintenance area. A warning level response will require Michigan to conduct a study. The study would assess whether the ozone value indicates a trend toward a higher ozone value and 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, taking into account ease and timing of implementation. Any implementation of necessary controls in response to a warning level response trigger will occur within 18 months of the conclusion of the ozone season.

In Michigan's plan, an action level response would be triggered when the fourth-highest monitored value, averaged over two years, of 0.071 ppm or higher is monitored within the maintenance area. The action level response will also be triggered if a three-year design value exceeds the level of the 2015 ozone NAAQS (0.070 ppm). When an action level response is triggered and not found to be due to an exceptional event, malfunction, or noncompliance with a permit condition or rule requirement, Michigan 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. Michigan 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.

Michigan included the following list of potential contingency measures in its maintenance plan. However, Michigan is not limited to the measures on this list:

1. VOC or NO_X RACT rules for existing sources covered by Control Technique Guidelines, Alternative Control Guidelines, or other appropriate guidance
2. Application of VOC RACT on existing smaller sources
3. Alternative fuel and diesel retrofit programs for fleet vehicle operations
4. VOC or NO_X control on sources emitting less than 100 tons per year
5. Increased VOC or NO_X emission offsets for new and modified major sources
6. Reduced idling programs
7. Trip reduction programs
8. Traffic flow and transit improvements
9. Increased turnover of legacy natural gas distribution pipelines
10. Stationary engine controls
11. Rules under the American Innovation and Manufacturing Act
12. Rules for consumer products
13. Additional measures identified by EGLE

To qualify as a contingency measure, emissions reductions from that measure must not be factored into the emissions projections used in the maintenance plan.

EPA has concluded that Michigan's 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, Michigan has committed to submit to EPA an updated ozone maintenance plan eight years after redesignation of the Detroit area to cover an additional ten years beyond the initial 10-year maintenance period. Thus, EPA finds that the maintenance plan SIP revision submitted by Michigan for the Detroit area meets the requirements of section 175A of the CAA, and EPA proposes to approve it as a revision to the Michigan 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 or contribute to any new air quality violations, increase the frequency or severity of any existing air quality problems, or delay timely attainment or any required interim emissions reductions or any other milestones. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and ensuring 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 CAA section 175A 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 motor vehicle emissions budgets for criteria pollutants, including ozone, and their precursor pollutants (VOC and NO_X) to address pollution from on-road transportation sources. The budgets 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 budget 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 budgets for other years as well. The budget serves as a ceiling on emissions from an area's planned transportation system. The budget 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 budget(s) in the SIP and how to revise the budget(s), if needed, after initially establishing a budget in the SIP.

As discussed earlier, Michigan's maintenance plan includes NO_X and VOC budgets for the Detroit area for 2025, which is an interim year, as well as 2035, which is the last year of the maintenance period. EPA has reviewed Michigan's NO_X and VOC budgets for the area and, in this action, is proposing to approve them.[9] We are also starting the adequacy review process for these budgets to determine if they meet the adequacy criteria in the transportation conformity regulations (40 CFR 93.118(e)(4)). Michigan's January 3, 2022, maintenance plan submission, including the budgets for this area, is available for public comment via this

[9] See 40 CFR 93.118(f)(2) for requirements associated with making adequacy findings through rulemaking on a submitted SIP.

proposed rulemaking. The submission was endorsed by the Governor's designee and Michigan provided opportunity for a public hearing. The budgets were developed as part of an interagency consultation process which includes Federal, state, and local agencies. The budgets were clearly identified and precisely quantified. These budgets, when considered together with all other emissions sources, are consistent with maintenance of the 2015 ozone NAAQS.

TABLE 5—MOTOR VEHICLE EMISSIONS BUDGETS FOR THE DETROIT AREA FOR THE 2025 INTERIM YEAR AND 2035 MAINTENANCE YEAR

[Tons per ozone season day]

	2025 Interim year			2035 Maintenance year		
	Projected on-road emissions	Safety margin allocation	Total budget	Projected on-road emissions	Safety margin allocation	Total budget
NO_X	61.20	43.15	104.35	40.30	62.11	102.41
VOCs	34.40	13.46	47.86	22.00	22.67	44.67

As shown in Table 5, the 2025 and 2035 budgets exceed the estimated 2025 and 2035 on-road sector emissions. To accommodate future variations in VMT in the area, EGLE allocated to the mobile sector a portion of the safety margin, as described further below.[10] Michigan has demonstrated that the Detroit area can maintain the 2015 ozone NAAQS in the 2035 maintenance year with mobile source emissions of 102.41 tons per ozone season day of NO_X and 44.67 tons per ozone season day of VOCs. Similarly, the Detroit area can maintain the 2015 ozone NAAQS in the 2025 interim year with mobile source emissions of 104.35 tons per ozone season day of NO_X and 47.86 tons per ozone season day of VOCs. Despite partial allocation of the safety margin, emissions will remain under emission levels in the 2019 attainment year.

EPA is proposing to approve the budgets for use to determine transportation conformity in the Detroit 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 budgets.

B. What is a safety margin?

A ''safety margin'' is the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for maintenance. 40 CFR 93.101. As noted in Tables 3 and 4, the emissions in the Detroit area are projected to have safety margins of 95.55 tons per ozone season day for NO_X and 34.88 tons per ozone season day for VOC in 2035 (the difference between emissions in the 2019 attainment year, and projected emissions in the 2035 maintenance year, for all sources in the Detroit area). Similarly, there is a safety margin of 66.39 tons per ozone season day for NO_X and 20.69 tons per ozone season day for VOC in 2025. Even if emissions exceeded projected levels by the full amount of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

As shown in Table 5 above, Michigan is allocating a portion of that safety margin to the mobile source sector. Specifically, in 2025, Michigan is allocating 43.15 tons per ozone season day and 13.46 tons per ozone season day of the NO_X and VOC safety margins, respectively. In 2035, Michigan is allocating 62.11 tons per ozone season day and 22.67 tons per ozone season day of the NO_X and VOC safety margins, respectively. Michigan is not requesting allocation to the budgets of the entire available safety margins reflected in the demonstration of maintenance. In fact, the amount allocated to the budgets represents only a portion of the 2025 and 2035 safety margins. Therefore, even though the State is requesting budgets that exceed the projected on-road mobile source emissions for 2025 and 2035 contained in the demonstration of maintenance, the increase in on-road mobile source emissions that can be considered for transportation conformity purposes is 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. Base Year Emissions Inventory

As discussed above, sections 172(c)(3) and 182(a)(1) of the CAA require states to submit a comprehensive, accurate, and current inventory of actual emissions from sources of NO_X and VOC emitted within the boundaries of the ozone nonattainment area. For the 2015 ozone NAAQS, EPA specifies that states submit ozone season day emissions estimates for an inventory calendar year to be consistent with the base year for RFP plans as required by 40 CFR 51.1310(b). For the RFP base year for the 2015 ozone NAAQS under 40 CFR 51.1310(b), states may use a calendar year for the most recently available complete triennial emissions inventory (40 CFR 51, subpart A) preceding the year of the area's effective date of designation as a nonattainment area (83 FR 62998).[11] *See* the SIP requirements for the 2015 ozone standard in EPA's December 6, 2018, implementation rule (83 FR 62998), and EPA's 2017 document ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations.'' [12]

In its December 18, 2020, submittal, Michigan requested that EPA approve into its SIP an inventory addressing the emissions inventory requirement of CAA section 182(a)(1). Michigan's SIP revision included inventories of NO_X and VOC emissions for several nonattainment areas, including the Detroit area, for the year 2017. At the time of its submittal, data for 2017 was the most recent comprehensive, accurate, and quality assured triennial emissions inventory in the NEI database. Michigan's submittal included estimates of NO_X and VOC emissions for four general classes of anthropogenic sources, point, nonpoint, on-road mobile, and nonroad mobile; biogenic

[10] Allocation of a safety margin to an area's motor vehicle emissions budgets is provided for by the transportation conformity rule. *See* 40 CFR 93.124(a).

[11] The RFP requirements specified in CAA section 182(b)(1) applies to all ozone nonattainment areas classified Moderate or higher.

[12] *https://www.epa.gov/sites/default/files/2016-12/documents/2016_ei_guidance_for_naaqs.pdf.*

emissions; and event emissions, which are discrete and short-lived sources such as wildfires.

To develop emissions inventories for the year 2017, Michigan began with annual emissions data contained in the 2017 NEI for the point, nonpoint, on-road, nonroad, biogenic, and event categories. In developing ozone season day emissions, Michigan again used July as the representative ozone season month. EGLE also analyzed the prevalence of weekend days with ozone values exceeding the 2015 ozone NAAQS and determined that including weekend days in the typical ozone season day emission derivation is appropriate. To convert annual emissions data to ozone season day values, EGLE extracted data from EPA's 2016v1 modeling platform and calculated a conversion factor for the point, nonpoint, on-road, nonroad, and biogenic data categories.[13] EGLE determined the event category emissions were too low and too variable from year to year to benefit from applying a conversion factor.

Under CAA section 182(a)(1) and 40 CFR 51.1115, states must submit a base year emissions inventory within two years of the effective date of designation of each nonattainment area for the 2015 ozone NAAQS. For the Detroit area, this requirement became due on August 3, 2020. At the time that EGLE prepared its inventory of 2017 emissions to address the requirements of section 182(a)(1), several improvements in data sources were not yet available. Specifically, EGLE relied upon a version of the 2017 NEI that did not include a revised point source inventory to correct airport emissions. Additionally, EGLE relied upon the 2016v1 modeling platform, which did not yet include improvements from the 2016v2 modeling platform including updated information from the 2017 NEI, MOVES3, and revised inventory methodologies. EPA is not evaluating Michigan's 2017 emissions inventory against platforms or data sources that were not available at the time of submission.

NO_X and VOC emissions data for the year 2017 are shown in Tables 6 and 7 below. Data are expressed in terms of tons per ozone season day.

TABLE 6—NO_X EMISSIONS FOR COUNTIES IN THE DETROIT AREA FOR THE 2017 BASE YEAR

[Tons per ozone season day]

	Point	Nonpoint	On-road	Nonroad	Biogenic	Event	Total
Livingston	1.53	0.72	5.78	1.13	1.32	0.04	10.52
Macomb	2.55	3.78	16.19	3.83	1.21	0.02	27.58
Monroe	16.05	1.43	5.22	1.31	2.29	0.01	26.31
Oakland	2.83	5.22	29.68	7.54	1.37	0.08	46.72
St. Clair	55.62	3.04	3.98	1.42	1.99	0.03	66.08
Washtenaw	2.56	1.45	9.35	1.64	1.73	0.05	16.78
Wayne	41.35	7.77	36.79	2.71	1.00	0.05	89.67
Total	122.49	23.41	106.99	19.58	10.91	0.28	283.66

TABLE 7—VOC EMISSIONS FOR COUNTIES IN THE DETROIT AREA FOR THE 2017 BASE YEAR

[Tons per ozone season day]

	Point	Nonpoint	On-road	Nonroad	Biogenic	Event	Total
Livingston	0.42	6.10	3.14	1.77	22.11	0.65	34.19
Macomb	8.22	28.46	11.50	4.77	13.64	0.47	67.06
Monroe	0.97	5.79	2.66	2.02	13.17	0.18	24.79
Oakland	2.61	36.72	18.55	10.62	33.00	1.48	102.98
St. Clair	3.16	5.68	2.45	2.41	28.77	0.59	43.06
Washtenaw	0.61	15.56	5.12	2.59	22.67	0.77	47.32
Wayne	15.19	57.45	21.74	8.50	24.51	1.05	128.44
Total	31.18	155.76	65.16	32.68	157.87	5.19	447.84

As shown in Table 6, total NO_X emissions in the Detroit area for the 2017 base year are 283.66 tons per summer day. As shown in Table 7, total VOC emissions in the Detroit area for the 2017 base year are 447.84 tons per summer day.

Michigan's December 18, 2020, emissions inventory submission includes a demonstration showing that approval of this SIP revision is consistent with CAA section 110(l). Section 110(l) provides that EPA cannot approve a SIP revision if the revision would interfere with attainment and maintenance of the NAAQS, reasonable further progress, or any other applicable requirement of the CAA. EGLE is making this submission as required by CAA sections 172(c)(3) and 182(a)(1), and approval of the 2017 base year inventories would strengthen the Michigan SIP and would not interfere with any applicable CAA requirement.

EPA reviewed Michigan's December 18, 2020, submittal for consistency with sections 172(c)(3) and 182(a)(1) of the CAA, and with EPA's emissions inventory requirements. In particular, EPA reviewed the techniques used by EGLE to derive and quality assure the emissions estimates. The documentation of the emissions estimation procedures is thorough and is adequate for EPA to determine that Michigan followed acceptable procedures to estimate the emissions. Accordingly, we propose to conclude that Michigan has developed inventories of NO_X and VOC emissions that are comprehensive and complete. EPA therefore proposes to approve the emissions inventory for the Detroit area in Michigan's December 18, 2020, submittal and shown above in Tables 6 and 7 as meeting the emissions

[13] *https://www.epa.gov/air-emissions-modeling/2016v1-platform.*

inventory requirements of sections 172(c)(3) and 182(a)(1) of the CAA.

In this rulemaking, EPA is only evaluating the portions of Michigan's December 18, 2020, emissions inventory submittal relating to the Detroit area. EPA is not evaluating inventories relating to other nonattainment areas. Instead, EPA will evaluate these inventories in a separate rulemaking.

VII. Emissions Statement

Section 182(a)(3)(B) of the CAA requires states with ozone nonattainment areas to submit revisions to their SIP to require the owner or operator of each stationary source of NO_X or VOC to provide the state with an annual statement documenting the actual emissions of NO_X and VOC from their source. Under section 182(a)(3)(B)(ii), a state may waive the emissions statement requirement for any class or category of stationary sources which emits less than 25 tons per year of VOC or NO_X if the state, in its base year emissions inventory, provides an inventory of emissions from such class or category of sources based on the EPA's emission factors, or other method acceptable to the EPA.

On March 8, 1994, EPA approved Michigan's emission statement program as a revision to the SIP (59 FR 10752). Specifically, EPA approved into the SIP the following: Section 5 of the 1965 Air Pollution Act 348 (1965 PA 348), Section 14a of 1965 PA 348, Air Pollution Control Rule 336.202 (Rule 2), and the 1993 Michigan Air Pollution Reporting Forms, Reference Tables, and General Instructions.

In a separate SIP submittal also dated December 18, 2020, Michigan requested that EPA revise the emissions statement program in its SIP by adding, removing, and updating certain statutes and reporting forms.

First, Michigan requests that EPA remove from the SIP Section 5 of 1965 PA 348 and approve into the SIP Michigan Complied Laws (MCL) 324.5503, Section 5503 of 1994 PA 451. At the time that EPA approved Section 5 of 1965 PA 348 in 1994, this measure conferred several authorities onto the Michigan Commission on the Environment, including the authority to require sources to report their emissions. In 1995, 1965 PA 348 was repealed by the Michigan Legislature and replaced with 1994 PA 451, and all Commission powers were transferred to the department. EGLE's current authority to require emissions reports, which Michigan is now requesting EPA approve into the SIP, is provided at MCL 324.5503, Section 5503 of 1994 PA 451.

Second, Michigan requests that EPA remove from the SIP Section 14a of 1965 PA 348, which relates to surveillance fees. In its submittal, Michigan states its belief that Section 14a was incorrectly submitted to and approved into the SIP as part of the emissions statement program, and that this measure is not required as part of an emissions statement program. In this rulemaking, EPA is not evaluating the portion of Michigan's submittal requesting the removal of Section 14a of 1965 PA 348 from its SIP. Instead, EPA will evaluate this request in a separate rulemaking.

Third, Michigan requests that EPA retain in its SIP Rule 2 and strengthen this rule by approving into the SIP AQD–013, Last Revision Date: July 22, 2020, entitled ''Criteria Pollutant Threshold Levels for Point Sources'' (AQD–013), of EGLE's AQD Policy and Procedure. Michigan's remaining authority to require emissions reports from certain sources is provided at Rule 2; since EPA approved Rule 2 into its SIP, Michigan has developed specific policies and procedures to determine which stationary sources must comply with Rule 2. These policies and procedures, including specific thresholds of emissions that trigger Rule 2 applicability, are provided at AQD–013. Additionally, AQD–013 is applicable to the emissions reporting requirements of Air Pollution Control Rule 336.1212 (Rule 212), which EPA approved into the SIP on August 31, 2018 (83 FR 44485). Michigan first developed AQD–013 in 1996 and most recently updated AQD–013 in 2020.

Fourth, Michigan requests that EPA remove from the SIP its 1993 Michigan Air Pollution Reporting forms and reference tables and strengthen its SIP by replacing them with the 2019 version of certain Michigan Air Emissions Reporting System (MAERS) forms. Specifically, Michigan is requesting that EPA approve into the SIP the 2019 version of five forms: MAERS form SB–101 Submit, MAERS form S–101 Source, MAERS form A–101 Activity, MAERS form EU–101 Emission Unit, and MAERS form E–101 Emissions. These forms satisfy requirements under EPA's 1992 Guidance on the Implementation of an Emission Statement Program relating to certification of data accuracy, source identification information, operating schedule, emissions information, control equipment information, and process data.

Fifth, Michigan requests that EPA remove from its SIP the 1993 general instructions and strengthen its SIP by replacing them with the January 2020 MAERS User Guide. EGLE no longer uses the 1993 general instructions that are currently in the SIP, and instead provides sources with its 2020 user guide, which clearly defines terms used in the MAERS forms and aids the sources in completing their MAERS submittal via the electronic format for all required pollutants.

Michigan's December 18, 2020, emissions statement submission also includes a demonstration showing that approval of this SIP revision is consistent with CAA section 110(l). The revisions EPA is proposing to approve would strengthen Michigan's SIP-approved emissions statement program by removing from the SIP outdated reporting forms and a statute that has been repealed by the state legislature and replacing those measures with the statute containing the state's current authority to require the reporting of emissions, as well as updated program forms, policies and procedures, and user information. These revisions would not interfere with any applicable CAA requirement.

EPA reviewed Michigan's December 18, 2020, submittal for consistency with 182(a)(3)(B) of the CAA and EPA's Guidance on the Implementation of an Emission Statement Program. Section 182(a)(3)(B) requires annual submission emissions from stationary sources with emissions greater than 25 tons per year (tpy) of NO_X and VOC. At AQD–013, Michigan requires annual reports from sources with VOC emissions of 10 tpy or greater statewide, and NO_X emissions of 25 tpy or greater in ozone nonattainment areas and 40 tpy in all other areas of the state. As described above, EPA will address the portion of Michigan's submittal requesting the removal of Section 14a of 1965 PA 348 from its SIP in a separate action. The remaining portions of Michigan's submittal are consistent with 182(a)(3)(B) of the CAA and relevant guidance and would strengthen Michigan's SIP-approved emissions statement program. EPA therefore proposes to approve the remaining portions of Michigan's December 18, 2020, emissions statement submittal as meeting the emissions statement requirements of section 182(a)(3)(B) of the CAA.

VIII. What action is EPA taking?

EPA is proposing to determine that the Detroit nonattainment area is attaining the 2015 ozone NAAQS, based on quality-assured and certified monitoring data for 2019–2021. EPA is proposing to approve portions of Michigan's December 18, 2020, submittals as meeting the base year emissions inventory and emissions

statement requirements of sections 182(a)(1) and 182(a)(3), respectively. EPA is also proposing to approve, as a revision to the Michigan SIP, the state's maintenance plan for the area. The maintenance plan is designed to keep the Detroit area in attainment of the 2015 ozone NAAQS through 2035. EPA is proposing to determine that upon final approval of Michigan's 2017 base year emissions inventory, emission statement SIP, and maintenance plan SIP, the area will have met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to change the legal designation of the Detroit area from nonattainment to attainment for the 2015 ozone NAAQS. Finally, EPA is proposing to approve the newly established 2025 and 2035 motor vehicle emissions budgets for the Detroit area and initiating the adequacy process for these budgets.

IX. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Michigan Act 451, Section 5503, effective March 30, 1995. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

X. 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, the proposed actions to approve Michigan's SIP submissions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For these reasons, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications 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

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 7, 2022.

Debra Shore,

Regional Administrator, Region 5.

[FR Doc. 2022–05253 Filed 3–11–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 312

[EPA–HQ–OLEM–2021–0946; FRL–9334–01–OLEM]

Standards and Practices for All Appropriate Inquiries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Standards and Practices for All Appropriate Inquiries to reference a standard practice recently made available by ASTM International, a widely recognized standards development organization. Specifically, EPA is proposing to amend the All Appropriate Inquiries Rule to reference ASTM International's E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to satisfy the requirements for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation, and Liability Act. In the ''Rules and Regulations'' section in this issue of **Federal Register**, EPA is amending the All Appropriate Inquiries Rule to reference ASTM International's E1527–21 standard practice as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Written comments must be received by April 13, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OLEM–2021–0946 at *www.regulations.gov:* Follow the on-line

instructions for submitting comments. Once submitted, comments cannot be edited or removed from *regulations.gov.* The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI and multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this proposed rule, contact Patricia Overmeyer, Office of Brownfields and Land Revitalization (5105T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460–0002, 202–566–2774, or *Overmeyer.patricia@epa.gov.*

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

Table of Contents

I. Why is EPA issuing this proposed rule?

With this action EPA proposes to amend the All Appropriate Inquiries Rule at 40 CFR part 312 to reference ASTM International's E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. We published a direct final rule amending the All Appropriate Inquiries Rule to reference the ASTM E1527–21 standard and allow for its use to comply with the All Appropriate Inquiries Rule in the ''Rules and Regulations'' section in this issue of the **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We explained our reasons for this action in the preamble to the direct final rule.

If EPA receives no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will then address all public comments in any subsequent final rule based on this proposed rule. We do not intend to institute a second comment period on this action. Any parties interested in commenting on this proposal must do so at this time or the direct final rule will take effect. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

This action offers certain parties the option of using an available industry standard to conduct all appropriate inquiries. Parties purchasing potentially contaminated properties will be able to use the ASTM E1527–21 standard practice to comply with the all appropriate inquiries requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). This proposed rule will not require any entity to use this standard. Any party who wants to claim protection from liability under one of CERCLA's landowner liability protections may follow the regulatory requirements of the All Appropriate Inquiries Rule at 40 CFR part 312, use the ASTM E1527–13 standard, use the ASTM E2247–16 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property,'' or use the standard recognized in this proposed rule, the ASTM E1527–21 standard.

Entities potentially affected by this action, or who may choose to use the newly referenced ASTM standard to perform all appropriate inquiries, include public and private parties who, as bona fide prospective purchasers, contiguous property owners, or innocent landowners, are purchasing potentially contaminated properties and wish to establish a limitation on CERCLA liability in conjunction with the property purchase. In addition, any entity conducting a site characterization or assessment on a property with a brownfields grant awarded under CERCLA section 104(k)(2)(B)(ii) may be affected by this action. This includes state, local and Tribal governments that receive brownfields site assessment grants. A summary of the potentially affected industry sectors (by North American Industry Classification System (NAICS) codes) is displayed in the table below.

Industry category	NAICS code
Real Estate	531
Insurance	52412
Banking/Real Estate Credit.	522292
Environmental Consulting Services.	54162
State, Local and Tribal Government.	926110, 925120
Federal Government	925120, 921190, 924120

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** Section of this document.

III. What should I consider as I prepare my comments for EPA?

Direct your comments to Docket ID No. EPA–HQ–OLEM–2021–0946. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

A. Submitting CBI: Do not submit any information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. You can only submit CBI to EPA via U.S. mail at: HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC 20460. Clearly mark all information that you claim to be CBI. For CBI submitted on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments: When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggested alternative.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

The *www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *https://www2.epa.gov/edockets/commenting-epa-dockets.*

C. The docket: All documents in the docket are listed in the *www.regulations.gov* index. Certain types of information claimed as CBI, and other information whose disclosure is restricted by statute, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material, such as ASTM International's E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' will not be placed in EPA's electronic public docket but will be publicly available only in printed form in the official public docket. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Please note: Due to public health concerns related to COVID–19, the EPA Docket Center and Reading Room are open to the public by appointment only, and walk-ins are not allowed. Visitors to the Reading Room must complete docket material requests in advance and then make an appointment to retrieve the material. Please contact the EPA Reading Room staff at (202) 566–1744 or via the Dockets Customer Service email at *docket-customerservice@epa.gov* to arrange material requests and appointments.

IV. Statutory Authority

EPA is proposing to amend the All Appropriate Inquiries Rule that sets Federal standards for the conduct of ''all appropriate inquiries'' at 40 CFR part 312. The All Appropriate Inquiries Rule sets forth standards and practices necessary for fulfilling the requirements of CERCLA section 101(35)(B) as required to obtain CERCLA liability protection and for conducting site characterizations and assessments with the use of brownfields grants per CERCLA section 104(k)(2)(B)(ii).

V. Background

On January 11, 2002, President Bush signed the Small Business Liability Relief and Brownfields Revitalization Act (''the Brownfields Amendments''). In general, the Brownfields Amendments to CERCLA provide funds to assess and cleanup brownfields sites; clarify existing and establish new CERCLA liability provisions related to certain types of owners of contaminated properties; and provide funding to establish or enhance State and Tribal cleanup programs. The Brownfields Amendments revised some of the provisions of CERCLA section 101(35) and limited liability under section 107 for bona fide prospective purchasers and contiguous property owners, in addition to clarifying the requirements necessary to establish the innocent landowner liability protection under CERCLA. The Brownfields Amendments clarified the requirement that parties purchasing potentially contaminated property undertake ''all appropriate inquiries'' into prior ownership and use of property before purchasing the property to qualify for protection from CERCLA liability.

The 2002 Brownfields Amendments to CERCLA required EPA to develop regulations establishing standards and practices for how to conduct all appropriate inquiries. EPA promulgated regulations that set standards and practices for all appropriate inquiries on November 1, 2005 (70 FR 66070). In the regulation, EPA referenced, and recognized as compliant with the rule, the ASTM E1527–05 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Standard Process.'' In December 2008, EPA used a direct final rule to amend the All Appropriate Inquiries Rule to recognize another ASTM standard as compliant, ASTM E2247–08 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property.'' Both standards, the ASTM E1527–05 and the ASTM E2247–08, were subsequently revised by ASTM International, and the revised versions were referenced by EPA as compliant with the All Appropriate Inquiries Rule. EPA referenced the ASTM E1527–13 standard on August 15, 2013 (78 FR 49690) and referenced the ASTM E2247–16 standard on September 15, 2017 (82 FR 43310). Currently, the All Appropriate Inquiries Rule (40 CFR part 312) allows for the use of the ASTM E1527–13 standard or the ASTM E2247–16 standard to conduct all appropriate inquiries, in lieu of following requirements included in the Rule. Once this action is final, the All Appropriate Inquiries Rule also will allow for the use of the ASTM E1527–21 standard.

Recently, ASTM International published a revised standard for conducting Phase I environmental site assessments. This standard, ASTM E1527–21, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' was reviewed by EPA, and determined by EPA to be compliant with the requirements of the All Appropriate Inquiries Rule.

VI. What action is EPA taking today?

This action will amend the All Appropriate Inquiries Rule to allow for the use of ASTM E1527–21 to conduct all appropriate inquiries as required under CERCLA for establishing the bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections.

With this proposed action, parties seeking liability relief under CERCLA's landowner liability protections, as well as recipients of brownfields grants for conducting site assessments, will be considered in compliance with the

requirements for all appropriate inquiries if such parties comply with the procedures provided in the ASTM E1527–21, ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.'' EPA determined that it is reasonable to promulgate this clarification as a direct final rule that is effective immediately, rather than delay promulgation of the clarification until after receipt and consideration of public comments. EPA made this determination based upon the Agency's finding that the ASTM E1527–21 standard is compliant with the All Appropriate Inquiries Rule, and the Agency sees no reason to delay allowing for its use in conducting all appropriate inquiries.

The Agency notes that this action will not require any party to use the ASTM E1527–21 standard. Any party conducting all appropriate inquiries to comply with CERCLA's bona fide prospective purchaser, contiguous property owner, and innocent landowner liability protections may continue to follow the provisions of the All Appropriate Inquiries Rule at 40 CFR part 312, or continue to use either the ASTM E1527–13 standard or use the ASTM E2247–16 standard.

This proposed action merely will allow for the use of the ASTM E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' for those parties purchasing potentially contaminated properties who want to use the ASTM E1527–21 standard in lieu of the following specific requirements of the All Appropriate Inquiries Rule.

The Agency notes that there are no legally significant differences between the regulatory requirements and the ASTM E1527 standards. To facilitate an understanding of the slight differences between the All Appropriate Inquiries Rule, the ASTM E1527–13 ''Phase I Environmental Site Assessment Standard,'' and the revised ASTM E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process,'' as well as the applicability of the E1527–21 standard for certain types of properties, EPA developed, and placed in the docket for this proposed action, the document ''Comparison of All Appropriate Inquiries Regulation, the ASTM E1527–13 Phase I Environmental Site Assessment Process, and ASTM E1527–21 Phase I Environmental Site Assessment Process.'' The document provides a comparison of the two ASTM E1527 standards.

EPA's proposed action includes no changes to the All Appropriate Inquiries Rule other than to add an additional reference to the new ASTM E1527–21 standard. EPA is not seeking comments on the standards and practices included in the All Appropriate Inquiries Rule published at 40 CFR part 312. Also, EPA is not seeking comments on the ASTM E1527–21 standard. EPA's only action with this proposed rule is recognition of the ASTM E1527–21 standard as compliant with the All Appropriate Inquiries Rule and, therefore, it is only this action on which the Agency is seeking comment.

EPA is proposing this action because the Agency wants to provide additional flexibility for brownfields grant recipients or other entities that may benefit from the use of the ASTM E1527–21 standard. We believe that this proposed action will allow for the use of a tailored standard that was developed by a recognized standards developing organization, reviewed by EPA, and determined to be equivalent to the Agency's All Appropriate Inquiries Rule. This action does not disallow the use of the previously recognized standards (ASTM E1527–13 or ASTM E2247–16), and it will not alter the requirements of the previously promulgated All Appropriate Inquiries Rule. In addition, this proposal potentially will increase flexibility for some parties who may make use of the new standard, without placing any additional burden on those parties who prefer to use either the ASTM E1527–13 standard or the ASTM E2247–16 or to follow the requirements of the All Appropriate Inquiries Rule when conducting all appropriate inquiries.

By proposing this action, EPA is fulfilling the intent and requirements of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113.

VII. Statutory and Executive Order Reviews

For a complete discussion of all of the administrative requirements applicable to this action, see the discussion in the ''Statutory and Executive Order Reviews'' section to the preamble for the direct final rule that is published in the ''Rules and Regulations'' section in this issue of the **Federal Register**.

Under Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), this proposed action is not a ''significant regulatory action'' and is therefore not subject to OMB review. This action merely amends the All Appropriate Inquiries Rule to reference ASTM International's E1527–21 ''Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process'' and allow for its use to satisfy the requirements for conducting all appropriate inquiries under CERCLA. This action does not impose any requirements on any entity, including small entities. Therefore, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), after considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 312

Administrative practice and procedure, Hazardous substances.

Barry N. Breen,

Acting Assistant Administrator, Office of Land and Emergency Management.

[FR Doc. 2022–05260 Filed 3–11–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES1111090FEDR 223]

Endangered and Threatened Wildlife and Plants; Three Species Not Warranted for Listing as Endangered or Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of findings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce findings that three species are not warranted for listing as endangered or threatened species under the Endangered Species Act of 1973, as amended (Act). After a thorough review of the best available scientific and commercial information, we find that it is not warranted at this time to list Blanco blind salamander (*Eurycea robusta*), Georgia bully (*Sideroxylon thornei*), and Rio Grande cooter (*Pseudemys gorzugi*). However, we ask the public to submit to us at any time any new information relevant to the status of any of the species mentioned above or their habitats.

DATES: The findings in this document were made on March 14, 2022.

ADDRESSES: Detailed descriptions of the bases for these findings are available on the internet at *https://www.regulations.gov* under the following docket numbers:

Species	Docket No.
Blanco blind salamander	FWS–R2–ES–2021–0128
Georgia bully	FWS–R4–ES–2021–0129
Rio Grande cooter	FWS–R2–ES–2021–0132

Those descriptions are also available by contacting the appropriate person as specified under **FOR FURTHER INFORMATION CONTACT**. Please submit any new information, materials, comments, or questions concerning this finding to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT:

Species	Contact information
Blanco blind salamander and Rio Grande cooter	Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office, *adam_zerrenner@fws.gov*, 512–490–0057 x248.
Georgia bully	Peter Maholland, Deputy Field Supervisor, Georgia Ecological Services Field Office, *peter_maholland@fws.gov*, 706–208–7512.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Under section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), we are required to make a finding whether or not a petitioned action is warranted within 12 months after receiving any petition for which we have determined contains substantial scientific or commercial information indicating that the petitioned action may be warranted (''12-month finding''). We must make a finding that the petitioned action is: (1) Not warranted; (2) warranted; or (3) warranted, but precluded by other listing activity. We must publish a notification of these 12-month findings in the **Federal Register**.

Summary of Information Pertaining to the Five Factors

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations at part 424 of title 50 of the Code of Federal Regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Lists of Endangered and Threatened Wildlife and Plants (Lists). The Act defines ''species'' as including any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). The Act defines ''endangered species'' as any species that is in danger of extinction throughout all or a significant portion of its range (16 U.S.C. 1532(6)), and ''threatened species'' as any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(20)). Under section 4(a)(1) of the Act, a species may be determined to be an endangered species or a threatened species because of any of the following five factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself. However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the expected response by the species, and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the Act's definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term ''foreseeable future'' extends only so far into the future as the Service can reasonably determine that both the future threats and the species' responses to those threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. ''Reliable'' does not mean ''certain''; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

It is not always possible or necessary to define foreseeable future as a

particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' likely responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

In conducting our evaluation of the five factors provided in section 4(a)(1) of the Act to determine whether Georgia bully and Rio Grande cooter meet the Act's definition of ''endangered species'' or ''threatened species,'' we considered and thoroughly evaluated the best scientific and commercial information available regarding the past, present, and future stressors and threats. In conducting our evaluation of the Blanco blind salamander, we determined that it either: (1) Does not meet the definition of a ''species'' under the Act, and, as a result, we conclude that it is not a listable entity; or (2) is extinct. We reviewed the petitions, information available in our files, and other available published and unpublished information for all of these species. Our evaluation may include information from recognized experts; Federal, State, and Tribal governments; academic institutions; foreign governments; private entities; and other members of the public.

The species assessment forms for these species contain more detailed biological information, a thorough analysis of the listing factors, a list of literature cited, and an explanation of why we determined that these species do not meet the Act's definition of an ''endangered species'' or a ''threatened species.'' A thorough review of the taxonomy, life history, and ecology of the Georgia bully and Rio Grande cooter is presented in each species' species status assessment (SSA) report. The species assessment form and the review report for the Blanco blind salamander contain more detailed taxonomic information, a list of literature cited, and an explanation of why we determined that the Blanco blind salamander either does not meet the Act's definition of a ''species'' or is extinct. This supporting information can be found on the internet at *https://www.regulations.gov* under the appropriate docket number (see **ADDRESSES**, above). The following are informational summaries for the findings in this document.

Georgia Bully

Previous Federal Actions

On April 20, 2010, the Service received a petition from the Center for Biological Diversity, Alabama Rivers Alliance, Clinch Coalition, Dogwood Alliance, Gulf Restoration Network, Tennessee Forests Council, and West Virginia Highlands Conservancy to list 404 aquatic, riparian, and wetland species, including Georgia bully (*Sideroxylon thornei*), as endangered or threatened species under the Act. On September 27, 2011, we published in the **Federal Register** (76 FR 59836) a partial 90-day finding that the petition presented substantial scientific or commercial information indicating that listing may be warranted for 374 of the species, including Georgia bully. The finding stated that the petition presented substantial information indicating that listing Georgia bully may be warranted due to disease or predation. This document constitutes the 12-month finding on the April 20, 2010, petition to list Georgia bully under the Act.

Summary of Finding

A member of the Sapotaceae family, Georgia bully is a shrub or small tree that grows up to 6 meters (20 feet) in height, and is sometimes multi-stemmed but not extensively clonal. Georgia bully is known to occur in Alabama, Georgia, and Florida. The species has been found in at least 29 counties and five watersheds (Altamaha, Apalachicola, Choctawhatchee-Escambia, Mobile Bay-Tombigbee, and Ogeechee) in 3 southeastern States: Alabama, Georgia, and Florida. The stronghold of the distribution is in the Apalachicola watershed in Georgia.

Georgia bully is restricted to riparian forests and forested wetlands (*i.e.,* swamps, bottomland forests, and depressional wetlands), where the species occurs most often in habitats developed over limestone (*i.e.,* calcareous substrates), particularly in Georgia. Georgia bully requires shaded to partly shaded habitat conditions within a mostly intact forest overstory. The species requires wet soils and periodic inundation from flooding to provide a competitive advantage to Georgia bully since many other plant species do not tolerate flooding disturbance (*e.g.,* decrease in oxygen, carbon dioxide, and light). Georgia bully reproduces sexually through pollination and fruit set, and asexually through vegetative means (*e.g.,* shoots, fragments, or clones).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to Georgia bully, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary threats affecting Georgia bully's biological status include habitat destruction and modification (including urbanization and land use change), and impacts to hydrology from climate change. We examined a number of other factors, including inherent factors (small population size), nonnative and invasive species, disease (insect damage), and predation (deer herbivory), and found that these factors may exacerbate the effects of the primary factors, but do not rise to such a level that affected the species as a whole.

Causes of habitat destruction and modification are urbanization and conversion to agricultural and silvicultural uses, including forest structure alteration due to timber harvest. Georgia bully is expected to be influenced by changes to the hydrologic regime, including periods of drought and flooding. Extended periods of drought may allow other species that outcompete Georgia bully to become established. Increased flooding events may reduce the ability for Georgia bully seedlings to become established if habitat is saturated during the germination period.

Despite impacts from the primary stressors, the species has maintained the majority of its historical occurrences throughout its range. Georgia bully currently has 16 moderately or highly resilient populations across its range in 45 populations in 3 States. Each of the five watersheds where Georgia bully occurs contains at least two moderate or highly resilient populations. Moderate and highly resilient Georgia bully populations are able to recover from stochastic events and are characterized by larger populations with recruitment and/or reproduction in habitats with intact mature overstory, wide riparian vegetated buffers, and minimal hydrological alteration. Existing protections for the species are in place with approximately 46 percent of populations on protected lands, including the two largest populations. Threats continue to impact Georgia bully and its habitat, and effects from these impacts may result in a decrease in habitat quality and quantity across the species' range; however, ongoing conservation actions offer some protection to the species.

Our future scenarios assessment included four elements of change (*e.g.,* urbanization, land use, climate-

influenced hydrology, and site-specific habitat factors) to assess the viability of Georgia bully at 30- and 60-year time steps. Upon examining the current trends and future forecast scenarios, we expect that the primary threats (habitat destruction and modification due to urbanization and land use change, and hydrology impacts associated with climate change) will continue to impact Georgia bully. Impacts to Georgia bully's population resiliency generally increase over time and with increased threats, including the threat of climate change effects. The species' representation has not declined between historical and most recent surveys, and the species' representation is expected to decline slightly under each future scenario. As moderate or highly resilient populations will persist across all watersheds, a broad level of representation is likely to be maintained over time. However, the adaptive capacity of the species will be reduced in the future as the projected population extirpations reduce the number of viable populations on the landscape, thus reducing the species potential ability to adjust to changing conditions. Georgia bully has retained redundancy based on multiple moderate and highly resilient populations being spread across its historical range in five watersheds; however, into the future, we expect the species' redundancy to decline as population resiliency is reduced, thereby impairing the species' ability to withstand and recover from catastrophic events such as storms and droughts. Although we predict some continued impacts from stressors in the future, we anticipate the species will be represented by moderate and highly resilient populations into the foreseeable future throughout its range, supported by the occurrence of 21 of the 45 known populations on protected lands and the species' ability to reproduce vegetatively (*e.g.,* shoots, fragments, or clonal) and through pollination and fruit set giving populations additional opportunities to maintain and expand. Given projections for quality and quantity of habitat and the number of healthy (moderate to high resiliency) populations, we conclude that the species is likely to maintain the ability to withstand stochasticity, catastrophic events, and novel changes in its environment for the foreseeable future. Based on these conditions, Georgia bully's current risk of extinction is very low. Furthermore, we did not find any evidence of a concentration of threats at any biologically meaningful scale in any portion of the species' range.

Therefore, we find that listing Georgia bully as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Georgia bully species assessment and other supporting documents (see **ADDRESSES**, above).

Rio Grande Cooter

Previous Federal Actions

On July 11, 2012, the U.S. Fish and Wildlife Service (Service) received a petition to list 53 amphibians and reptiles, including the Rio Grande cooter (*Pseudemys gorzugi*), as endangered or threatened under the Act and to designate critical habitat. On July 1, 2015, we published a 90-day finding that the petition presented substantial scientific or commercial information indicating that listing may be warranted for 21 species, including the Rio Grande cooter (80 FR 37568). The finding stated that the petition presented substantial information indicating that listing the Rio Grande cooter may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; and regulatory mechanisms inadequate to address these threats. This document constitutes the 12-month finding on the July 11, 2012, petition to list the Rio Grande cooter under the Act.

Summary of Finding

The Rio Grande cooter is a medium-to-large freshwater turtle (100–370 millimeters (3.9–14.6 inches)) that lives in the spring pools, streams, and rivers found within portions of the Rio Grande/Río Bravo watershed of the United States and Mexico. The species' range includes the Pecos River basin of New Mexico and Texas; the Devils River basin of Texas; the Rio Grande basin of Texas (below the Big Bend region) and Coahuila, Nuevo León, and Tamaulipas, Mexico; the Río Salado basin of Coahuila, Nuevo León, and Tamaulipas, Mexico; and the Río San Juan basin of Coahuila, Nuevo León, and Tamaulipas, Mexico. Within these five major river basins, Rio Grande cooter habitat includes the freshwater systems and the riparian habitat adjacent to them. The current distribution of the species is similar to its historical distribution.

As a mostly aquatic species, adequate water quality and water quantity are central to the Rio Grande cooter's ability to forage, survive, and reproduce. Water must be of adequate depth to provide protection from predation and within temperature ranges that allow for thermoregulation. Further, contaminants and other harmful constituents in water must be absent or below thresholds that would cause acute or chronic toxicity to Rio Grande cooter or the resources upon which they rely for survival, growth and reproduction. The Rio Grande cooter also requires water flows that allow for individual movements for breeding, nesting, and retreating from areas of unsuitable habitat. Additionally, the Rio Grande cooter requires upland nesting habitat with loose soils near water where eggs will be adequately thermoregulated and safe from inundation, predation, and other disturbances during incubation.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to the Rio Grande cooter, and we evaluated all relevant factors under the five listing factors, including any regulatory mechanisms and conservation measures addressing these stressors. The primary stressors affecting the Rio Grande cooter's biological status include hydrological alteration, pollution, climate change (increasing demands on the surface and ground water resources that provide or support habitat for the species due to effects on climate and weather associated with rising temperatures), and direct mortality. Rio Grande cooter has limited abundance information available across its range, with a few exceptions. Therefore, we assessed species viability based on presence-only data and the condition of the species' habitat.

Despite existing within an altered system in the Rio Grande watershed and the associated impacts from the primary stressors, the Rio Grande cooter currently has multiple resilient population analysis units (10 of 16 units characterized as Low or Moderate Risk) distributed throughout its known historical range. Because Rio Grande cooter has maintained multiple resilient population analysis units across a diversity of habitat types and within all five river basins in which it historically occurred—except for the Devils River basin, which contains a single unit categorized as low risk—the species has retained redundancy and representation at the species level. Based on these conditions, the current risk of extinction for the Rio Grande cooter is low. Although we project some continued impacts from the identified stressors into the foreseeable future under two future scenarios, our analysis indicates that the Rio Grande cooter will maintain multiple, resilient population analysis units distributed throughout its

historical range within each of the five major river basins. Overall, the Rio Grande cooter is projected to either maintain current levels of resiliency, representation, and redundancy or have a slight decrease in resiliency (nine of 16 population analysis units being categorized as Low or Moderate Risk) while maintaining current levels of redundancy and representation into the foreseeable future. Thus, the best available information does not indicate that the magnitude and scope of individual stressors would cause the species to be in danger of extinction in the foreseeable future. Furthermore, we did not find any evidence of a concentration of threats at any biologically meaningful scale in any portion of the species' range.

Therefore, we find that listing the Rio Grande cooter as an endangered species or threatened species under the Act is not warranted. A detailed discussion of the basis for this finding can be found in the Rio Grande cooter's species assessment and other supporting documents (see **ADDRESSES**, above).

Blanco Blind Salamander

Previous Federal Actions

On June 25, 2007, the Service received a petition from Forest Guardians (now WildEarth Guardians) requesting that the Service list 475 species in the Southwest Region as endangered or threatened under the Act with critical habitat. The Blanco blind salamander (*Eurycea robusta*) was included among the list of petitioned species. On December 16, 2009, we published in the **Federal Register** (74 FR 66866) a partial 90-day finding that the petition presented substantial scientific or commercial information indicating that listing may be warranted for 67 of the species, including the Blanco blind salamander. The finding stated that the petition presented substantial information indicating that listing the Blanco blind salamander may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range resulting from water pollutants and water withdrawal. This document constitutes the 12-month finding on the June 25, 2007, petition to list the Blanco blind salamander under the Act.

Summary of Finding

We have carefully assessed the best scientific and commercial information available regarding the Blanco blind salamander and evaluated the petition's claims that the species warrants listing under the Act. We determined the type specimen on which the species' description was based either represents a historical occurrence of the federally endangered Texas blind salamander (*Typhlomolge rathbuni*) or it represents a unique species that is no longer extant.

To be considered an endangered or threatened species under the Act, a species' taxonomy must be valid. In our evaluation of the species' status, we found evidence that the Blanco blind salamander does not exist as a current taxonomic entity. Several morphological characters of the Blanco blind salamander overlap or are identical to the Texas blind salamander; the Blanco blind salamander specimen's size may have been influenced by chemical fixation and preservation, and may not reflect the original size of the living individual; and hydrogeological connectivity would likely facilitate movement between the Blanco River site and locations the Texas blind salamander inhabits. Given this, we find that the Blanco blind salamander type specimen is likely a Texas blind salamander individual. If it is a Texas blind salamander, then the Blanco blind salamander is not a valid taxonomic entity and, therefore, is not a listable entity under the Act.

While the best available science does indicate that the specimen collected in 1951 is a Texas blind salamander, due to the inability to conduct conclusive genetic testing, we considered the status of the Blanco blind salamander out of an abundance of caution.

Based on the best available information, if the Blanco blind salamander was in fact a valid entity, we conclude that it is now extinct. When evaluating the possibility of extinction, we attempted to minimize the possibility of either (1) prematurely determining that the species is extinct where individuals exist but remain undetected, or (2) assuming the species is extant when extinction has already occurred. Our determinations of whether the best available information indicates that a species is extinct include an analysis of the following criteria: Detectability of the species, adequacy of survey efforts, and time since last detection. All three criteria require taking into account applicable aspects of a species' life history. Other lines of evidence may also support the determination and be included in our analysis. In conducting our analysis of whether the Blanco blind salamander is extinct, we considered and thoroughly evaluated the best scientific and commercial data available. We reviewed the information available in our files, and other available published and unpublished information. These evaluations include information from recognized experts, Federal and State governments, academic institutions, and private entities.

The Edwards Aquifer, in the area of southeastern Hays County, Texas, has been and continues to be intensively sampled for its diverse and unique groundwater fauna. Beginning in the late 19th century, caves, springs, and wells in the area have yielded many new species, including the Texas blind salamander and a contingent of endemic groundwater invertebrates.

Like species with similar characteristics, the Blanco blind salamander is likely to have a low detectability. However, despite being mostly subterranean, stygobitic (*i.e.,* living exclusively in groundwater, such as aquifers or caves) *Eurycea* salamanders are often surveyed at springs and caves. Surveys were conducted in 2006 to re-detect the Blanco blind salamander at the Blanco River site and several groundwater wells north of that site in Hays and Travis Counties, Texas. Additionally, researchers excavated three surface fissures in the dry bed of the Blanco River, but none of the excavations extended to subterranean voids, and no salamanders were observed. Groundwater wells were surveyed north of the Blanco River 8 to 25 kilometers (5 to 15 miles) away from the locality of the Blanco specimen and did not yield stygobitic *Eurycea* salamanders, although they did extend into subterranean habitats. Recent survey efforts of wells and springs in Hays County in 2020 and 2021 have also not resulted in discovery of Blanco blind salamanders or other stygobitic *Eurycea* salamanders to date. Conversely, Texas blind salamanders are regularly observed and collected during surveys of caves, spring openings, and groundwater wells by permitted researchers from several localities in the City of San Marcos, Texas.

Since 1951, no stygobitic *Eurycea* salamanders have been collected from the Blanco River or areas to the north of the river in Hays County. Despite its low detectability, given the combination of surveys at the original locality and repeated surveys from surface and subterranean habitats nearby, we conclude that these efforts were adequate to detect the Blanco blind salamander should individuals exist. If the Blanco blind salamander was a valid taxon, we have no evidence that the species has remained extant for the past 70 years; thus, we conclude it is extinct.

In conclusion, based on the best available information, we have determined that the Blanco blind

salamander is not a valid taxonomic entity and, accordingly, does not meet the statutory definition of a listable entity under the Act. Additionally, even if our conclusion is incorrect and the Blanco blind salamander was a valid taxonomic entity, it has not been collected in over 70 years despite survey efforts; thus, we have no evidence it has remained extant. Because the Blanco blind salamander either does not meet the definition of a listable entity or is extinct, it does not warrant listing under the Act. A detailed discussion of the basis for this finding can be found in the Blanco blind salamander species assessment form and other supporting documents (see **ADDRESSES**, above).

New Information

We request that you submit any new information concerning the taxonomy of, biology of, ecology of, status of, or stressors to Blanco blind salamander, Georgia bully, or Rio Grande cooter to the appropriate person, as specified under **FOR FURTHER INFORMATION CONTACT**, whenever it becomes available. New information will help us monitor these species and make appropriate decisions about their conservation and status. We encourage local agencies and stakeholders to continue cooperative monitoring and conservation efforts.

References Cited

A list of the references cited in this petition finding is available in the relevant species assessment form, which is available on the internet at *https://www.regulations.gov* in the appropriate docket (see **ADDRESSES**, above) and upon request from the appropriate person (see **FOR FURTHER INFORMATION CONTACT**, above).

Authors

The primary authors of this document are the staff members of the Species Assessment Team, Ecological Services Program.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–05331 Filed 3–11–22; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[Docket No. FWS–R7–MB–2021–0172; FXMB12610700000–201–FF07M01000]

RIN 1018 BF65

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2022 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service or USFWS), are proposing changes to the migratory bird subsistence harvest regulations in Alaska. These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The proposed changes would update the regulations to incorporate revisions requested by these partners.

DATES: We will accept comments received or postmarked on or before April 13, 2022.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments to Docket No. FWS–R7–MB–2021–0172.
- *U.S. Mail:* Public Comments Processing, Attn: FWS–R7–MB–2021–0172, U.S. Fish and Wildlife Service, MS: JAO/3W, 5275 Leesburg Place, Falls Church, VA 22041 3803.

We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comment Procedures section, below, for more information).

FOR FURTHER INFORMATION CONTACT: Eric J. Taylor, U.S. Fish and Wildlife Service, 1011 E Tudor Road, Mail Stop 201, Anchorage, AK 99503; (907) 903 7210.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

To ensure that any action resulting from this proposed rule will be as accurate and as effective as possible, we request that you send relevant information for our consideration. The comments that will be most useful and likely to influence our decisions are those that you support by quantitative information or studies and those that include citations to, and analyses of, the applicable laws and regulations. Please make your comments as specific as possible and explain the basis for them. In addition, please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

You must submit your comments and materials concerning this proposed rule by one of the methods listed above in **ADDRESSES**. We will not accept comments sent by email or fax or to an address not listed in **ADDRESSES**. If you submit a comment via *https://www.regulations.gov,* your entire comment—including any personal identifying information, such as your address, telephone number, or email address—will be posted on the website. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission.

If you mail a hardcopy comment directly to us that includes personal information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. All comments and materials we receive will be available for public inspection via *https://www.regulations.gov.* Search for FWS–R7–MB–2021–0172, which is the docket number for this rulemaking.

Background

The Migratory Bird Treaty Act of 1918 (MBTA, 16 U.S.C. 703 *et seq.*) was enacted to conserve certain species of migratory birds and gives the Secretary of the Interior the authority to regulate the harvest of these birds. The law further authorizes the Secretary to issue regulations to ensure that the indigenous inhabitants of the State of Alaska may take migratory birds and collect their eggs for nutritional and other essential needs during seasons established by the Secretary so as to provide for the preservation and maintenance of stocks of migratory birds (16 U.S.C. 712(1)).

The take of migratory birds for subsistence uses in Alaska occurs during the spring and summer, during which timeframe when the annual fall/winter harvest of migratory birds is not allowed. Regulations governing the subsistence harvest of migratory birds in Alaska are located in title 50 of the Code of Federal Regulations (CFR) in part 92.

These regulations allow for the continuation of customary and traditional subsistence uses of migratory birds and prescribe regional information on when and where the harvesting of birds in Alaska may occur.

The migratory bird subsistence harvest regulations are developed cooperatively. The Alaska Migratory Bird Co-Management Council (Council or AMBCC) consists of the U.S. Fish and Wildlife Service, the Alaska Department of Fish and Game (ADFG), and representatives of Alaska's Native population. The Council's primary purpose is to develop recommendations pertaining to the subsistence harvest of migratory birds.

The Council generally holds an annual spring meeting to develop recommendations for migratory bird subsistence-harvest regulations in Alaska that would take effect in the spring of the next year. In 2021, the in-person spring meeting did not occur due to the coronavirus pandemic. Instead, the Council met virtually via teleconference on April 5, 2021, to approve subsistence harvest regulations that would take effect during the 2022 harvest season. The Council's recommendations were presented to the Pacific Flyway Council for review and subsequent submission to the Service Regulations Committee (SRC) for approval at the SRC meeting on September 28 and 29, 2021.

Proposed Revisions to the Regulations

Per the collaborative process described above, this document proposes the following revisions to the regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer.

Proposed Revisions to Subpart A

In part 92, subpart A (general provisions), we propose to clarify the regulations defining excluded areas, which are those areas that are closed to subsistence harvest.

First, we propose revisions to clarify that subsistence hunters whose communities petitioned successfully to be added to the list of included areas appearing at 50 CFR 92.5(a)(2) may harvest migratory birds within the entirety of the subsistence harvest areas designated for their community, including portions of harvest areas that occur within designated excluded areas.

For example, portions of the subsistence harvest areas selected by communities in the Upper Copper River Region listed as eligible under 50 CFR 92.5(a)(2)(i) occur within the Matanuska-Susitna Borough, an excluded area that is otherwise closed to harvest (50 CFR 92.5(b)(2)). The regulations do not specify that these portions of designated harvest areas that occur in excluded areas are, in fact, open to subsistence hunting. To address this issue, we propose to amend 50 CFR 92.5(b) to make an exception to harvest closures in those portions of excluded areas that fall within subsistence harvest areas designated for specific communities that petitioned to be listed as eligible for participation in the spring-summer subsistence hunt (50 CFR 92.5(a)(2)).

This exception would not apply to subsistence harvest areas that have been generally designated for regions (*e.g.,* Bering Strait Norton Sound Region) or subregions (*e.g.,* Bering Strait Norton Sound Stebbins/St. Michael Area) listed as included areas at 50 CFR 92.5(a).

Second, to clarify the boundaries of areas that are closed to subsistence harvest, we propose to address an apparent inconsistency in some terms used in part 92. The regulations governing subsistence harvest of migratory birds were set forth August 16, 2002 (67 FR 53511). That rule defined the term ''village'' at 50 CFR 92.4 and also set forth provisions regarding areas that are excluded from eligibility to participate in the subsistence harvest of migratory birds. Under 50 CFR 92.5(b)(2), excluded areas include ''[v]illage areas'' located in Anchorage, the Matanuska-Susitna Borough, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, Southeast Alaska, and the Central Interior Excluded Area. The definition of ''village'' at 50 CFR 92.4 and use of the term ''village areas'' at 50 CFR 92.5(b)(2) to describe excluded areas has created confusion in determining the boundaries of closed areas. We never intended for the excluded areas set forth at 50 CFR 92.5(b)(2) to be only those portions of those areas that meet the definition of ''village'' at 50 CFR 92.4. Therefore, we propose to remove the term ''village areas'' from 50 CFR 92.5(b)(2) to clarify that excluded areas are closed to harvest in their entirety, except those portions that occur within a harvest area that has been designated for a specific community.

Third, we would clarify the language defining boundaries of the excluded areas of the Kenai Peninsula roaded area and the Gulf of Alaska roaded area. The geographic boundaries of the Kenai Peninsula roaded area and the Gulf of Alaska roaded area are undefined in the regulations, making the development of usable hunt maps imprecise and ambiguous. The proposed changes to the regulations would allow publication of maps that are accurate and reproducible into the future and interpretable by subsistence hunters and law enforcement officials.

Finally, we are including in this proposed rule a needed correction. The Chugach Community of Cordova should have been included in the list of included areas for the Gulf of Alaska region in subpart A following Council action in 2014. The omission of this community from the regulations was the result of an inadvertent oversight. The Chugach Community of Cordova does appropriately appear in the regulations for eligible subsistence-harvest areas in 50 CFR 92.31(j)(2). Therefore, we are proposing to add the Chugach Community of Cordova to the current list of included areas in 50 CFR 92.5(a)(2)(ii).

These proposed revisions to the regulations in subpart A are not anticipated to result in a significant increase in harvest of birds and eggs because spring and summer subsistence practices likely occur in these areas at the present time.

Proposed Revisions to Subpart D

In 50 CFR 92.31, we propose to clarify the designated harvest area boundaries for the communities of Port Graham and Nanwalek in the Gulf of Alaska Region and for the community of Tyonek in the Cook Inlet Region. Current harvest area definitions in the regulations for these communities are incomplete (that is, they do not describe a complete polygon), and only partially define the boundaries of the harvest areas. The proposed revisions would allow publication of maps that are accurate and reproducible into the future and provide a clear definition of the harvest areas designated for the communities that subsistence hunters and law enforcement officials can interpret and follow in the field.

Compliance With the MBTA and the Endangered Species Act

The Service has dual objectives and responsibilities for authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these objectives continue to be challenging, they are not irreconcilable, provided that: (1) Regulations continue to protect threatened species, (2) measures to address documented threats are implemented, and (3) the subsistence community and other conservation partners commit to working together.

Mortality, sickness, and poisoning from lead exposure have been documented in many waterfowl species, including threatened spectacled eiders (*Somateria fischeri*) and the Alaska-

breeding population of Steller's eiders (*Polysticta stelleri*). While lead shot has been banned nationally for waterfowl hunting since 1991, Service staff have documented the availability of lead shot in waterfowl rounds for sale in communities on the Yukon-Kuskokwim Delta and North Slope. The Service will work with partners to increase our education, outreach, and enforcement efforts to ensure that subsistence waterfowl hunting is conducted using nontoxic shot.

Conservation Under the MBTA

We have monitored subsistence harvest for the past 25 years through the use of household surveys in the most heavily used subsistence harvest areas, such as the Yukon–Kuskokwim Delta. Based on our monitoring of the migratory bird species and populations taken for subsistence, we find that this rule will provide for the preservation and maintenance of migratory bird stocks as required by the MBTA. Communication and coordination between the Service, the AMBCC, and the Pacific Flyway Council have allowed us to set harvest regulations to ensure the long-term viability of the migratory bird stocks.

Endangered Species Act Consideration

Spectacled eiders and the Alaska-breeding population of Steller's eiders are listed as threatened species under the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). Their migration and breeding distribution overlap with areas where the spring and summer subsistence migratory bird hunt is open in Alaska. Neither species is included in the list of subsistence migratory bird species at 50 CFR 92.22; therefore, both species are closed to subsistence harvest. Under 50 CFR 92.21 and 92.32, the Service may implement emergency closures, if necessary, to protect Steller's eiders or any other endangered or threatened species or migratory bird population.

Section 7 of the ESA requires the Secretary of the Interior to review other programs administered by the Department of the Interior and utilize such programs in furtherance of the purposes of the ESA. The Secretary is further required to insure that any action authorized, funded, or carried out by the Department of the Interior is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of critical habitat.

The Service's Alaska Region Migratory Bird Management Program is conducting an intra-agency consultation with the Service's Fairbanks Fish and Wildlife Field Office on this proposed rule. A biological opinion will be updated based on new information to ensure this rulemaking action is not likely to jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. Therefore, we expect this rule will comply with the ESA.

Comment Period

Implementation of the Service's 2013 Supplemental Environmental Impact Statement (SEIS) on the hunting of migratory birds resulted in changes to the overall timing of the annual regulatory schedule for the establishment of migratory bird hunting regulations and the Alaska migratory bird subsistence harvest regulations. The programmatic document, ''Second Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Hunting of Migratory Birds (SEIS 20130139),'' filed with the Environmental Protection Agency (EPA) on May 24, 2013, addresses compliance with the National Environmental Policy Act by the Service for issuance of the annual framework regulations for hunting of migratory game bird species. We published a notice of availability of the SEIS in the **Federal Register** on May 31, 2013 (78 FR 32686), and our Record of Decision on July 26, 2013 (78 FR 45376).

The 2013 SEIS moved the annual SRC meeting from July to October, and this procedural change has greatly shortened our period each year to publish the proposed regulations and solicit comments. We are further bounded by a subsistence harvest start date of April 2, 2022. Thus, we have established a 30-day comment period for this proposed rule (see **DATES**, above), and we will be conducting Tribal consultations within Alaska simultaneously. We believe a 30-day comment period gives the public adequate time to provide meaningful comments.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. OIRA has determined that this proposed rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The Executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this proposed rule in a manner consistent with these requirements.

Regulatory Flexibility Act

The Department of the Interior certifies that, if adopted as proposed, this proposed rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A regulatory flexibility analysis is not required. Accordingly, a small entity compliance guide is not required. This proposed rule would legalize a preexisting subsistence activity, and the resources harvested will be consumed.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

(a) Would not have an annual effect on the economy of $100 million or more. It would legalize and regulate a traditional subsistence activity. It would not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities that would be regulated under this rule are migratory birds. This proposed rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule would derive from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska qualify as small businesses. We have no reason to believe that this proposed rule would lead to a disproportionate distribution of benefits.

(b) Would not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This proposed rule does not deal with traded commodities and, therefore, would not have an impact on prices for consumers.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule deals with the harvesting of wildlife for personal consumption. It would not regulate the marketplace in any way to generate substantial effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule would not impose a cost of $100 million or more in any given year on local, State, or Tribal governments or private entities. The proposed rule would not have a significant or unique effect on local, State, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Council requires travel expenses for some Alaska Native organizations and local governments. In addition, they assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In a notice of decision (65 FR 16405; March 28, 2000), we identified 7 to 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The ADFG also incurs expenses for travel to Council and regional management body meetings. In addition, the State of Alaska would be required to provide technical staff support to each of the regional management bodies and to the Council. Expenses for the State's involvement may exceed $100,000 per year but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the ADFG to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this proposed rule would not have significant takings implications. This proposed rule is not specific to particular land ownership, but instead applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this proposed rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. We discuss effects of this rule on the State of Alaska in the *Unfunded Mandates Reform Act* section, above. We worked with the State of Alaska to develop these proposed regulations. Therefore, a federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this proposed rule, has determined that it would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

Consistent with Executive Order 13175 (65 FR 67249; November 9, 2000), ''Consultation and Coordination with Indian Tribal Governments,'' and Department of the Interior policy on Consultation with Indian Tribes (December 1, 2011), we will send letters via electronic mail to all 229 Alaska federally recognized Indian Tribes. Consistent with Congressional direction (Pub. L. 108–199, div. H, Sec. 161, Jan. 23, 2004, 118 Stat. 452, as amended by Pub. L. 108–447, div. H, title V, Sec. 518, Dec. 8, 2004, 118 Stat. 3267), we also will send letters to approximately 200 Alaska Native corporations and other Tribal entities in Alaska soliciting their input as to whether or not they would like the Service to consult with them on the 2022 migratory bird subsistence harvest regulations.

We implemented the amended treaty with Canada with a focus on local involvement. The treaty calls for the creation of management bodies to ensure an effective and meaningful role for Alaska's indigenous inhabitants in the conservation of migratory birds. According to the Letter of Submittal, management bodies are to include Alaska Native, Federal, and State of Alaska representatives as equals. They develop recommendations for, among other things: Seasons and bag limits, methods and means of take, law enforcement policies, population and harvest monitoring, educational programs, research and use of traditional knowledge, and habitat protection. The management bodies involve village councils to the maximum extent possible in all aspects of management. To ensure maximum input at the village level, we required each of the 11 participating regions to create regional management bodies consisting of at least one representative from the participating villages. The regional management bodies meet twice annually to review and/or submit proposals to the Statewide body.

Paperwork Reduction Act of 1995 (PRA)

This rule does not contain any new collection of information that requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has previously approved the information collection requirements associated with subsistence harvest reporting and assigned the following OMB control numbers:

- Alaska Migratory Bird Subsistence Harvest Household Survey, OMB Control Number 1018–0124 (expires 04/30/2024), and
- Regulations for the Taking of Migratory Birds for Subsistence Uses in Alaska, 50 CFR part 92, OMB Control Number 1018–0178 (expires 04/30/2024).

National Environmental Policy Act Consideration (42 U.S.C. 4321 et seq.)

The annual regulations and options are considered in the January 2022 Environmental Assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2022 Spring/Summer Harvest.'' Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at *https://www.regulations.gov.*

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare statements of energy effects when undertaking certain actions. This is not a significant regulatory action under this Executive Order; it allows only for traditional subsistence harvest and improves conservation of migratory birds by allowing effective regulation of this harvest. Further, this proposed rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211, and a statement of energy effects is not required.

List of Subjects in 50 CFR Part 92

Hunting, Treaties, Wildlife.

Proposed Regulation Promulgation

For the reasons set out in the preamble, we propose to amend 50 CFR part 92 as set forth below:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

■ 2. Amend § 92.5 by:
■ a. Revising paragraph (a)(2)(ii), the first full sentence of the introductory text of paragraph (b), and paragraphs (b)(2) and (3); and
■ b. Adding paragraphs (b)(4) and (5).

The revisions and additions read as follows:

§ 92.5 Who is eligible to participate?

* * * * *

(a) * * *

(2) * * *

(ii) Gulf of Alaska Region—Chugach Community of Chenega, Chugach Community of Cordova, Chugach Community of Nanwalek, Chugach Community of Port Graham, and Chugach Community of Tatitlek.

* * * * *

(b) *Excluded areas.* Excluded areas are not subsistence harvest areas and are closed to harvest, with the exception of any portion of an excluded area that falls within a harvest area that has been designated for a specific community under paragraph (a)(2) of this section.

* * *

* * * * *

(2) The Municipality of Anchorage, the Matanuska-Susitna Borough, the Kenai Peninsula roaded area (as described in paragraph (b)(3) of this section), the Gulf of Alaska roaded area (as described in paragraph (b)(4) of this section), Southeast Alaska, and the Central Interior Excluded Area (as described in paragraph (b)(5) of this section) do not qualify for a spring and summer harvest.

(3) The Kenai Peninsula roaded area comprises the following: Game Management Unit (Unit) 7, Unit 15(A), Unit 15(B), and that portion of Unit 15(C) east and north of a line beginning at the northern boundary of Unit 15(C) and mouth of the Kasilof River at 60°23′19″ N; 151°18′37″ W, extending south along the coastline of Cook Inlet to Bluff Point (59°40′00″ N), then south along longitude line 151°41′48″ W to latitude 59°35′56″ N, then east to the tip of Homer Spit (excluding any land of the Homer Spit), then northeast to the north bank of Fox River (59°48′57″ N; 150°58′44″ W), and then east to the eastern boundary of Unit 15(C) at 150°19′59″ W.

(4) The Gulf of Alaska roaded area comprises the incorporated city boundaries of Valdez and Whittier, Alaska.

(5) The Central Interior Excluded Area comprises the following: The Fairbanks North Star Borough and that portion of Unit 20(A) east of the Wood River drainage and south of Rex Trail, including the upper Wood River drainage south of its confluence with Chicken Creek; that portion of Unit 20(C) east of Denali National Park north to Rock Creek and east to Unit 20(A); and that portion of Unit 20(D) west of the Tanana River between its confluence with the Johnson and Delta Rivers, west of the east bank of the Johnson River, and north and west of the Volkmar drainage, including the Goodpaster River drainage. The following communities are within the Excluded Area: Delta Junction/Big Delta/Fort Greely, McKinley Park/Village, Healy, Ferry, and all residents of the formerly named Fairbanks North Star Borough Excluded Area.

* * * * *

■ 3. Amend § 92.31 by revising paragraphs (j)(3) and (k)(1) to read as follows:

§ 92.31 Region-specific regulations.

* * * * *

(j) * * *

(3) Kachemak Bay Area (Harvest area: That portion of Game Management Unit [Unit] 15[C] west and south of a line beginning at the northern boundary of Unit 15[C] and mouth of the Kasilof River at 60°23′19″ N; 151°18′37″ W, extending south along the coastline of Cook Inlet to Bluff Point [59°40′00″ N], then south along longitude line 151°41′48″ W to latitude 59°35′56″ N, then east to the tip of Homer Spit [excluding any land of the Homer Spit], then northeast to the north bank of the Fox River [59°48′57″ N; 150°58′44″ W], and then east to the eastern boundary of Unit 15[C] at 150°19′59″ W) (Eligible Chugach Communities: Port Graham, Nanwalek):

* * * * *

(k) * * *

(1) Season: April 2–May 31—That portion of Game Management Unit 16(B) west of the east bank of the Yentna River, south of the north bank of the Skwentna River, and south of the north bank of Portage Creek to the boundary of Game Management Unit 16(B) at Portage Pass; and August 1–31—That portion of Game Management Unit 16(B) west of longitude line 150° 56′ W, south of the north banks of the Beluga River and Beluga Lake, then south of latitude line 61°26′08″ N.

* * * * *

Shannon A. Estenoz,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2022–05251 Filed 3–11–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 49
Monday, March 14, 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

Food Safety and Inspection Service

[Docket No. FSIS–2022–0007]

Retail Exemptions Adjusted Dollar Limitations

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing the dollar limitations on the amount of meat and meat products and poultry and poultry products that a retail store can sell to hotels, restaurants, and similar institutions without disqualifying itself for exemption from Federal inspection requirements.

DATES: *Applicable* April 13, 2022.

FOR FURTHER INFORMATION CONTACT: Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Mailstop 3758, South Building, Washington, DC 20250–3700; (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide a comprehensive statutory framework to ensure that meat and meat products and poultry and poultry products prepared for commerce are wholesome, not adulterated, and properly labeled and packaged. Statutory provisions requiring inspection of the processing of meat and meat products and poultry and poultry products do not apply to operations of types traditionally and usually conducted at retail stores and restaurants in regard to products offered for sale to consumers in normal retail quantities (21 U.S.C. 661(c)(2) and 454(c)(2)). FSIS' regulations (9 CFR 303.1(d) and 381.10(d)) elaborate on the conditions under which requirements for inspection do not apply to retail operations involving the preparation of meat and meat products and the processing of poultry and poultry products.

Sales to Hotels, Restaurants, and Similar Institutions

Under the aforementioned regulations, sales to hotels, restaurants, and similar institutions (other than household consumers) disqualify a retail store from exemption if the retail product sales of amenable products exceed either of two maximum limits: 25 percent of the dollar value of the total retail product sales or the calendar year retail dollar limitation set by the FSIS Administrator. The retail dollar limitation is adjusted automatically during the first quarter of the year if the Consumer Price Index (CPI), published by the Bureau of Labor Statistics, shows an increase or decrease of more than $500 in the price of the same volume of product for the previous year. FSIS publishes a notice of the adjusted retail dollar limitations in the **Federal Register**. (See 9 CFR 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*).)

The CPI for 2021 reveals an annual average price increase for meat and meat products of 7.66 percent, an average annual price increase for Siluriformes fish and fish products of 5.39 percent, and an annual average price increase for poultry and poultry products of 5.11 percent. When rounded to the nearest $100 dollar, the retail dollar limitation for meat and meat products, including Siluriformes fish and fish products, increased by $6,400 [1] and the retail dollar limitation for poultry and poultry products increased by $3,100.[2] In accordance with 9 CFR 303.1(d)(2)(iii)(*b*) and 381.10(d)(2)(iii)(*b*), because the retail dollar limitations for meat and meat products increased by more than $500, FSIS is increasing the dollar limitation on sales to hotels, restaurants, and similar institutions to $91,400 for meat and meat products for calendar year 2022. Because the retail dollar limitations for poultry and poultry products increased by more than $500, FSIS is increasing the dollar limitation on sales to hotels, restaurants, and similar institutions to $62,800 for poultry and poultry products for calendar year 2022.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls, to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its

[1] The base value for meat and meat products in 2021 was $84,942 rounded to the nearest $100 dollar to $84,900. The base value included $82,360 for meat and meat products and $2,582 to account for Siluriformes fish and fish products. The meat and meat products prices increased by 7.66 percent, or $6,309 ($82,360 × 0.0766 = $6,309), during 2021. The Siluriformes fish and fish products prices increased by 5.39 percent, or $139 ($2,582 × 0.0539 = $139), during 2021. Combined, the value for meat and meat products that includes Siluriformes fish and fish products increased by $6,448 ($6,309 + $139). Since this change is more than $500, the retail dollar limitation is adjusted to $91,400 [($82,360 + $6,309) + ($2,582 + $139) = $91,390 which is rounded to $91,400].

[2] The base value for poultry and poultry products in 2021 was $59,770 rounded to the nearest $100 dollar to $59,800. The poultry and poultry products prices increased by 5.11 percent, or $3,054 ($59,770 × 0.0511 = $3,054), during 2021. Since this change is more than $500, the retail dollar limitation is adjusted to $62,800 ($59,770 + $3,054 = $62,824 rounded to $62,800.)

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/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 (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877–8339. 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 of the information requested in the form. To request a copy of the complaint form, call (866) 632–9992.

Submit your completed form or letter to USDA by: (1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; (2) *fax:* (202) 690–7442; or (3) *email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Paul Kiecker,

Administrator.

[FR Doc. 2022–05341 Filed 3–11–22; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–21–CF–0020]

Community Facilities Technical Assistance and Training Grant Program for Fiscal Year 2022

AGENCY: Rural Housing Service, USDA.

ACTION: Notice of Solicitation of Applications (NOSA).

SUMMARY: The Rural Housing Service (Agency), a Rural Development agency of the United States Department of Agriculture (USDA), announces that it is accepting applications under the Community Facilities Technical Assistance and Training (TAT) Grant program for fiscal year (FY) 2022. This NOSA is being issued prior to passage of a final appropriations act for FY 2022 to allow potential applicants time to submit applications for financial assistance under the program and to give the Agency time to process applications. Once the FY 2022 funding amount is determined, the Agency will publish it on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.*

DATES: Completed applications must be submitted using one of the following methods:

- *Paper submissions:* The Agency must receive applications in paper, postmarked, and mailed, shipped, or sent overnight by 4:00 p.m. local time on May 26, 2022. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail, and postage due applications will not be accepted. The application dates and times are firm. The Agency will not consider any application received after the deadline.
- *Electronic submissions:* Electronic applications must be submitted via *https://www.grants.gov* by 11:59 p.m. Eastern Daylight Savings Time on May 23, 2022.

Prior to official submission of applications, applicants may request application guidance from the Agency, as long as such requests are made prior to May 16, 2022. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis.

The Agency will not solicit or consider scoring nor eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

ADDRESSES: This notice and application materials may be accessed at *https://www.grants.gov.* This Notice may also be viewed at: *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas.*

Applicants can submit an electronic application by following the instructions for the TAT funding announcement on *https://www.grants.gov.* Applications may be submitted by the following methods:

Applications are to be submitted to the USDA Rural Development State Office for the State in which the applicant is located. The address for the headquarters of each USDA Rural Development State Office can be accessed at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* The Applicant should contact the USDA Rural Development State Office to see if applications may be submitted to Field Offices within the state.

For applicants located in the District of Columbia, applications will be submitted to the National Office in care of Shirley Stevenson, 1400 Independence Ave. SW, STOP 0787, Washington, DC 20250.

Electronic applications will be submitted via *https://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: The Rural Development office for the state in which the applicant is located. A list of Rural Development State Office contacts is provided at the following link: *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf.* Applicants located in Washington, DC can contact Shirley Stevenson at (202) 205–9685 or via email at *Shirley.Stevenson@usda.gov.*

SUPPLEMENTARY INFORMATION:

Authority

This solicitation is authorized pursuant to Section 306(a)(26) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(26)), 7 CFR part 3570, subpart F, and 7 CFR 3570.267.

Rural Development: Key Priorities

The Agency encourages applicants to consider projects that will advance the following key priorities:

- Assisting Rural communities recover economically from the impacts of the COVID–19 pandemic, particularly disadvantaged communities;
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

Additional information regarding RD's funding priorities is available at the following website: *https://www.rd.usda.gov/priority-points.* Expenses incurred in developing grant application packages will be at the applicant's sole risk.

Background

USDA's Rural Development Agencies, comprised of the Rural Business-Cooperative Service (RB–CS), Rural Housing Service (RHS), and the Rural Utilities Service (RUS), are leading the way in helping rural America improve the quality of life and increase the economic opportunities for rural people. RHS offers a variety of programs to build or improve housing and essential community facilities in rural areas. The Agency also offers loans, grants, and loan guarantees for single- and multi-family housing, child-care centers, fire and police stations, hospitals, libraries, nursing homes, schools, first responder vehicles and equipment, housing for farm laborers and much more. The Agency also provides technical assistance loans and grants in partnership with non-profit organizations, Indian tribes, state and Federal government agencies, and local communities.

Program Description

The RHS provides TAT grants to eligible public bodies and private, nonprofit organizations (such as states, counties, cities, townships, incorporated towns, villages, boroughs, authorities, districts, and Tribes located on Federal or state reservations) to provide technical assistance and training in support of essential community facilities programs. In turn, this technical assistance and training helps grantees identify and plan for community facility needs in their area. Once these needs are pinpointed, the grantee can find additional public and private financial resources.

Paperwork Reduction Act

The paperwork burden has been approved by the Office of Management and Budget (OMB) under OMB Control Number 0575–0198.

Overview

Federal Agency: Rural Housing Service (RHS).

Funding Opportunity Title: Community Facilities Technical Assistance and Training Grant.

Announcement Type: Notice of Solicitation of Applications (NOSA).

Assistance Listing (formerly CFDA): 10.766.

Funding Opportunity Number: USDA–RD–CFTAT–202.

Due Date for Applications: Applications must be submitted using one of the following methods:

Paper submissions: The deadline for receipt of a paper application is 4 p.m. local time, May 26, 2022.

Electronic submissions: Electronic applications will be accepted via *Grants.gov*. The deadline for receipt of an electronic application via *https://Grants.gov* is 11:59 p.m. Eastern Daylight Savings Time on May 23, 2022. The application dates and times are firm. The Agency will not consider any application received after the deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX), electronic mail, and postage due applications will not be accepted. Prior to official submission of applications, applicants may request technical assistance or other application guidance from the Agency, as long as such requests are made prior to May 17, 2022. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for agency review of completed applications, nor a determination of eligibility, if such determination requires in-depth analysis. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

Items in Supplementary Information

I. Funding Opportunity Description

The Community Facilities Technical Assistance and Training Grant program is authorized by Section 306(a)(26) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(26)).

Program regulations can be found at 7 CFR part 3570, subpart F, referenced in this Notice. The purpose of this Notice is to seek applications from entities that will provide technical assistance and/or training with respect to essential community facilities programs. The purpose of this program is to assist entities in rural areas in accessing funding under RHS's Community Facilities Programs in accordance with 7 CFR part 3570, subpart F. Funding priority will be made to private, nonprofit or public organizations that have experience in providing technical assistance and training to rural entities.

II. Award Information

Type of Awards: Grants will be made to eligible entities who will then provide technical assistance and training to eligible ultimate recipients.

Fiscal Year Funds: FY 2022 TAT Grant funds.

Available Funds: This NOSA is being issued prior to passage of a final appropriations act for FY 2022. Once the FY 22 funding amount is determined, the Agency will publish it on its website at *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas*. Up to ten percent of the available funds may be awarded to the highest scoring Ultimate Recipient(s) as long as they score a minimum score of at least 70. The Agency reserves the right to reduce funding amounts based on the Agency's determination of available funding or other Agency funding priorities.

Funding Award Amounts: Grant awards for Technical Assistance providers assisting Ultimate Recipients within one state may not exceed $150,000. Grant awards made to Ultimate Recipients will not exceed $50,000.

Award Dates: Awards will be funded on or before September 15, 2022.

III. Eligibility Information

Both the applicant and the use of funds must meet eligibility requirements. The applicant eligibility requirements can be found at 7 CFR 3570.262. Eligible project purposes can be found at 7 CFR 3570.263. Ineligible project purposes can be found at 7 CFR 3570.264. Restrictions substantially similar to Sections 744 and 745 outlined in Division C, Title VII, ''General Provisions—Government-Wide'' of the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) will apply unless noted on the Rural Development website (*https://www.rd.usda.gov/programs-services/community-facilities-technical-assistance-and-training-grant*). Any corporation that has been convicted of a felony criminal violation under any Federal law within the past 24 months, or that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance provided with full-year appropriated funds, unless a Federal

agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

IV. Application and Submission Information

The requirements for submitting an application can be found at 7 CFR 3570.267. All applicants can access application materials at *https://www.grants.gov*. Applications must be received by the Agency by the due date listed in the **DATES** section of this Notice. Applications received after that due date will not be considered for funding. Paper copies of the applications will be submitted to the State Office in which the applicant is headquartered. Electronic submissions should be submitted at *https://www.grants.gov*. A listing of the Rural Development State Offices may be found at *https://www.rd.usda.gov/files/CF_State_Office_Contacts.pdf*. Applicants whose headquarters are in the District of Columbia will submit their application to the National Office in care of Shirley Stevenson, 1400 Independence Ave. SW, STOP 0787, Washington, DC 20250. Both paper and electronic applications must be received by the Agency by the deadlines stated in the **DATES** section of this Notice. The use of a courier and package tracking for paper applications is strongly encouraged. An applicant can only submit one application for funding. Application information for electronic submissions may be found at *https://www.grants.gov*. Applications will not be accepted via FAX or email.

V. Unique Entity Identifier (UEI) and System for Awards Management (SAM)

Grant applicants must obtain a Unique Entity Identifier (UEI) and register in the System for Award Management (SAM) prior to submitting an application pursuant to 2 CFR 25.200(b). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration*.

In addition, an entity applicant must maintain registration in SAM at all times during which it has an active Federal award or an application or plan under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM. Similarly, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation in accordance with 2 CFR part 170. So long as an entity applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding. See 2 CFR 170.200(b).

An applicant, unless excepted under 2 CFR 25.110(b), (c), or (d), is required to:

(a) Be registered in SAM before submitting its application;

(b) Provide a valid UEI in its application; and

(c) Continue to maintain an active SAM registration with current information at all times during which it has an active Federal award or an application or plan under consideration by a Federal awarding agency.

The Federal awarding agency may not make a federal award to an applicant until the applicant has complied with all applicable UEI and SAM requirements. If an applicant has not fully complied with these requirements by the time the Federal awarding agency is ready to make a Federal award, the Federal awarding agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

As required by the Office of Management and Budget (OMB), all grant applications must provide a UEI number when applying for Federal grants. Organizations can obtain a UEI at *https://sam.gov/content/entity-registration*.

VI. Application Processing

(a) Applications will be processed in accordance with this NOSA and 7 CFR 3570.272:

(1) Applications that are not selected for funding due to low rating will be notified by the Agency. Applications that cannot be funded in the fiscal year that the application was received will not be retained for consideration in the following fiscal year.

(2) Applicants selected for funding will need to accept the conditions set forth in the Letter of Conditions, meet all such conditions, and complete a grant agreement which outlines the terms and conditions of the grant award before grant funds will be disbursed.

VII. Scoring Criteria

Applications will be scored in accordance with this NOSA and 7 CFR 3570.273. Those applications receiving the highest points using the scoring factors will be selected for funding. Up to 10% of the available funds may be awarded to the highest scoring Ultimate Recipient(s) as long as they score a minimum score of at least 70. In the case of a tie, the first tiebreaker will go to the applicant who scores the highest on matching funds. If two or more applications are still tied after using this tiebreaker, the next tiebreaker will go to the applicant who scores the highest in the multi-jurisdictional category. Once the successful applicants are announced, the State Office will be responsible for obligating the grant funds, executing all obligation documents, and the grant agreement, as provided by the agency.

The Agency will score each application using the following scoring factors:

(a) *Experience:* Applicant Experience at developing and implementing successful technical assistance and/or training programs:

(1) More than 10 years—40 points.
(2) More than 5 years to 10 years—25 points.
(3) 3 to 5 years—10 points.

(b) *No prior grants received:*

(1) Applicant has never received a TAT Grant—5 points.

(c) *Population:* The average population of proposed area(s) to be served:

(1) 2,500 or less—15 points.
(2) 2,501 to 5,000—10 points.
(3) 5,001 to 10,000—5 points.

(d) *MHI:* The average median household income (MHI) of the proposed area to be served is below the higher of the poverty line or:

(1) 60 percent of the State's MHI—15 points.
(2) 70 percent of the State MHI—10 points.
(3) 90 percent of the State's MHI—5 points.

(e) *Multi-jurisdictional:* The proposed technical assistance or training project is part of a Multi-jurisdictional project comprised of:

(1) More than 10 jurisdictions—15 points.
(2) More than 5 to 10 jurisdictions—10 points.
(3) 3 to 5 jurisdictions—5 points.

(f) *Soundness of approach:* Up to 10 points.

(1) The problem/issue being addressed in the Needs Assessment is clearly defined, supported by data, and addresses the needs;
(2) Goals & objectives are clearly defined, tied to the need as defined in the work plan, and are measurable;
(3) Work plan clearly articulates a well thought out approach to accomplishing objectives and clearly identifies who will be served by the project; and
(4) The proposed activities are needed in order for a complete Community Facilities loan and/or grant application.

(g) *Matching funds:*

(1) There is evidence of the commitment of other cash funds of 20% of the total project costs—10 points.

(2) There is evidence of the commitment of other cash funds of 10% of the total project costs—5 points.

(h) *State Director discretionary points.* The State Director may award up to 10 discretionary points for the highest priority project in each state, up to 7 points for the second highest priority project in each state, and up to 5 points for the third highest priority project that address the following key priorities:

(1) COVID–19 Impacts. Priority points may be awarded if the project is located in or serving one of the top 10% of counties or county equivalents based upon county risk score in the United States. Information on whether your project qualifies for priority points can be found at the following website: *https://www.rd.usda.gov/priority-points*.

(2) Equity. Priority points may be awarded if the project is located in or serving a community with score 0.75 or above on the CDC Social Vulnerability Index. Information on whether your project qualifies for priority points can be found at the following website: *https://www.rd.usda.gov/priority-points*.

(3) Climate Impacts. Priority points may be awarded if the project is located in or serving coal, oil and gas, and power plant communities whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. Information on whether your project qualifies for priority points can be found at the following website: *https://www.rd.usda.gov/priority-points*.

The State Director will place written documentation in the project file each time the State Director assigns these points.

(i) *Administrator discretionary points.* The Administrator may award up to 20 discretionary points for projects to address geographic distribution of funds, emergency conditions caused by economic problems, natural disasters and other initiatives identified by the Secretary such as applicants proposing to advance any or all of the Agency's three key funding priorities, provided that all other requirements set forth in this notice are otherwise met. The key priorities are:

(1) COVID–19 Impacts. Priority points may be awarded if the project is located in or serving one of the top 10% of counties or county equivalents based upon county risk score in the United States. Information on whether your project qualifies for priority points can be found at the following website: *https://www.rd.usda.gov/priority-points*.

(2) Equity. Priority points may be awarded if the project is located in or serving a community with score 0.75 or above on the CDC Social Vulnerability Index. Information on whether your project qualifies for priority points can be found at the following website: *https://www.rd.usda.gov/priority-points*.

(3) Climate Impacts. Priority points may be awarded if the project is located in or serving coal, oil and gas, and power plant communities whose economic well-being ranks in the most distressed tier of the Distressed Communities Index. Information on whether your project qualifies for priority points can be found at the following website: *https://www.rd.usda.gov/priority-points*.

VIII. Federal Award Administration Information

1. Federal Award Notice. Within the limit of funds available for such purpose, the awarding official of the Agency shall make grants in ranked order to eligible applicants under the procedures set forth in this Notice and the grant regulation 7 CFR part 3570, subpart F. Successful applicants will receive a letter in the mail containing instructions on requirements necessary to proceed with execution and performance of the award. This letter is not an authorization to begin performance. In addition, selected applicants will be requested to verify that components of the application have not changed at the time of selection and on the award date, if requested by the Agency.

The award is not approved until all information has been verified, and the awarding official of the Agency has signed Form RD 1940–1, ''Request for Obligation of Funds'' and the grant agreement.

Unsuccessful and ineligible applicants will receive written notification of their review and appeal rights.

2. Administrative and National Policy Requirements. Grantees will be required to do the following:

(a) Execute a Grant Agreement.

(b) Execute Form RD 1940–1.

(c) Use Form SF 270, ''Request for Advance or Reimbursement'' to request reimbursement. Provide receipts for expenditures, timesheets, and any other documentation to support the request for reimbursement.

(d) Provide financial status and project performance reports as set forth at 7 CFR 3570.276.

(e) Maintain a financial management system that is acceptable to the Agency.

(f) Ensure that records are maintained to document all activities and expenditures utilizing CF TAT grant funds and any matching funds, if applicable. Receipts for expenditures will be included in this documentation.

(g) Provide audits or financial information as set forth in 7 CFR 3570.277.

(h) Collect and maintain data provided by ultimate recipients on race, sex, and national origin and ensure Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

(i) Provide a final performance report as set forth at 7 CFR 3570.276(a)(7).

(j) Identify and report any association or relationship with Rural Development employees.

(k) The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E. The grantee must comply with policies, guidance, and requirements as described in the following applicable Code of Federal Regulations and any successor regulations:

(1) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards).

(2) 2 CFR parts 417 and 180 (Government-wide Debarment and Suspension (Nonprocurement)).

3. Reporting

Reporting requirements for this grant as set forth at 7 CFR 3570.276.

IX. Non-Discrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, 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/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. Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office, the USDA TARGET Center at (202) 720–2600 (voice and TTY), or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint

Form, which can be obtained online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint, https://www.ocio.usda.gov/document/ad-3027,* or from any USDA office by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) Mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) Fax: (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2022–05080 Filed 3–11–22; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[Docket Number RUS–22–ELECTRIC–0001]

Announcement of Application Deadlines and Requirements for Section 313A Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2022

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Solicitation of Applications (NOSA).

SUMMARY: The Rural Utilities Service (RUS), an agency of the United States Department of Agriculture (USDA), announces the solicitation of applications under the Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes Program (the 313A Program) for Fiscal Year (FY) 2022. The agency has received $750 million for this purpose in previous years and has a pro-rata share of that amount pursuant to the most recent continuing resolution. The final amount of funding shall be determined by Congressional appropriations. Should additional funding become available this fiscal year, RUS reserves the right to increase the total funds available under this notice. These types of loan guarantees will be made available to qualified applicants to make utility infrastructure loans or to refinance bonds or notes issued for such purposes. This notice is being issued in order to allow applicants sufficient time to leverage financing, prepare and submit their applications, and give the Agency time to process applications within FY 2022. An announcement will be made on the Agency website: *https://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas* regarding any amount received in the FY 2022 appropriations. Successful applications will be selected by the Agency for funding and subsequently awarded. All applicants are responsible for any expenses incurred in developing their applications. The agency welcomes financially feasible proposals which would use funds available under this notice to further finance eligible utilities projects that demonstrably reduce carbon emissions.

DATES: Completed applications must be received or postmarked by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) May 13, 2022. Applicants intending to mail applications must have their applications postmarked by the closing deadline. The Agency will allow 60 days from the date of the postmark for delivery.

ADDRESSES: Applicants are required to submit one original and two copies of their loan application to the U.S. Department of Agriculture, Rural Utilities Service, Electric Program, ATTN: Amy McWilliams, Program Advisor, Electric Program, Rural Utilities Service, 1400 Independence Avenue SW, Washington, DC 20250–1560 or via email at *amy.mcwilliams@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Amy McWilliams, Program Advisor, Electric Program, Rural Utilities Service, 1400 Independence Avenue SW, Washington, DC 20250–1560. Telephone: (202) 205–8663; fax: (844) 749–0736; or email: *amy.mcwilliams@usda.gov.*

SUPPLEMENTARY INFORMATION:

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs in the Office of Management and Budget designated this action as a major rule, as defined by 5 U.S.C. 804(2), because it will result in an annual effect on the economy of $100,000,000 or more. Accordingly, there will be a mandatory 60-day delay in effectiveness to award loan guarantees. However, applications will be accepted for 60 days beginning March 14, 2022 as stated in the **DATES** section of this NOSA.

Overview

Federal Agency: Rural Utilities Service, USDA.

Funding Opportunity Title: Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2022.

Announcement Type: Guarantees for Bonds and Notes.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.850.

Due Date for Applications: Completed applications must be received or postmarked by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) May 13, 2022.

The Agency encourages applicants to consider projects that will promote equity and economic opportunity in rural America, specifically those that advance key priorities (more details are available at *https://www.rd.usda.gov/priority-points*):

- Assisting rural communities recover economically from the impacts of the COVID–19 pandemic, particularly disadvantaged communities;
- Ensuring all rural residents have equitable access to Rural Development (RD) programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

Items in Supplementary Information

I. Program Description

A. Purpose and Objectives of the 313A Program

The purpose of the 313A Program is to guarantee loans to selected applicants (each referred to as ''Guaranteed Lender'' in this NOSA). The proceeds of the guaranteed loans are to be used (i) to make utility infrastructure loans or (ii) to refinance bonds or notes issued for such purposes to a borrower that has at any time received, or is eligible to receive, a loan under the Rural Electrification Act of 1936, as amended (RE Act). Each applicant must provide a statement on how it proposes to use the proceeds of the guaranteed bonds,

and the financial benefit it anticipates deriving from participating in the program pursuant to 7 CFR 1720.6(a)(3), or its equivalent in any subsequent regulation. Objectives may include, but are not limited to the annual savings to be realized by the ultimate borrower(s) as a result of the applicant's use of lower cost loan funds provided by the Federal Financing Bank (FFB) and guaranteed by RUS.

The Agriculture Improvement Act of 2018 (2018 Farm Bill) modified the 313A Program by amending the RE Act to allow proceeds of guaranteed bonds awarded under this NOSA to be used to make broadband loans, or to refinance broadband loans made to a borrower that has received, or is eligible to receive, a broadband loan under Title VI of the RE Act.

The 2018 Farm Bill has also modified the 313A Program to allow the proceeds of guaranteed loans made under this NOSA to be used by the Guaranteed Lender to fund projects for the generation of electricity.

B. Statutory Authority

The 313A Program is authorized by Section 313A of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c–1), and is implemented by regulations located at 7 CFR part 1720. The Administrator of RUS (the Administrator) has been delegated responsibility for administering the 313A Program.

C. Definition of Terms

The definitions applicable to this NOSA are currently published at 7 CFR 1720.3, or its equivalent in any new regulation issued by RUS.

D. Application Awards

RUS will review and evaluate applications received in response to this NOSA based on the regulations at 7 CFR 1720.7, and as provided in this NOSA.

II. Federal Award Information

Type of Awards: Guaranteed Loans.

Fiscal Year Funds: FY 2022.

Available Funds: The agency received authority to issue $750 million in loan guarantees for this program in FY 2021 and has a pro-rata share of that amount for FY 2022 pursuant to the most recent continuing resolution. The final amount of funding for this program for FY 2022 will be determined by Congressional appropriations. Should additional funding become available this fiscal year, RUS reserves the right to increase the total funds available under this notice.

Award Amounts: RUS anticipates making multiple guarantees under this NOSA. The number, amount, and terms of awards under this NOSA will depend in part on the number of eligible applications and the amount of funds requested. In determining whether to make an award, RUS will take overall program policy objectives into account.

Due Date for Applications: Completed applications must be received or post marked by RUS no later than 5:00 p.m. Eastern Daylight Time (EDT) May 13, 2022.

Award Date: Awards will be made on or before September 30, 2022, but no earlier than May 13, 2022.

Performance Period: The Rural Electrification Act provides that loans guaranteed under this program cannot exceed 30 years in length.

Type of Assistance Instrument: The type of assistance is in the form of an RUS FFB Guaranteed Loan and is supported by a perfected lien on collateral sufficient to provide for full loan security.

Schedule of Loan Repayment: The amortization method for the repayment of the guaranteed loan shall be repaid by the Guaranteed Lender: (i) In periodic installments of principal and interest, (ii) in periodic installments of interest and, at the end of the term of the bond or note, as applicable, by the repayment of the outstanding principal, or (iii) through a combination of the methods described in (i) and (ii) above. The amortization method will be agreed to by RUS and the Guaranteed Lender.

III. Eligibility Information

A. Eligible Applicants

1. *To be eligible to participate in the 313A Program, a Guaranteed Lender must be:*

a. A bank or other lending institution organized as a private, not-for-profit cooperative association, or otherwise organized on a non-profit basis;

b. Able to demonstrate to the Administrator that it possesses the appropriate expertise, experience, and qualifications to make loans for utility infrastructure purposes (to the extent that the applicant intends to use the guaranteed loan funds for such purpose); and

c. Able to demonstrate to the Administrator that it has bonds or notes eligible for refinancing under the 313A Program (to the extent that the applicant intends to use the guaranteed loan funds for such purpose).

2. *To be eligible to receive a guarantee, a Guaranteed Lender's bond must meet the following criteria:*

a. The Guaranteed Lender must furnish the Administrator with a certified list of the principal balances of eligible loans outstanding and certify that such aggregate balance is at least equal to the sum of the proposed principal amount of guaranteed bonds to be issued, including any previously issued guaranteed bonds outstanding; and

b. The guaranteed bonds to be issued by the Guaranteed Lender would receive an underlying investment grade rating from a Rating Agency, without regard to the guarantee.

3. A lending institution's status as an eligible applicant does not assure that the Administrator will issue the guarantee sought in the amount or under the terms requested, or otherwise preclude the Administrator from declining to issue a guarantee.

B. Cost Sharing or Matching

There is no requirement for cost sharing or matching; however, borrowers must provide sufficient unencumbered collateral to secure loan guarantees made under this program.

C. Other Eligibility Requirements

Applications will only be accepted from lenders that serve rural areas defined in 7 CFR 1710.2(a) as (i) any area of the United States, its territories and insular possessions (including any area within the Federated States of Micronesia, the Marshall Islands, and the Republic of Palau) other than a city, town, or unincorporated area that has a population of greater than 20,000 inhabitants; and (ii) any area within a service area of a borrower for which a borrower has an outstanding loan as of June 18, 2008, made under titles I through V of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901–950cc–2). For initial loans to a borrower made after June 18, 2008, the ''rural'' character of an area is determined at the time of the initial loan to furnish or improve service in the area. When a non-tribal applicant is proposing to use guaranteed loan funds made available through this program, for projects on tribal lands, the application must include a resolution of support from the Tribe or Tribes within the proposed service territory of the project.

IV. Fiscal Year 2022 Application and Submission Information

A. AddressTo Request Application Package

All applications must be prepared and submitted in accordance with this NOSA and 7 CFR part 1720 (available online at *https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVII/part-1720*).

B. Content and Form of Application Submission

In addition to the required application specified in 7 CFR 1720.6, all applicants must submit the following additional required documents and materials:

1. System for Awards Management

All program applicants must be registered in the System for Awards Management (SAM) prior to submitting an application, unless determined exempt under 2 CFR 25.110. Recipients of guaranteed loans under this program must maintain an active SAM registration with current information at all times during the time they have an outstanding guaranteed loan or an application under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate, and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

2. Restrictions on Lobbying

Applicants must comply with the requirements relating to restrictions on lobbying activities. (See 2 CFR part 418.) This form is available at *https://www.gsa.gov/forms-library/disclosure-lobbying-activities.*

3. Uniform Relocation Act assurance statement

Applicants must comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. (See 7 CFR 1710.124.) This form is available at *https://www.rd.usda.gov/resources/directives/electric-sample-documents.*

4. Federal Debt Delinquency Requirements

This report indicates whether the applicants are delinquent on any Federal debt (See 7 CFR 1710.126 and 7 CFR 1710.501(a)(13)). This form (the Federal Debt Delinquency Certification) is available at *https://www.rd.usda.gov/resources/directives/electric-sample-documents.*

5. Form RD 400–4, Assurance Agreement

Applicants must submit a non-discrimination assurance commitment to comply with certain regulations on non-discrimination in program services and benefits and on equal employment opportunity as set forth in 7 CFR parts 15 and 15b and 12 CFR part 202, 7 CFR 1901, Subpart E, DR4300–003, DR4330–0300, DR4330–005. This form is available at: *http://www.rd.usda.gov/resources/directives/electric-sample-documents;* and

6. Articles of Incorporation and Bylaws

See 7 CFR 1710.501(b)(1). These are required if either document has been amended since the last loan application was submitted to RUS, or if this is the applicant's first application for a loan under the RE Act.

C. Supplemental Documents for Submission

1. Pro Forma Financial Statements Including Cash Flow Projections and Assumptions

Each applicant must include five-year pro forma income statements, balance sheets and cash flow projections or business plans and clearly state the assumptions that underlie the projections, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed loan in accordance with its terms (See 7 CFR 1720.6(a)(4)).

2. Pending Litigation Statement

A statement from the applicant's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the applicant, must be submitted to RUS.

D. Submission Dates and Times

To be considered, applications must be submitted no later than 5:00 p.m. Eastern Daylight Time (EDT) May 13, 2022.

E. Funding Restrictions

Funds from loans guaranteed under this program may only be used in accordance with this notice, the program regulations and the RE Act.

V. Application Review Information

A. Criteria

Each application will be reviewed by the Secretary to determine whether it is eligible under 7 CFR 1720.5, the information required under 7 CFR 1720.6 is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Secretary can at any time reject an application that fails to meet these requirements.

B. Review and Section Process.

1. Administrator Review

a. Applications will be subject to a substantive review, on a competitive basis, by the Administrator based upon the evaluation factors listed in 7 CFR 1720.7(b).

2. Decisions by the Administrator

The Administrator may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS will notify the applicant in writing of the Administrator's approval or denial of an application. Approvals for guarantees will be conditioned upon compliance with 7 CFR 1720.4 and 7 CFR 1720.6. The Administrator reserves the discretion to approve an application for an amount that was less than requested.

C. Independent Assessment

Before a guarantee decision is made by the Administrator, the Administrator shall request that FFB review the rating agency determination required by 7 CFR 1720.5(b)(2) as to whether the bond or note to be issued would receive an investment grade rating without regard to the guarantee.

VI. Issuance of the Guarantee

The requirements under 7 CFR 1720.8 must be met by the applicant prior to the endorsement of a guarantee by the Administrator.

VII. Guarantee Agreement

Each Guaranteed Lender will be required to enter into a Guarantee Agreement with RUS that contains the provisions described in 7 CFR 1720.8 (Issuance of the Guarantee), 7 CFR 1720.9 (Guarantee Agreement), and 7 CFR 1720.12 (Reporting Requirements). The Guarantee Agreement will also obligate the Guaranteed Lender to pay, on an annual basis, a guarantee fee equal to 30 basis points (0.30 percent) of the outstanding principal amount of the guaranteed loan (See 7 CFR 1720.10).

VIII. Federal Administration Information

Award Notices. RUS will send a commitment letter to an applicant once the guaranteed loan has been approved. Applicants must accept and commit to all terms and conditions of the guaranteed loan which are requested by RUS and FFB as follows:

1. Compliance Conditions

In addition to the standard conditions placed on the 313A Program or conditions requested by RUS to ensure loan security and statutory compliance, applicants must comply with the following conditions:

a. Each Guaranteed Lender selected under the 313A Program will be required to post collateral for the benefit of RUS in an amount at least equal to the aggregate amount of loan advances

made to the Guaranteed Lender under the 313A Program.

b. The pledged collateral (the Pledged Collateral) shall consist of outstanding notes or bonds payable to the Guaranteed Lender (the Eligible Instruments) and shall be placed on deposit with a collateral agent for the benefit of RUS. To be deemed Eligible Instruments that can be pledged as collateral, the notes or bonds to be pledged (i) cannot be classified as non-performing, impaired, or restructured under generally accepted accounting principles; special mention loans as defined by the Office of the Comptroller of the Currency; or any other elevated risk categories used by the Guaranteed Lender, (ii) must be free and clear of all liens other than the lien created for the benefit of RUS, (iii) cannot be comprised of more than 30 percent of bonds or notes from generation and transmission borrowers, (iv) cannot have more than 5 percent of notes and bonds be from any one particular borrower and (v) cannot be unsecured notes.

c. The Guaranteed Lender will be required to place a lien on the Pledged Collateral in favor of RUS (as secured party) at the time that the Pledged Collateral is deposited with the collateral agent. RUS will have the right, in its sole discretion, within 14 business days of the Guaranteed Lender's written request to pledge Pledged Collateral, to reject any of the Pledged Instruments and require the Guaranteed Lender to substitute other Pledged Instruments as collateral with the collateral agent. Prior to receiving any advances under the 313A Program, the Guaranteed Lender will be required to enter into a pledge agreement, satisfactory to RUS, with a banking institution serving as collateral agent.

d. The Guaranteed Lender will be required to agree not to take any action that would have the effect of reducing the value of the pledged collateral below the level described above.

e. Applicants must certify to the RUS, the portion of their loan portfolio that is:

(1) Refinanced RUS debt;

(2) Debt of borrowers for whom both RUS and the applicants have outstanding loans; and

(3) Debt of borrowers for whom both RUS and the applicant have outstanding concurrent loans pursuant to Section 307 of the RE Act, and the amount of Eligible Loans.

2. Compliance With Federal Laws

Applicants must comply with all applicable Federal laws and regulations.

a. This loan guarantee will be subject to the provisions contained in the appropriations act for FY 2022, once enacted by Congress. Prior appropriations acts have included prohibitions against RUS making awards to applicants having corporate felony convictions within the past 24 months or to applicants having corporate federal tax delinquencies. It is possible that such a provision will be included in the appropriations act for FY 2022.

b. An authorized official within your organization must execute, date, and return the loan commitment letter and the Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants (Form AD–3031) to RUS within 14 calendar days from the date of the loan commitment letter, or by September 26, 2022, if the loan is approved after September 12, 2022; otherwise, the commitment will be void. This form is available at *https://www.ocio.usda.gov/document/ad3031.*

c. Uniform Commercial Code (UCC) Filing. The Borrower must provide RUS with evidence that the Borrower has filed the UCC financing statement required by 7 CFR 1720.8(a)(2). Upon filing of the appropriate UCC financing statement, the Guaranteed Lender will provide RUS with a perfection opinion by outside counsel which demonstrates that RUS's security interest in the pledged collateral under the Pledge Agreement is perfected.

d. Additional conditions may be instituted for future obligations.

3. Reporting Requirements

Guaranteed Lenders are required to comply with the financial reporting requirements and Pledged Collateral review and certification requirements set forth in 7 CFR 1720.12.

IX. National Environmental Policy Act Certification

For any proceeds to be used to refinance bonds and notes previously issued by the Guaranteed Lender for RE Act purposes that are not obligated for specific projects, RUS has determined that these financial actions will not individually or cumulatively have a significant effect on the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR parts 1500–1508. However, for any new projects funded through the 313A Program, applicants must consult with RUS and comply with the Agency regulations at 7 CFR part 1970.

X. Other Information and Requirements

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), OMB must approve all ''collection of information'' as a requirement for ''answers to *** identical reporting or recordkeeping requirements imposed on ten or more persons *** '' (44 U.S.C. 3502(3)(A).) RUS has concluded that the reporting requirements contained in this rule/funding announcement will involve less than 10 persons and do not require approval under the provisions of the Act.

Applications must contain all the required elements of this NOSA, and all standard requirements as required by 7 CFR part 1720. Additional supporting data or documents may be required by RUS depending on the individual application or financial conditions. All applicants must comply with all Federal laws and regulations.

XI. Agency Contacts

A. *Website: https://www.rd.usda.gov/contact-us/national-office/rus.*

B. *Phone:* (202) 720–9540.

C. *Email: amy.mcwilliams@usda.gov.*

D. *Main point of contact:* Amy McWilliams, Program Advisor; Phone: (202) 205–8663.

XII. USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, 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/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.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600

(voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ocio.usda.gov/document/ad-3027,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Authority: 7 U.S.C. 940c–1.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 2022–05238 Filed 3–11–22; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Massachusetts Advisory Committee

AGENCY: 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 (FACA), that a meeting of the Massachusetts Advisory Committee to the Commission will convene by conference call on Thursday, March 24, 2022, at 2:00 p.m. (ET). The purpose of the meeting is to discuss the next civil rights project.

DATES: Thursday, March 24, 2022, at 2:00 p.m. (ET).

Public WebEx Conference Link (video and audio): https://tinyurl.com/sp6atz8m.

To Join by Phone Only: Dial 1–800–360–9505; Access code: 2762 179 4933#.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor at *ero@usccr.gov* or by phone at 202–921–2212.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Barbara Delaviez at *ero@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the *www.facadatabase.gov.* Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda: Thursday, March 24, 2022; 2:00 p.m. (ET)

1. Roll call
2. Concept Gate and Next Steps
3. Public Comment
4. Other Business
5. Adjourn

Dated: March 8, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–05239 Filed 3–11–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; National Sample Survey of Registered Nurses

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act (PRA) of 1995, 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 on the proposed reinstatement, with change, of National Sample Survey of Registered Nurses (NSSRN), prior to the submission of the information collection request (ICR) to OMB for approval.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before May 13, 2022.

ADDRESSES: Interested persons are invited to submit written comments by email to *addp.nssrn@census.gov.* Please reference National Sample Survey of Registered Nurses (NSSRN) in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2022–0006, to the Federal e-Rulemaking Portal: *http://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Daniel Doyle, Assistant Survey Director, (301) 763–5304, and *daniel.p.doyle@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Sponsored by the U.S. Department of Health and Human Services' (HHS') Health Resources Services Administration's (HRSA) National Center for Health Workforce Analysis (NCHWA), the National Sample Survey of Registered Nurses (NSSRN) is conducted to assist in fulfilling the Congressional mandates of the Public Health Service Act. Under 42 U.S.C. Section 294n(b)(2)(A), the Secretary of Health and Human Services (the Secretary) must establish a National Center for Health Workforce Analysis

responsible for the development of information describing and analyzing the health care workforce and workforce related issues as well as to provide necessary information for decision-making regarding future directions in health professions and nursing programs in response to societal and professional needs. In addition, under another provision of the Public Health Service Act, 42 U.S.C. Section 295k(a)–(b), the Secretary is required to establish ''a program, including a uniform health professions data reporting system, to collect, compile, and analyze data on health professions personnel.'' Under this same provision, the Secretary may expand the program to include, whenever determined necessary, ''the collection, compilation, and analysis of data . . . health care administration personnel, nurses, allied health personnel . . . in States designated by the Secretary to be included in the program.'' The NSSRN is designed to obtain the necessary data to determine the characteristics and distribution of Registered Nurses (RNs) throughout the United States, as well as emerging patterns in their employment characteristics. These data will provide the means for the evaluation and assessment of the evolving demographics, educational qualifications, and career employment patterns of RNs, consistent with the goals of congressional mandates of the Public Health Service Act found in 42 U.S.C. Section 294n(b)(2)(A) and Section 295k(a)–(b). Such data have become particularly important for the need to better understand workforce issues given the recent dynamic change in the RN population and, the transformation of the healthcare system.

NSSRN is seeking clearance to make the following changes:

- Increased sample size—The 2022 NSSRN plans to sample 125,000 RNs compared with 100,000 RNs in the 2018 NSSRN. The increased sample will allow for the potential to have more nursing estimates released. The 125,000 RNs will be selected from a sampling frame compiled from files provided by the State Boards of Nursing and the National Council of the State Boards of Nursing (NCSBN). These files constitute a sampling frame of all RNs licensed in the 50 States and the District of Columbia. Sampling rates are set for each state based on considerations of statistical precision of the estimates and the costs involved in obtaining reliable national and state-level estimates.
- Unconditional incentive—The NSSRN will experiment with unconditional monetary incentives for the 2022 cycle, with 90% of the sample receiving $5 with an initial web invitation letter. The intention of the monetary incentive is to test the efficacy of reducing nonresponse bias by encouraging response, that is, whether offering $5 increases response, thus reducing non-response bias and reducing costs associated with follow-up mailings. The unconditional monetary incentive will be randomly assigned to 90% of the sample prior to data collection.
- Revised questionnaire content—There are modifications to the questionnaire which include removing items, modifying existing items and adding new content for the 2022 NSSRN. There is a new set of questions that will evaluate nursing during the coronavirus pandemic. The new content has been cognitively tested and final content decisions are still being discussed. The final set of proposed new and modified content will be included in the full OMB ICR for the 2022 NSSRN.

Besides the proposed changes listed above, the 2022 NSSRN will make modifications to data collection strategies. Results from the prior survey cycle will be used to inform the decisions.

From the prior cycle of the NSSRN, using American Association for Public Opinion Research definitions of response, we can expect for the 2022 NSSRN a response rate of 50%.

II. Method of Collection

Web push is the data collection design for the 2022 NSSRN. All 125,000 RNs will receive an initial invitation letter with instructions on how to complete the questionnaire via the web. Ninety percent (112,500) of the sampled RNs will receive a $5 unconditional monetary incentive with the initial invitation, ten percent (12,500) of sampled RNs will not receive a monetary incentive. The experimental design will test the efficacy of monetary incentives on this population. No additional incentives are planned for subsequent follow-up mailings.

Following the initial invitation letter, two additional web invitations, two reminder pressure sealed postcards and one paper questionnaire mailing will be mailed. Similar to the 2018 NSSRN, the 2022 NSSRN will have a Telephone Questionnaire Assistance (TQA) line available. TQA staff will not only be able to answer respondent questions and concerns, but also will be able to collect survey responses over the phone, using an administrative access to the web instrument, if the respondent calls in and would like to have interviewer assistance in completing the interview.

III. Data

OMB Control Number: 0607–1002.

Form Number(s): NSSRN.

Type of Review: Regular submission, Request for a Reinstatement, with Change, of a Previously Approved Collection.

Affected Public: Nursing populations, researchers, policy makers.

Estimated Number of Respondents: 62,500.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 31,250.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: Census Authority: 13 U.S.C. Section 8(b).

HRSA Authority: Public Health Service Act, 42 U.S.C. Section 294n(b)(2)(A) and 42 U.S.C. Section 295k(a)–(b).

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. 2022–05347 Filed 3–11–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–913]

Oil Country Tubular Goods From the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of oil country tubular goods (OCTG) from the Republic of Korea (Korea). The period of investigation is January 1, 2020, through December 31, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 14, 2022.

FOR FURTHER INFORMATION CONTACT: Jacob Garten or Paul Litwin, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3342 or (202) 482–6002, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on November 1, 2021.[1] On November 30, 2021, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now March 7, 2022.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The product covered by this investigation is OCTG from Korea. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice. See* revised scope in Appendix I.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[7]

Alignment

As noted in the Preliminary Decision Memorandum, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final countervailing duty (CVD) determination in this investigation with the final determination in the companion antidumping duty (AD) investigations of OCTG from Argentina, Mexico, and the Russian Federation based on a request made by the petitioners.[8] Consequently, the final CVD determination will be issued on the same date as the final AD determinations, which are currently scheduled to be issued no later than July 18, 2022, unless postponed.

Preliminary Determination

For this preliminary determination, Commerce calculated zero or *de minimis* estimated countervailable subsidies for all individually examined producers/exporters of the subject merchandise. Consistent with section 703(b)(4)(A) of the Act, Commerce has disregarded the zero and *de minimis* rates. Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

Company	Subsidy rate (percent)
Hyundai Steel Corporation	0.17 (*de minimis*).
SeAH Steel Corporation[9]	0.00.

Consistent with section 703(d) of the Act, Commerce has not calculated an estimated weighted-average subsidy rate for all other producers/exporters because it has not made an affirmative preliminary determination.

Suspension of Liquidation

Because Commerce preliminarily determines that no countervailable subsidies are being provided to the production or exportation of subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation of any such entries.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

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[1] *See Oil Country Tubular Goods from the Republic of Korea and the Russian Federation: Initiation of Countervailing Duty Investigations,* 86 FR 60210 (November 1, 2021) (*Initiation Notice*).

[2] *See Oil Country Tubular Goods from the Republic of Korea and the Russian Federation: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* 86 FR 67909 (November 30, 2021).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination of the Countervailing Duty Investigation of Oil Country Tubular Goods from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 86 FR at 60210–11.

[6] *See* Memorandum, ''Antidumping Duty Investigations of Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation and Countervailing Duty Investigations of Oil Country Tubular Goods from the Republic of Korea, and the Russian Federation: Preliminary Scope Decision Memorandum,'' dated March 7, 2022 (Preliminary Scope Decision Memorandum).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[8] *See* Petitioners' Letter, ''Petitioners' Request to Extend Preliminary Determinations and Align the Countervailing Duty Investigations with the Concurrent Less-Than-Fair-Value Investigations,'' dated February 10, 2022.

[9] As discussed in the Preliminary Decision Memorandum, Commerce has found the following company to be cross-owned with SeAH Steel Corporation: SeAH Steel Holding Corporation.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel restrictions in response to the global COVID–19 pandemic, Commerce is unable to conduct on-site verification in this investigation. Accordingly, we intend to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. A timeline for the submission of case briefs and written comments will be notified to interested parties at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs after the deadline date for case briefs.[10] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine 75 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: March 7, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than case iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of this investigation also covers OCTG coupling stock.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by performing any heat treatment, cutting, upsetting, threading, coupling, or any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the OCTG.

Excluded from the scope of the investigation are: Casing, tubing, or coupling stock containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050, 7304.29.2060, 7304.29.2080, 7304.29.3110, 7304.29.3120, 7304.29.3130, 7304.29.3140, 7304.29.3150, 7304.29.3160, 7304.29.3180, 7304.29.4110, 7304.29.4120, 7304.29.4130, 7304.29.4140, 7304.29.4150, 7304.29.4160, 7304.29.4180, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6115, 7304.29.6130, 7304.29.6145, 7304.29.6160, 7304.29.6175, 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.29.1030, 7306.29.1090, 7306.29.2000, 7306.29.3100, 7306.29.4100, 7306.29.6010, 7306.29.6050, 7306.29.8110, and 7306.29.8150.

The merchandise subject to this investigation may also enter under the following HTSUS item numbers: 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.39.0076, 7304.39.0080, 7304.59.6000, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, 7304.59.8070, 7304.59.8080, 7305.31.4000, 7305.31.6090, 7306.30.5055, 7306.30.5090, 7306.50.5050, and 7306.50.5070.

The HTSUS subheadings and specifications above are provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–05334 Filed 3–11–22; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–821–834]

Oil Country Tubular Goods From the Russian Federation: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of oil country tubular goods (OCTG) from the Russian Federation (Russia) for the period of investigation (POI) January 1, 2020, through December 31, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable March 14, 2022.

FOR FURTHER INFORMATION CONTACT: Brontee Jeffries or Theodore Pearson,

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) 482–4645 or (202) 482–2631, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on November 1, 2021.[1] On November 23, 2021, Commerce postponed the preliminary determination of this investigation to March 7, 2022.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are OCTG from Russia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this preliminary determination and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] Commerce is preliminarily modifying the scope language as it appeared in the *Initiation Notice, see* Appendix I.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[7] For a full description of the methodology underlying our preliminary conclusions, *see* the Preliminary Decision Memorandum.

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that the Government of Russia did not act to the best of its ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.[8] For further information, *see* ''Use of Facts Otherwise Available and Adverse Inferences'' in the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), and based on the petitioners' request,[9] we are aligning the final CVD determination in this investigation with the final determination in the companion AD investigations of OCTG from Argentina, Mexico, Korea, and Russia. Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than July 18, 2022, unless postponed.

Preliminary Negative Determination of Critical Circumstances

The petitioners alleged, based on publicly available trade statistics, that there is a reasonable basis to believe or suspect that critical circumstances exist regarding imports of OCTG.[10] Based on monthly shipment information requested from the mandatory respondents, Commerce is preliminarily determining that critical circumstances do not exist within the meaning of section 703(e)(1) of the Act. For further information, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 703(d)(1)(A)(i) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. Pursuant to section 705(c)(5)(A)(i) of the Act, this rate shall normally be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis,* or rates based entirely under section 776 of the Act.

We preliminarily calculated individual estimated countervailable subsidy rates for TMK Group (TMK) and United Metallurgical Company and Vyksa Steel Works (collectively, OMK) that are not zero, *de minimis,* or based entirely on facts otherwise available. Commerce calculated the all-others rate using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged values for the merchandise under consideration.[11]

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[1] *See Oil Country Tubular Goods From the Republic of Korea and the Russia Federation: Initiation of Countervailing Duty Investigations,* 86 FR 60210 (November 1, 2021).

[2] *See Oil Country Tubular Goods from the Republic of Korea and the Russian Federation: Postponement of Preliminary Determinations in the Countervailing Duty Investigations,* (November 23, 2021).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination and Preliminary Negative Critical Circumstances Determination in the Countervailing Duty Investigation of Oil Country Tubular Goods from the Russian Federation,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 86 FR at 60210–11.

[6] *See* Memorandum, ''Antidumping Duty Investigations of Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation and Countervailing Duty Investigations of Oil Country Tubular Goods from the Republic of Korea, and the Russian Federation: Preliminary Scope Decision Memorandum,'' dated March 7, 2022 (Preliminary Scope Decision Memorandum).

[7] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[8] *See* sections 776(a) and (b) of the Act.

[9] *See* Petitioners' Letter, ''Oil Country Tubular Goods from Argentina, Mexico, Russia, and the Republic of Korea: Petitioners' Request to Extend Preliminary Determinations and Align the Countervailing Duty Investigations with the Concurrent Less-Than-Fair-Value Investigations,'' dated February 10, 2022.

[10] *See* Petitioners' Letter, ''Oil Country Tubular Goods from the Russian Federation: Critical Circumstances Allegation,'' dated February 15, 2022.

[11] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results*

Preliminary Determination

Commerce preliminary determines that the following estimated countervailable subsidy rates exist:

Manufacturer/exporter	Subsidy rate (percent *ad valorem*)
Volzhsky Pipe Plant, Joint Stock Company; Sinarsky Pipe Plant, Joint Stock Company; Seversky Pipe Plant, Joint Stock Company; Taganrog Metallurgical Plant, Joint Stock Company; Orsky Machine Building Plant, Joint Stock Company; and PAO TMK [12]	1.37
JSC Vyksa Steel Works [13]	1.68
All Others	1.53

Suspension of Liquidation

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel restrictions in response to the global COVID–19 pandemic, Commerce is unable to conduct on-site verification in this investigation. Accordingly, we intend to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[14] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[15] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date and time of the hearing two days before the scheduled date.

International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If Commerce's final determination is affirmative, the ITC will make its final injury determination before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: March 7, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than case iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products),

of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part, 75 FR 53661, 53663 (September 1, 2010). *See also Forged Steel Fluid End Blocks from Italy: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination with Final Antidumping Duty Determination,* 85 FR 31460, 31461 (May 26, 2020) (unchanged in *Forged Steel Fluid End Blocks from Italy: Final Affirmative Countervailing Duty Determination,* 85 FR 80022, 80023 (December 11, 2020)).

[12] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Volzhsky Pipe Plant: TMK Neftegasservice-Nizhnevartovsk, Joint Stock Company; TMK Neftegasservice-Buzuluk, Limited Liability Company; Russian Research Institute of the Tube & Pipe Industries, JSC; and Scientific and Technical Center TMK, LLC.

[13] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with JSC Vyska Steel Works: BusinessOptima; Metallolomaya Company OMK—Ecometall; United Metallurgical Company; and Joint-Stock Company Trubodetal.

[14] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements); *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (*Temporary Rule*); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule Extension*).

[15] *See Temporary Rule; see also Temporary Rule Extension.*

whether or not thread protectors are attached. The scope of this investigation also covers OCTG coupling stock.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by performing any heat treatment, cutting, upsetting, threading, coupling, or any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the OCTG.

Excluded from the scope of the investigation are: Casing, tubing, or coupling stock containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050, 7304.29.2060, 7304.29.2080, 7304.29.3110, 7304.29.3120, 7304.29.3130, 7304.29.3140, 7304.29.3150, 7304.29.3160, 7304.29.3180, 7304.29.4110, 7304.29.4120, 7304.29.4130, 7304.29.4140, 7304.29.4150, 7304.29.4160, 7304.29.4180, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6115, 7304.29.6130, 7304.29.6145, 7304.29.6160, 7304.29.6175, 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.29.1030, 7306.29.1090, 7306.29.2000, 7306.29.3100, 7306.29.4100, 7306.29.6010, 7306.29.6050, 7306.29.8110, and 7306.29.8150.

The merchandise subject to this investigation may also enter under the following HTSUS item numbers: 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.39.0076, 7304.39.0080, 7304.59.6000, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, 7304.59.8070, 7304.59.8080, 7305.31.4000, 7305.31.6090, 7306.30.5055, 7306.30.5090, 7306.50.5050, and 7306.50.5070.

The HTSUS subheadings and specifications above are provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Injury Test
IV. Preliminary Negative Determination of Critical Circumstances
V. Scope of the Investigation
VI. Use of Facts Otherwise Available and Application of Adverse Inferences
VII. Subsidies Valuation
VIII. Interest Rate Benchmarks, Discount Rates, and Natural Gas Benchmark
IX. Analysis of Programs
X. Recommendation

[FR Doc. 2022–05333 Filed 3–11–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB865]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a four-day meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ). This is a hybrid meeting open to the public offering both in-person and virtual options for participation.

DATES: The meeting will convene Monday, April 4 at 8 a.m. through 5:30 p.m., CDT and Tuesday, April 5 at 8 a.m. through Thursday, April 7, 2022 at 5 p.m., CDT.

ADDRESSES: The meeting will take place at The Lodge at Gulf State Park, 21196 East Beach Boulevard, Gulf Shores, AL 36542.

Please note, in-person meeting attendees will be expected to follow any current COVID–19 safety protocols as determined by the Council, hotel and the City of Gulf Shores. Such precautions may include masks, room capacity restrictions, and/or social distancing. If you prefer to ''listen in'', you may access the log-on information by visiting our website at *www.gulfcouncil.org.*

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Monday, April 4, 2022; 8 a.m.–5:30 p.m., CDT

The meeting will begin with the Administrative/Budget Committee reviewing 2022 Anticipated Activities, Budget and 2021 Funded Expenditures, and discuss Electronic Voting Process and available technology for Council and Council Bodies.

The Ecosystem Committee will review and discuss contracted Draft Fishery Ecosystem Plan, and receive a meeting summary from the Ecosystem Technical Committee meeting.

The *Mackerel* Committee will review and discuss *Coastal Migratory Pelagics* Landings, Draft Framework Amendment 11: Modifications to the Gulf of Mexico *Migratory Group King Mackerel* Catch Limits, Final Action: Draft Amendment 34: *Atlantic Migratory Group King Mackerel* Catch Levels and Atlantic King and Spanish Mackerel Management Measures, and Other Business: Discussion *Gulf King Mackerel* Southern Zone Gillnet Fishing Restriction on Weekends.

The *Shrimp* Committee will receive the Biological Review of the Texas Closure; receive update on Current *Shrimp* Vessel Position Data Collection, a summary from the *Shrimp* Advisory Panel Meeting, update on Council Request for Proposals to Address Expanded Sampling of the Fleet for Effort Monitoring in the *Gulf Shrimp* Industry, and SSC Recommendations on Development and Process of Using Empirical Dynamic Models on Brown and White Shrimp.

At approximately 2:45 p.m. until 5:30 p.m., the Council will convene the Full Council in a Closed Session to review and discuss the selection of Individual Fishing Quotas (IFQ) Focus Group Participants, *Coral,* Data Collection, and *Spiny Lobster* Advisory Panel Members, and select the 2021 Law Enforcement Officer of the Year or Team of the Year.

Tuesday, April 5, 2022; 8 a.m.–5 p.m., CDT

The *Reef Fish* Committee will convene to review *Reef Fish* Landings and Individual Fishing Quota (IFQ) Landings, and Federal For-hire Season Projection. The Committee will review the *Red Snapper* Private Recreational Component 2021 Landings Summary and 2022 Season Projections, and Draft Options: Gulf of Mexico *Greater Amberjack* Catch Limits, Sector Allocations, and other Rebuilding Plan Modifications. The Committee will review the revised Great *Red Snapper* Count Estimates and SSC Recommendations for *Red Snapper* Catch Advice.

Following lunch, the Committee will receive a presentation and hold a discussion on the Gulf of Mexico *Gag Grouper* Interim Rule, State *Reef Fish* Survey (SRFS) Calibration, and Interim Analysis. The Committee will hold an SSC discussion of Limited Access Privilege Programs in Mixed-use Fisheries, Focus Group Formation and Next Steps Individual Fishing Quota (IFQ) Programs, and review of the Gulf

Red Grouper Interim Analysis Health Status and SSC Recommendations.

Immediately following the *Reef Fish* Committee, there will be a virtual and in-person GMFMC and NOAA Question and Answer Session.

Wednesday, April 6, 2022; 8 a.m.–5 p.m., CDT

The Data Collection Committee will review Draft Framework Action: Modification to Location Reporting Requirements for For-Hire Vessels, receive updates on Southeast For-Hire Integrated Electronic Reporting (SEFHIER) Program, NMFS–SERO Permits office Use of Council Funding, and upcoming Workshop to Evaluate State-Federal Recreational Survey Differences.

The Sustainable Fisheries Committee will review Final Action: Framework Action: Historical Captain Permit Conversion and discuss Allocation Review Framework.

Following lunch at approximately 1:30 p.m., the Council will reconvene with a Call to Order, Announcements and Introductions, Adoption of Agenda and Approval of Minutes.

The Council will receive presentations on Gulf of Mexico Renewable Energy and Understanding Population Dynamics of Adult Red Drum.

The Council will hold public testimony from 2:30 p.m. to 5 p.m., CDT on Final Action Items: Draft Amendment 34: Atlantic Migratory Group *King Mackerel* Catch levels and *Atlantic King* and *Spanish Mackerel* Management Measures and Framework Action: Historical Captain Permit Conversion; and open testimony on other fishery issues or concerns. Public comment may begin earlier than 2:30 p.m. CDT, but will not conclude before that time. Persons wishing to give public testimony in-person must register at the registration kiosk in the meeting room. Persons wishing to give public testimony virtually must sign up on the Council website on the day of public testimony. Registration for virtual testimony closes one hour (1:30 p.m. CDT) before public testimony begins.

Thursday, April 7, 2022; 8 a.m.–5 p.m., CDT

The Council will receive Committee reports from Administrative Budget, Ecosystem, *Shrimp, Mackerel,* Data Collection, *Reef Fish* and Sustainable Fisheries Management Committees; and, a Closed Session report. The Council will receive updates from the following supporting agencies: South Atlantic Fishery Management Council; Alabama Law Enforcement Efforts; NOAA Office of Law Enforcement (OLE); Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and Department of State.

The Council will discuss any Other Business items.

—Meeting Adjourns

The meeting will be a hybrid meeting; both in-person and virtual participation available. You may register for the webinar to listen-in only by visiting *www.gulfcouncil.org* and click on the Council meeting on the calendar.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meeting. Actions will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid or accommodations should be directed to Kathy Pereira, (813) 348–1630, at least 15 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 8, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–05263 Filed 3–11–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB880]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) will hold a public meeting of its Mackerel, Squid, and Butterfish (MSB) Committee. See **SUPPLEMENTARY INFORMATION** for agenda details.

DATES: The meeting will be held on Monday, March 28, 2022, from 1 p.m. until 4:30 p.m.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the calendar prior to the meeting at *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Council's Mackerel, Squid, and Butterfish (MSB) Committee will develop recommendations for the Council regarding 2022 *Illex* specifications and Atlantic mackerel rebuilding alternatives after reviewing input from the Council's Scientific and Statistical Committee (SSC), MSB Monitoring Committee, MSB Advisory Panel, and staff.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Shelley Spedden, (302) 526–5251, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 8, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–05264 Filed 3–11–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB826]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold a

meeting of its Law Enforcement Technical Committee (LETC).

DATES: The meeting will convene on Wednesday, March 30, 2022, from at 10 a.m. to 12 p.m., EDT in CLOSED SESSION.

ADDRESSES: The meeting will be held virtually. Please visit the Gulf Council website at *www.gulfcouncil.org* for meeting materials and webinar registration information.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348–1630.

FOR FURTHER INFORMATION CONTACT: Dr. Ava Lasseter, Anthropologist, Gulf of Mexico Fishery Management Council; *ava.lasseter@gulfcouncil.org,* telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Wednesday, March 30, 2022; Beginning at 10 a.m. Until 12 p.m., EDT

Meeting will be in a CLOSED SESSION with introductions and review of nominations for the 2021 Officer/Team of the Year Award, followed by a discussion of the Council process for federal fishing violation checks. There will be no report out to the public on these items until the Gulf of Mexico Fishery Management Council discusses these recommendations at a future Council meeting. After that time, any decisions on the 2021 Officer/Team of the Year Award and proposed changes to the Statement of Organization Practices and Procedures (SOPPs) addressing the process for conducting federal fishing violations will be discussed in open Council session.

Meeting Adjourns.

The Agenda is subject to change, and the latest version along with other meeting materials will be posted on *www.gulfcouncil.org.*

The Law Enforcement Technical Committee consists of principal law enforcement officers in each of the Gulf States, as well as the NOAA Office of Law Enforcement, U.S. Fish and Wildlife Service and the NOAA Office of General Counsel for Law Enforcement.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take-action to address the emergency.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 8, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–05265 Filed 3–11–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Draft Revised Management Plan for the Rookery Bay National Estuarine Research Reserve

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Request for comments on draft revised management plan.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is soliciting comments from the public regarding a proposed revision of the management plan for the Rookery Bay National Estuarine Research Reserve. A management plan provides a framework for the direction and timing of a reserve's programs; allows reserve managers to assess a reserve's success in meeting its goals and to identify any necessary changes in direction; and is used to guide programmatic evaluations of the reserve. Plan revisions are required of each reserve in the National Estuarine Research Reserve System at least every five years. This revised plan is intended to replace the plan approved in 2012.

DATES: Comments are due by April 13, 2022.

ADDRESSES: The draft revised management plan is available at: *http://publicfiles.dep.state.fl.us/CAMA/plans/Rookery/Bay/NERR/Mgmt/Plan/DRAFT/220127.pdf,* or by emailing Matt Chasse of NOAA's Office for Coastal Management at *matt.chasse@noaa.gov.*

Submit comments by the following method:

Electronic Submission: Submit all electronic public comments by email to *matt.chasse@noaa.gov.* Include ''Comments on the draft Rookery Bay Management Plan'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Matt Chasse of NOAA's Office for Coastal Management, by email at *matt.chasse@noaa.gov,* phone at 240–628–5417.

SUPPLEMENTARY INFORMATION:

Pursuant to 15 CFR 921.33(c), a state must revise the management plan for the research reserve at least every five years. If approved by NOAA, the Rookery Bay Reserve's revised plan will replace the plan previously approved in 2012.

The draft revised management plan outlines the reserve's strategic goals and objectives; administrative structure; programs for conducting research and monitoring, education, and training; resource protection, restoration, volunteer, and communications plans; prescribed fire and invasive species plans; consideration for future land acquisition; and facility development to support reserve operations. In particular, this draft revised management plan focuses on building upon past successes and accomplishments. Research and monitoring will focus on habitat mapping, wildlife communities, resource management and restoration, coastal change and resilience, and ecosystem services. Reserve education programming will focus on informed community and individual action as related to ecosystems, human connections, resilience, and outreach. The reserve is also planning on enhancing the use of technology in education programming and on building a robust interpretation program with volunteer staff. Coastal training will continue offering programs to professional audiences and conduct an updated needs assessment. The plan also includes the reserve monitoring the health of fish and bird communities, invasive species control efforts, and the use of prescribed fire as a management tool. In addition, the reserve is expecting to expand its strategic partnership with Florida International University.

Since 2012, the reserve has developed a map of reserve habitats, installed surface elevation tables in the Henderson Creek area to support the sentinel site program, and continued a host of habitat and species monitoring programs. The reserve has conducted projects that assess and value freshwater within the reserve supporting the Collier County watershed improvement plans and mangrove habitat restoration efforts. A new partnership with Florida International University is supporting reserve staffing needs and various research projects. Mangrove and research symposiums hosted by the reserve highlighted the diversity of reserve activities and partnerships. Post

Hurricane Irma, the reserve has rebuilt the Ten Thousand Islands field station and other infrastructure to be more resilient to future extreme storm impacts. Furthermore, no reserve boundary changes are incorporated into the revised management plan. The revised management plan, once approved, would serve as the guiding document for the 110,000-acre research reserve for the next five years.

NOAA's Office for Coastal Management analyzes the environmental impacts of the proposed approval of this draft revised management plan in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(2)(C), and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1500–1508). The public is invited to comment on the draft revised management plan. NOAA will take these comments into consideration in deciding whether to approve the draft revised management plan in whole or in part.

(Authority: 16 U.S.C. 1451 *et seq.;* 15 CFR 921.33)

Keelin S. Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–05277 Filed 3–11–22; 8:45 am]

BILLING CODE 3510–NK22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Service Criminal History Check Recordkeeping Requirement

AGENCY: The Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by May 13, 2022.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* AmeriCorps, Attention: Elizabeth Appel, Office of General Counsel, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.gov.*

Comments submitted in response to this notice may be made available to the public through *regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Associate General Counsel, 202–967–5070 or by email at *eappel@cns.gov.*

SUPPLEMENTARY INFORMATION: *Title of Collection:* National Service Criminal History Check Recordkeeping Requirement.

OMB Control Number: 3045–0150.

Type of Review: Renewal.

Respondents/Affected Public: Businesses and organizations (AmeriCorps grantees and subgrantees).

Total Estimated Number of Annual Responses: 337,071.

Total Estimated Number of Annual Burden Hours: 28,089.

Abstract: Section 189D of the National and Community Service Act of 1990, as amended, requires AmeriCorps grantees and subgrantees to conduct a National Service Criminal History Check on individuals in covered positions. Documenting compliance with the requirement is critical to that responsibility. The currently approved information collection is due to expire on July 31, 2022. This notice announces AmeriCorps' intention to seek renewal of the information collection approval.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov.*

Dated: March 9, 2022.

Fernando Laguarda,

General Counsel.

[FR Doc. 2022–05320 Filed 3–11–22; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Application Package for Request for Medical or Religious Reasonable Accommodation

AGENCY: The Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing a new information collection.

DATES: Written comments must be submitted to the individual and office

listed in the **ADDRESSES** section by May 13, 2022.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* AmeriCorps, Attention Civil Rights Director, 250 E Street SW, Washington, DC 20525.

(2) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except federal holidays.

(3) Electronically through *www.regulations.gov.*

Comments submitted in response to this notice may be made available to the public through *regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Lisa Gray, 202–308–9304, or by email at *LiGray@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Request for Reasonable Accommodation.

OMB Control Number: TBD. Type of Review: New.

Respondents/Affected Public: Federal Employees, applicants for employment, service members and volunteers, and service member and volunteer applicants.

Total Estimated Number of Annual Responses: 100.

Total Estimated Number of Annual Burden Hours: 100.

Abstract: The purpose of the information collection is to obtain information from persons who request a reasonable accommodation, so that AmeriCorps is able to determine whether such a request will be granted or denied under applicable laws and regulations.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov*.

Dated: March 9, 2022.

Lisa Gray,

Acting Director of Civil Rights.

[FR Doc. 2022–05297 Filed 3–11–22; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF ENERGY

Basic Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces a meeting of the Basic Energy Sciences Advisory Committee (BESAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, April 5, 2022, 11:00 a.m. to 5:00 p.m.

ADDRESSES: This meeting is open to the public. This meeting will be held digitally via Zoom. Information to participate can be found on the website closer to the meeting date at: *https://science.osti.gov/bes/besac/Meetings.*

FOR FURTHER INFORMATION CONTACT: Kerry Hochberger; Office of Basic Energy Sciences; U.S. Department of Energy; Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585; Telephone: (301) 903–7661 or email: *kerry.hochberger@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of this Board is to make recommendation to DOE–SC with respect to the basic energy sciences research program.

Tentative Agenda:

- Call to Order, Introductions, Review of the Agenda
- News from the Office of Science
- News from the Office of Basic Energy Sciences
- JCESR: Scientific Progress and Technological Impact
- Plant Research Laboratory: Fundamental Mechanisms of Photosynthesis Presentation
- Roundtable on Foundational Science for Carbon Dioxide Removal Technologies Presentation
- Panel Discussion: NSF Indicators/ Updates on Diversity Equity and Inclusion
- Public Comments
- Adjourn

Breaks taken as appropriate.

Public Participation: The meeting is open to the public. A webcast of this meeting will be available. Please check the website below for updates and information on how to view the meeting. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Kerry Hochberger at *kerry.hochberger@science.doe.gov.* You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule. Information about the committee can be found at: *https://science.osti.gov/bes/besac.*

Minutes: The minutes of this meeting will be available for public review on the U.S. Department of Energy's Office of Basic Energy Sciences website at: *https://science.osti.gov/bes/besac/Meetings.*

Signed in Washington, DC, on March 9, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–05335 Filed 3–11–22; 8:45 am]

BILLING CODE 6450–01–P

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: ER10–1410–005; ER10–1823–003; ER16–1750–008; ER20–2768–003; ER20–2123–003; ER17–2381–005; ER17–2292–006; ER16–2601–006; ER19–1656–005.

Applicants: Wilkinson Solar LLC, Summit Farms Solar, LLC, Southampton Solar, LLC, Scott-II Solar LLC, Hardin Solar Energy LLC, Greensville County Solar Project, LLC, Eastern Shore Solar LLC, Dominion Energy Marketing, Inc., Virginia Electric and Power Company.

Description: Dominion Energy Services, Inc. submits Supplemental Information to the March 1, 2022 Compliance Filing.

Filed Date: 3/4/22.

Accession Number: 20220304–5295.

Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER10–1484–025; ER12–2381–011; ER13–1069–014.

Applicants: MP2 Energy LLC, MP2 Energy NE LLC, Shell Energy North America (US), L.P.

Description: Notice of Change in Status of Shell Energy North America (US), L.P, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5263.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER10–2136–018; ER11–4044–028; ER11–4046–027; ER16–1720–020; ER21–2137–004.

Applicants: IR Energy Management LLC, Invenergy Energy Management LLC, Gratiot County Wind II LLC, Gratiot County Wind LLC, Invenergy Cannon Falls LLC.

Description: Notice of Change in Status of Invenergy Cannon Falls LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5260.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER15–1418–015; ER15–1883–015; ER21–2294–003; ER22–415–003; ER21–2304–003; ER16–632–014; ER20–819–008; ER20–820–007; ER13–1991–021; ER13–1992–021; ER10–1852–063; ER10–1890–021; ER11–2160–021; ER13–2112–016; ER16–90–014; ER17–2340–011; ER15–2477–014; ER10–1962–021; ER15–1375–015; ER20–2695–006; ER16–2443–011; ER17–838–040; ER10–1951–043; ER11–4462–065; ER11–4677–021; ER12–2444–020; ER12–676–017; ER15–1016–014; ER15–2243–012; ER11–4678–021; ER17–582–013; ER17–583–013; ER12–631–022; ER21–1813–005; ER21–1814–005.

Applicants: Yellow Pine Energy Center II, LLC, Yellow Pine Energy Center I, LLC, Windpower Partners 1993, LLC, Whitney Point Solar, LLC, Westside Solar, LLC, Vasco Winds, LLC, Silver State Solar Power South, LLC, Shafter Solar, LLC, Perrin Ranch Wind, LLC, North Sky River Energy, LLC, NextEra Energy Montezuma II Wind, LLC, NEPM II, LLC, NextEra Energy Services Massachusetts, LLC, NextEra Energy Marketing, LLC, NextEra Blythe Solar Energy Center, LLC, Mohave County Wind Farm LLC, McCoy Solar, LLC, High Winds, LLC, Golden Hills Wind, LLC, Golden Hills North Wind, LLC, Golden Hills Interconnection, LLC, Genesis Solar, LLC, FPL Energy Montezuma Wind, LLC, FPL Energy Green Power Wind, LLC, Florida Power & Light Company, Desert Sunlight 300, LLC, Desert Sunlight 250, LLC, Blythe Solar IV, LLC, Blythe Solar III, LLC, Blythe Solar II, LLC, Arlington Solar, LLC, Arlington Energy Center III, LLC, Arlington Energy Center II, LLC, Adelanto Solar, LLC, Adelanto Solar II, LLC.

Description: Notice of Change in Status of Adelanto Solar II, LLC et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5267.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER19–1575–007; ER14–2871–018; ER16–182–013; ER20–71–006; ER20–72–006; ER17–47–010; ER21–1369–003; ER21–1371–003; ER21–1373–004; ER21–1376–004; ER18–2241–006; ER19–426–006; ER19–427–006; ER19–1660–006; ER19–1662–006; ER20–75–006; ER10–2488–024; ER15–621–017; ER20–77–006; ER15–622–017; ER21–2782–002; ER22–149–002; ER15–463–017; ER16–72–013; ER20–76–008; ER17–48–011; ER19–1667–006; ER13–1586–019; ER21–1368–002; ER16–902–010; ER18–47–009; ER18–47–010; ER20–79–006; ER18–2240–006.

Applicants: Yavi Energy, LLC, Voyager Wind IV Expansion, LLC, Voyager Wind II, LLC, Voyager Wind I, LLC, Valley Center ESS, LLC, TGP Energy Management, LLC, Terra-Gen VG Wind, LLC, Terra-Gen Mojave Windfarms, LLC, ES 1A Group 2 Opco, LLC, ES 1A Group 3 Opco, LLC, San Gorgonio Westwinds II—Windustries, LLC, San Gorgonio Westwinds II, LLC, Sagebrush Line, LLC, Sagebrush ESS, LLC, Ridgetop Energy, LLC, Painted Hills Wind Holdings, LLC, Pacific Crest Power, LLC, Oasis Power Partners, LLC, Oasis Alta, LLC, Mojave 16/17/18 LLC, Mojave 3/4/5 LLC, LUZ Solar Partners IX, Ltd., LUZ Solar Partners VIII, Ltd., Garnet Wind, LLC, Tehachapi Plains Wind, LLC, Edwards Sanborn Storage II, LLC, Edwards Sanborn Storage I, LLC, DifWind Farms LTD VI, Coachella Wind Holdings, LLC, Coachella Hills Wind, LLC, Cameron Ridge II, LLC, Cameron Ridge, LLC, Alta Oak Realty, LLC.

Description: Notice of Non-Material Change in Status of Alta Oak Realty, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5261.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER19–2373–008; ER10–2005–025; ER11–26–025; ER10–1841–025; ER20–1987–007; ER20–1769–006; ER20–122–006; ER19–2461–008; ER19–987–012; ER19–1003–012; ER22–381–003; ER19–2437–008; ER19–1393–012; ER19–1394–012; ER10–1852–064; ER10–1918–025; ER10–1907–024; ER10–1950–025; ER19–2398–010; ER18–2246–014; ER21–1953–004; ER20–2690–006; ER18–1771–014; ER16–1872–015; ER11–4462–066; ER10–1970–024; ER17–838–041; ER10–1972–024; ER10–1951–044; ER20–1220–006; ER20–1879–007; ER16–2506–017; ER18–2224–015; ER13–2461–019; ER19–2382–008; ER17–2270–016; ER12–1660–024; ER13–2458–019.

Applicants: Tuscola Wind II, LLC, Tuscola Bay Wind, LLC, Stuttgart Solar, LLC, Story County Wind, LLC, Pheasant Run Wind, LLC, Pegasus Wind, LLC, Oliver Wind III, LLC, Oliver Wind I, LLC, Oliver Wind II, LLC, NextEra Energy Services Massachusetts, LLC, NextEra Energy Point Beach, LLC, NextEra Energy Marketing, LLC, NextEra Energy Duane Arnold, LLC, NEPM II, LLC, Marshall Solar, LLC, Langdon Renewables, LLC, Jordan Creek Wind Farm LLC, Heartland Divide Wind II, LLC, Heartland Divide Wind Project, LLC, Hancock County Wind, LLC, Garden Wind, LLC, FPL Energy North Dakota Wind, LLC, FPL Energy North Dakota Wind II, LLC, Florida Power & Light Company, Endeavor Wind II, LLC, Endeavor Wind I, LLC, Emmons-Logan Wind, LLC, Dunns Bridge Solar Center, LLC, Crystal Lake Wind Energy II, LLC, Crystal Lake Wind Energy I, LLC, Crowned Ridge Wind, LLC, Crowned Ridge Interconnection, LLC, Chicot Solar, LLC, Cerro Gordo Wind, LLC, Butler Ridge Wind Energy Center, LLC, Ashtabula Wind III, LLC, Ashtabula Wind II, LLC, Ashtabula Wind I, LLC.

Description: Notice of Change in Status of Butler Ridge Wind Energy Center, LLC, et al.

Filed Date: 3/3/22.

Accession Number: 20220303–5268.

Comment Date: 5 p.m. ET 3/24/22.

Docket Numbers: ER22–1217–000.

Applicants: Cheyenne Light, Fuel and Power Company.

Description: § 205(d) Rate Filing: Filing of Engineering and Procurement Agreement to be effective 3/15/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5192.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1218–000.

Applicants: Idaho Power Company.

Description: § 205(d) Rate Filing: SA 434—Black Mesa Non-Conforming LGIA to be effective 2/23/2022.

Filed Date: 3/7/22.

Accession Number: 20220307–5196.

Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: ER22–1219–000.

Applicants: PacifiCorp.

Description: Order No. 676–J Compliance Filing of PacifiCorp.

Filed Date: 3/2/22.

Accession Number: 20220302–5303.

Comment Date: 5 p.m. ET 3/23/22.

Docket Numbers: ER22–1220–000.

Applicants: Avista Corporation.

Description: Order No. 676–J Compliance Filing of Avista Corporation.

Filed Date: 3/2/22.

Accession Number: 20220302–5304.

Comment Date: 5 p.m. ET 3/23/22.

Docket Numbers: ER22–1225–000.

Applicants: Navajo Tribal Utility Authority.

Description: Petition for Limited Waiver of Navajo Tribal Utility Authority.

Filed Date: 3/4/22.

Accession Number: 20220304–5296.

Comment Date: 5 p.m. ET 3/25/22.

Docket Numbers: ER22–1227–000.

Applicants: Martins Creek, LLC.

Description: § 205(d) Rate Filing: Proposed Revisions to Reactive Service Rate Schedule and Request for Waivers to be effective 4/1/2022.

Filed Date: 3/8/22.

Accession Number: 20220308–5092.

Comment Date: 5 p.m. ET 3/29/22.

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: March 8, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–05327 Filed 3–11–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 10675–021, 10676–027, 10677–024, and 10678–026]

Central Rivers Power MA, LLC; Notice of Application To Amend Terms and Conditions for Exemptions, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Proceeding:* Application to amend terms and conditions of exemptions.

b. *Project Nos.:* 10675–021, 10676–027, 10677–024, and 10678–026.

c. *Date Filed:* January 7, 2022.

d. *Exemptee:* Central Rivers Power MA, LLC.

e. *Name of Project:* Dwight Hydroelectric Project (No. 10675), Red Bridge Hydroelectric Project (No. 10676), Putts Bridge Hydroelectric Project (No. 10677), and Indian Orchard Hydroelectric Project (No. 10678).

f. *Location:* The projects are located on the Chicopee River in Hampden County, Massachusetts.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Exemptee Contact:* Curt Mooney, Central Rivers Power, 670 N. Commerce Street, Suite 204, Manchester, NH 03101 (603) 744–0846, *cmooney@centralriverspower.com.*

i. *FERC Contact:* Rebecca Martin, (202) 502–6012, *Rebecca.martin@ferc.gov.*

j. *Deadline for filing comments, interventions, and protests Deadline for filing comments, motions to intervene, and protests:* April 7, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket numbers P–10675–021, P–10676–027, P–10677–024, and P–10678–026. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The exemptee requests to amend its terms and conditions for these projects. The U.S. Fish and Wildlife Service and the Massachusetts Division of Fish and Wildlife have provided updated terms and conditions for the exemptions that modify operation of the projects. Primarily the updated terms and conditions stipulate operation of the projects in a run-of-river mode, with revised bypass flow releases.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via

email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: March 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–05317 Filed 3–11–22; 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: RP22–679–000.

Applicants: Discovery Gas Transmission LLC.

Description: § 4(d) Rate Filing: Discovery Gas Transmission LLC Housekeeping Tariff Filing to be effective 4/8/2022.

Filed Date: 3/8/22.

Accession Number: 20220308–5007.

Comment Date: 5 p.m. ET 3/21/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *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: March 8, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–05328 Filed 3–11–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2514–209]

Appalachian Power Company; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2514–209.

c. *Date Filed:* February 28, 2022.

d. *Applicant:* Appalachian Power Company (Appalachian).

e. *Name of Project:* Byllesby-Buck Hydroelectric Project (Byllesby-Buck Project).

f. *Location:* The two-development Byllesby-Buck Project is located on the New River in Carroll County, Virginia. The project occupies 7.23 acres of federal land managed by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Elizabeth Parcell, Process Supervisor, American Electric Power Service Corporation, 40 Franklin Road SW, Roanoke, VA 24011; Phone at (540) 985–2441 or email at *ebparcell@aep.com.*

i. *FERC Contact:* Jody Callihan at (202) 502–8278, or *jody.callihan@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. The Byllesby-Buck Project consists of two developments (Byllesby and Buck); the Byllesby Development is located 3 river miles upstream of the Buck Development. The current license authorizes a combined generating capacity of 30.1 megawatts (MW); however, the actual installed capacity is 26.1 MW, which Appalachian proposes to increase to 29.8 MW, as described below.

Between 2016 and 2020, the project had an average annual generation of 92,820 megawatt-hours (MWh).

The Byllesby Development consists of: (1) A 64-foot-high, 528-foot-long concrete dam, sluice gate, and main spillway section topped with four sections of 9-foot-high flashboards, five sections of 9-foot-high inflatable Obermeyer crest gates, and six bays of 10-foot-high Tainter gates; (2) an auxiliary spillway including six sections of 9-foot-high flashboards; (3) a 239-acre impoundment with a gross storage capacity of 2,000 acre-feet; (4) a powerhouse containing four turbine-generator units with a total installed capacity of 18.0 MW; (5) a control house and switchyard; and (6) appurtenant facilities.

The Buck Development consists of: (1) A 42-foot-high, 353-foot-long concrete dam and sluice gate; (2) a 1,005-foot-long, 19-foot-high spillway section topped with twenty sections of 9-foot-high flashboards, four sections of 9-foot-high inflatable crest gates, and six bays of 10-foot-high Tainter gates; (3) a 66-acre impoundment with a gross storage capacity of 661 acre-feet; (4) a powerhouse containing three turbine-generator units with a total installed capacity of 8.1 MW; (5) two 2-mile-long overhead 13.2-kilovolt transmission lines extending from the Buck powerhouse to the Byllesby control house; and (6) appurtenant facilities.

The Byllesby-Buck Project is currently operated in a run-of-river (ROR) mode, with the Byllesby impoundment maintained between elevations of 2,078.2 feet and 2,079.2 feet National Geodetic Vertical Datum of 1929 (NGVD 29) and the Buck impoundment maintained between elevations of

2,002.4 feet and 2,003.4 feet NGVD 29. A minimum flow of 360 cubic feet per second (cfs), or project inflow if less, is provided downstream of each powerhouse. Article 406 of the current license requires that following periods of spill when a spillway gate has been opened 2 feet of more, spill flows (into the Buck bypassed reach) must be released through a 2-foot gate opening for at least 3 hours, then the gate opening must be reduced to 1 foot for at least an additional 3 hours prior to closing the gate.

Appalachian proposes to continue operating the project in a ROR mode and providing a 360-cfs minimum flow at each development. However, Appalachian proposes to modify the existing ramping rate requirement at the Buck Development such that, following periods of spill when a spillway gate has been opened 2 feet or more, water would be released (into the Buck bypassed reach) through a 2-foot gate opening for at least 2 hours, then the gate opening would be reduced to 1 foot for 2 hours, and finally to 0.5 foot for 2 hours before closing the gate. In addition to this measure, which is intended to minimize walleye stranding in the Buck bypassed reach, Appalachian proposes environmental measures for the protection and enhancement of other aquatic resources as well as terrestrial, recreation, and cultural resources.

Appalachian also proposes to upgrade three (of the four) turbine-generator units at the Byllesby Development and two (of the three) turbine-generator units at the Buck Development. The proposed upgrades are expected to increase the total installed capacity from 26.1 MW to 29.8 MW and the project's average annual generation by 25,927 MWh. In addition, Appalachian proposes to add to the current project boundary: (1) The Byllesby control house and switchyard and (2) two 2-mile-long overhead 13.2-kilovolt transmission lines that extend from the Buck powerhouse to the Byllesby control house.

l. A copy of the application can be viewed on the Commission's website at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document (P–2514). For assistance, contact FERC at *FERCOnlineSupport@ferc.gov,* or call toll-free, (866) 208–3676 or (202) 502–8659 (TTY).

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural schedule:* The application will be processed according to the following preliminary schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Deficiency Letter (if necessary)	March 2022.
Request Additional Information (if necessary)	May 2022.
Notice of Acceptance/Notice of Ready for Environmental Analysis	August 2022.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: March 8, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–05311 Filed 3–11–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 9597–01–OA]

Request for Nominations of Candidates for the National Environmental Education Advisory Council (NEEAC)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency Office of Public Engagement and Environmental Education is soliciting applications for environmental education professionals for consideration to serve on the National Environmental Education Advisory Council (NEEAC). There are multiple vacancies on the Advisory Council that must be filled. Additional avenues and resources may be utilized in the solicitation of applications. ''In accordance with Executive Order 14035 (June 25, 2021), EPA values and welcomes opportunities to increase diversity, equity, inclusion and accessibility on its federal advisory committees. EPA's federal advisory committees have a workforce that reflects the diversity of the American people.''

DATES: Nominations should be submitted by April 13, 2022 per the instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Notice and Request for Nominations may contact Mr. Javier Araujo, Designated Federal Officer (DFO), Office of Environmental Education (OEE), by telephone at (202) 441–8981 or via email at *araujo.javier@epa.gov.* General information concerning the NEEAC can be found on the following website: *https://www.epa.gov/education/national-environmental-education-advisory-council-neeac.*

SUPPLEMENTARY INFORMATION:

Background

The National Environmental Education Act requires that the council be comprised of (11) members appointed by the Administrator of the EPA. Members represent a balance of perspectives, professional qualifications, and experience. The Act specifies that members must represent the following sectors: Primary and secondary education (One of whom shall be a classroom teacher), two members: Colleges and universities, two members; business and industry, two members; non-profit organizations, two members. state departments of education and natural resources, two members, and one member to represent senior Americans. Members are chosen to represent various geographic regions of the country, and the Council strives for a diverse representation. The professional backgrounds of Council members should include education, science, policy, or other appropriate disciplines. Each member of the Council shall hold office for a one (1) to three (3) year period. Members are expected to participate in up to two (2) meetings per year and monthly or more conference calls per year. *Members of the council shall receive compensation and allowances, including travel*

expenses at a rate fixed by the Administrator.

Request for Nominations: Specific experience in environmental justice and climate change education is essential.

Expertise Sought: The NEEAC staff office seeks candidates with demonstrated experience and or knowledge in any of the following environmental education issue areas: (a) Integrating environmental education into state and local education reform, improvement and environmental justice initiatives; (b) state, local and tribal level capacity building for environmental education; (c) cross-sector partnerships to foster environmental education in Minority Serving Institutions and increase the conversation around using EE as a tool to achieve environmental justice, climate equity, and economic prosperity; (d) leveraging resources for environmental education in underserved communities; (e) design and implementation of environmental education research; (f) evaluation methodology; professional development for teachers and other education professionals; and targeting under-represented audiences, including low-income, multi-cultural, senior citizens and other adults.

The NEEAC is best served by a structurally and geographically diverse group of individuals. Each individual will demonstrate the ability to make a time commitment. In addition, the individual will demonstrate both strong leadership and analytical skills. Also, strong writing skills, communication skills and the ability to evaluate programs in an unbiased manner are essential. Team players, who can meet deadlines and review items on short notice are ideal candidates.

Process and Deadline for Submitting Nominations

Any interested and qualified individuals may be considered for appointment on the National Environmental Education Advisory Council. In order to apply, the following four items should be submitted in electronic format to the Designated Federal Officer, Javier Araujo, *araujo.javier@epa.gov* and contain the following: (1) Contact information including name, address, phone, and an email address; (2) a curriculum vitae or resume; (3) Include the specific area of expertise in environmental education and *the sector* in the subject line of your email submission; and (4) a one page commentary on the applicant's philosophy regarding the need for, development, implementation and or management of environmental education.

Nominations should be submitted by April 4, 2022.

Submit nominations electronically to Javier Araujo, Designated Federal Officer, National Environmental Education Advisory Council, U.S. Environmental Protection Agency, email: *araujo.javier@epa.gov.*

FOR FURTHER INFORMATION CONTACT: For information regarding this Request for Nominations, please contact Mr. Javier Araujo, Designated Federal Officer, by email at: *araujo.javier@epa.gov* or phone at: 202–441–8981. General Information concerning NEEAC can be found on the EPA website at: *https://www.epa.gov/education/national-environmental-education-advisory-council-neeac.* The short list candidates will be required to fill out the Confidential Disclosure Form for Special Government Employees serving Federal Advisory Committees at the U.S. Environmental Protection Agency. (EPA form 3110–48). This confidential form allows government officials to determine whether there is a statutory conflict between that person's public responsibilities (which include membership on a Federal Advisory Committee) and private interests and activities and the appearance of a lack of impartiality as defined by Federal regulation. The form may be viewed and downloaded from the following URL address. Please note this form is not an application form. *http://intranet.epa.gov/ogc/ethics/EPA3110-48ver3.pdf.*

Rosemary Enobakhare,

Associate Administrator, Office of Public Engagement and Environmental Education.

[FR Doc. 2022–05254 Filed 3–11–22; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Privacy Act of 1974; Systems of Records

AGENCY: Equal Employment Opportunity Commission

ACTION: Notice of a new system of records.

SUMMARY: The Equal Employment Opportunity Commission (hereinafter ''EEOC'' or ''the Commission'') proposes to create a new Religious Accommodation system of records to maintain information collected in response to a request for an accommodation based on a sincerely held religious belief, practice, or observance.

DATES: This system of records will be effective upon publication in the **Federal Register** with the exception of new routine uses which will become effective April 13, 2022. Comments must be received on or before April 13, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions online for submitting comments.
- *Fax:* Comments totaling six or fewer pages may be sent by fax to (202) 663–4114. Receipt of fax transmittals will not be acknowledged; the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 921–2815 (voice) or 1 (800) 669–6820 (TTY) or (844) 234–5122 (ASL). (These are not toll-free numbers).
- *Mail:* Shelley Kahn, Acting Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.
- *Hand Delivery/Courier:* Shelley Kahn, Acting Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. Comments need be submitted in only one of the above-listed formats. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information you provide. Comments must be received on or before April 13, 2022.

Docket: For access to comments received visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Kathleen Oram, Assistant Legal Counsel, at *kathleen.oram@eeoc.gov,* or Savannah Marion Felton, Senior Attorney, at *savannah.felton@eeoc.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, EEOC proposes to create a new Religious Accommodation SORN (EEOC–23) for records related to accommodation requests based on a sincerely held religious belief, practice, or observance. Title VII of the Civil Rights Act of 1964 prohibits discrimination, including on the basis of religion. Title VII also requires an employer, once on notice, to reasonably accommodate an employee whose sincerely held religious belief, practice, or observance conflicts with a work requirement, unless providing the accommodation would create an undue

hardship. 42 U.S.C. 2000e(j). As a result, EEOC employees and applicants have the right to request an accommodation based on a sincerely held religious belief, practice, or observance. The EEOC's Office of the Chief Human Capital Officer processes requests for accommodations from employees and applicants based on a sincerely held religious belief, practice, or observance. The request (including any documentation provided in support of the request), notes or records made during consideration of requests, decisions on requests, records made to implement or track decisions on requests and similar documentation related to requests for reconsideration, are all covered by this system of records.

For the Commission,

Charlotte A. Burrows,

Chair.

SYSTEM NAME AND NUMBER:

EEOC–23: Religious Accommodation Records.

SECURITY CLASSIFICATION:

This system of records does not contain classified records.

SYSTEM LOCATION:

Office of the Chief Human Capital Officer, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

SYSTEM MANAGER(S):

Accommodations Manager, Office of the Chief Human Capital Officer, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507; *religious.accommodation@eeoc.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e(j), as amended; 29 CFR 1614 (Federal Sector Equal Employment Opportunity); 29 CFR 1605 (Guidelines on Discrimination Because of Religion); EEOC Order 560.009.

PURPOSE(S) OF THE SYSTEM:

This system is maintained for the purpose of considering, deciding, and implementing requests for accommodations for sincerely held religious beliefs, practice, or observances made by EEOC employees and applicants.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former EEOC employees and applicants who request accommodations based on a sincerely held religious belief, practice, or observance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Requests for religious accommodations; notes or records made during consideration of requests; decisions on requests; records made to implement or track decisions on requests; requests for reconsideration; notes or records made during consideration of requests for reconsideration; final decisions made in response to requests for reconsideration; records made to implement or track decisions on requests for reconsideration.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from the current or former employee or applicant requesting a religious accommodation, the Office of the Chief Human Capital Officer, and management officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These records and information in these records are used:

a. To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency when the Government is a party to the judicial or administrative proceeding, and the EEOC determines that use of such records is relevant and necessary to the litigation or proceeding.

b. To disclose information to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

c. To disclose to an authorized appeal grievance examiner, formal complaints examiner, administrative judge, equal employment opportunity investigator, arbitrator, or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee.

d. To disclose to appropriate agencies, entities, and persons when: (1) The EEOC suspects or has confirmed that there has been a breach of the system of records; (2) the EEOC has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the EEOC (including its information systems, programs, and operations), the Federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the EEOC's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

e. To disclose to another Federal agency or Federal entity when the EEOC determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Maintained in locked file cabinets and electronically.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Indexed by name of employee or applicant and office location, or by assigned number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

These records are maintained in the Office of the Chief Human Capital Officer for the longer of an employee's tenure with EEOC or 5 years. Thereafter, they will be destroyed.

ADMINSTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Files are maintained in locked cabinets. Access is restricted to EEOC personnel whose official duties require such access. Access to computerized records is limited, through use of logins and passwords, to those whose official duties require access.

RECORD ACCESS PROCEDURES:

Inquiries concerning this system of records should be addressed to the System Manager. It is necessary to provide the full name of the individual whose records are requested, position title and office location at the time the accommodation was requested, and a mailing or email address to which a response may be sent.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures.

NOTIFICATION PROCEDURES:

See Record Access Procedures.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

There are no exemptions applicable to this system of records.

HISTORY:

None.

[FR Doc. 2022–05257 Filed 3–11–22; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0600; FR ID 76030]

Information Collection Requirement Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written PRA comments should be submitted on or before May 13, 2022.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the Title as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0600.

Title: Application to Participate in an FCC Auction, FCC Form 175.

Form Number: FCC Form 175.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, not-for-profit institutions, and state, local or Tribal governments.

Estimated Number of Respondents and Responses: 500 respondents and 500 responses.

Estimated Time per Response: 90 minutes.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in sections 154(i) and 309(j)(5) of the Communications Act, as amended, 47 U.S.C. 4(i), 309(j)(5), and in sections 1.2105, 1.2110, 1.2112 of the Commission's rules, 47 CFR 1.2105, 1.2110, 1.2112.

Estimated Total Annual Burden: 750 hours.

Total Annual Costs: No cost.

Needs and Uses: A request for extension of this information collection (no change in requirements) will be submitted to the Office of Management and Budget (OMB) after this 60-day comment period in order to obtain the full three year clearance from OMB. FCC Form 175 is used by the public to apply to participate in auctions for Commission licenses and permits. The Commission's auction rules and related requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants, deter possible abuse of the bidding and licensing processes, and enhance the use of competitive bidding to assign Commission licenses and permits in furtherance of the public interest. The information collected on FCC Form 175 is used by the Commission to determine if an applicant is legally, technically, and financially qualified to participate in an auction for Commission licenses or permits. Additionally, if an applicant applies for status as a particular type of auction participant pursuant to Commission rules, the Commission uses information collected on FCC Form 175 to determine whether the applicant is eligible for the status requested. Commission staff reviews the information collected on FCC Form 175 for a particular auction as part of the pre-auction process, prior to the auction being held. Staff determines whether each applicant satisfies the Commission's requirements to participate in the auction and, if an applicant claims status as a particular type of auction participant, whether that applicant is eligible for the status claimed. On June 28, 2021, the Commission received approval from OMB under its emergency PRA processing provisions, 5 U.S.C. 1320.13, for a revision to the approved collection of information on FCC Form 175 under OMB Control Number 3060–0600 for an additional certification requirement adopted for Auction 110 applicants requiring that, in addition to making the certifications already required by the Commission's rules in its FCC Form 175 auction application, each applicant also certify that it had read the public notice adopting procedures for the auction and had familiarized itself both with the auction procedures and with the requirements for obtaining a license and operating facilities in the 3.45–3.55 GHz band. The information collection requirements under OMB Control Number 3060–0600 have not changed since they were approved by OMB on June 28, 2021. The Commission plans to continue to use FCC Form 175 for its upcoming auctions for Commission licenses and permits, including the forward auction component of any incentive auction, collecting only the information necessary for each particular auction.

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2022–05249 Filed 3–11–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1297; FR ID 75645]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 13, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1297.

Title: COVID–19 Vaccine Attestation Form for Non-paid Employees.

Form No.: FCC Form 5644.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households.

Number of Respondents and Responses: 140 respondents and 140 responses.

Estimated Time per Response: 0.25 hours.

Frequency of Response: One-time reporting requirement.

Obligation to Respond: Mandatory. The statutory authority to collect this information derives from General Duty Clause; Section 5(a)(1) of the Occupational Safety and Health (OSH) Act of 1970 (29 U.S.C. 654); Executive Order 12196, Occupational safety and health programs for Federal employees (Feb. 26, 1980); Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing; Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees; OMB Memorandum M 21–15, COVID–19 Safe Federal Workplace: Agency Model Safety Principles (Jan. 24, 2021), as amended; and the National Defense Authorization Act For Fiscal Year 2017 (5 U.S.C. 6329c(b)). Information will be collected and maintained in accordance with the Rehabilitation Act of 1973 (29 U.S.C. 791 *et seq.*).

Total Annual Burden: 35 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: Yes. Health information collected about FCC staff and visitors to a FCC facility, which may include immunization and vaccination information, is covered by the FCC's Systems of Records Notice (SORN) OMD–33, Ensuring Workplace Health and Safety in Response to a Public Health Emergency, posted at *https://www.fcc.gov/sites/default/files/sor-fcc-omd-33.pdf.* This system is part of the FCC's ServiceNow platform, which has a Privacy Impact Assessment (PIA) posted at *https://www.fcc.gov/sites/default/files/servicenow-pia-10292019.pdf.*

Nature and Extent of Confidentiality: As Privacy Act-protected records, these records are kept confidential and will not be disclosed except under applicable Privacy Act exceptions, including the routine uses identified in the FCC/OMD–3 SORN.

Needs and Uses: On September 9, 2021, President Biden issued Executive Order 14043 to protect the health and safety of the Federal workforce and to promote the efficiency of the civil service. Pursuant to the Executive Order and implementing guidance, the Federal Communications Commission (FCC) informed its workforce that, other than in limited circumstances where a reasonable accommodation is legally required, all employees needed to be fully vaccinated against COVID–19 by November 22, 2021, regardless of where they are working. To ensure compliance with this mandate, the FCC established a requirement for employees to complete and submit a form attesting to their current vaccination status. Although the vaccination requirement issued pursuant to E.O. 14043 is currently the subject of a nationwide injunction, the FCC will continue to develop and implement health and safety protocols to ensure and maintain the safety of all occupants during standard operations and public health emergencies or similar health and safety incidents, such as the current pandemic, and will continue to request that workers report on their vaccination status. For some special categories of individuals who perform (or will perform) work for the agency but are not considered employees, the FCC is required to obtain OMB approval prior to collecting such information. These include incoming employees, unpaid interns, unpaid legal fellows, individuals performing work for the FCC pursuant to an Intergovernmental Personnel Agreement, participants in advisory committees, and possibly other similar classes of individuals who are not on the FCC payroll but are performing work for the agency.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2022–05247 Filed 3–11–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 75965]

Privacy Act of 1974; Matching Program

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (''Privacy Act''), this document announces a new computer matching program the Federal Communications Commission (''FCC'' or ''Commission'' or ''Agency'') and the Universal Service Administrative Company (USAC) will conduct with the South Carolina Department of Social Services (''Department'') (''Agency''). The purpose of this matching program is to verify the eligibility of applicants to and subscribers of Lifeline, and the Affordable Connectivity Program (ACP), both of which are administered by USAC under the direction of the FCC. More information about these programs is provided in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Written comments are due on or before April 13, 2022. This computer matching program will commence on April 13, 2022, and will conclude 18 months after the effective date.

ADDRESSES: Send comments to Linda Oliver, FCC, 45 L Street NE, Washington, DC 20554, or to *Privacy@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Oliver at 202–418–1732 or *Privacy@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Lifeline program provides support for discounted broadband and voice services to low-income consumers. Lifeline is administered by the Universal Service Administrative Company (USAC) under FCC direction. Consumers qualify for Lifeline through proof of income or participation in a qualifying program, such as Medicaid, the Supplemental Nutritional Assistance Program (SNAP), Federal Public Housing Assistance, Supplemental Security Income (SSI), Veterans and Survivors Pension Benefit, or various Tribal-specific federal assistance programs.

In the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat. 1182, 2129–36 (2020) (codified at 47 U.S.C. 1301 nt.), Congress created the Emergency Broadband Benefit Program, and directed use of the National Verifier to determine eligibility based on various criteria, including the qualifications for Lifeline (Medicaid, SNAP, etc.). EBBP provided $3.2 billion in monthly consumer discounts for broadband service and one-time provider reimbursement for a connected device (laptop, desktop computer or tablet). In the Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52), Congress modified and extended EBBP, provided an additional $14.2 billion, and renamed it the Affordable Connectivity Program (ACP). A household may qualify for the ACP benefit under various criteria, including an individual qualifying for the FCC's Lifeline program.

In a Report and Order adopted on March 31, 2016, (81 FR 33026, May 24, 2016) (*2016 Lifeline Modernization Order*), the Commission ordered USAC to create a National Lifeline Eligibility Verifier (''National Verifier''), including the National Lifeline Eligibility Database (LED), that would match data about Lifeline applicants and subscribers with other data sources to verify the eligibility of an applicant or subscriber. The Commission found that the National Verifier would reduce compliance costs for Lifeline service providers, improve service for Lifeline subscribers, and reduce waste, fraud, and abuse in the program.

The Consolidated Appropriations Act of 2021 directs the FCC to leverage the National Verifier to verify applicants' eligibility for ACP. The purpose of this matching program is to verify the eligibility of Lifeline and ACP applicants and subscribers by determining whether they receive SNAP benefits administered by the South Carolina Department of Social Services.

Participating Agencies

South Carolina Department of Social Services, the Federal Communications Commission and the Universal Service Administrative Company.

Authority for Conducting the Matching Program

The authority for the FCC's ACP is Infrastructure Investment and Jobs Act, Public Law 117–58, 135 Stat. 429, 1238–44 (2021) (codified at 47 U.S.C. 1751–52); 47 CFR part 54. The authority for the FCC's Lifeline program is 47 U.S.C. 254; 47 CFR 54.400 through 54.423; Lifeline and Link Up Reform and Modernization, *et al.,* Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 4006–21, paras. 126–66 (2016) (*2016 Lifeline Modernization Order*).

Purpose(s)

The purpose of this new matching agreement is to verify the eligibility of applicants and subscribers to Lifeline, as well as to ACP and other Federal programs that use qualification for Lifeline as an eligibility criterion. This new agreement will permit eligibility verification for the Lifeline program and ACP by checking an applicant's/subscriber's participation in SNAP in South Carolina. Under FCC rules, consumers receiving these benefits qualify for Lifeline discounts and also for ACP benefits.

Categories of Individuals

The categories of individuals whose information is involved in the matching program include, but are not limited to, those individuals who have applied for Lifeline and/or ACP benefits; are currently receiving Lifeline and/or ACP benefits; are individuals who enable another individual in their household to qualify for Lifeline and/or ACP benefits; are minors whose status qualifies a parent or guardian for Lifeline and/or ACP benefits; or are individuals who have received Lifeline and/or ACP benefits.

Categories of Records

The categories of records involved in the matching program include, but are not limited to, the last four digits of the applicant's Social Security Number, date of birth, and last name. The National Verifier will transfer these data elements to the South Carolina Department of Social Services, which will respond either ''yes'' or ''no'' that the individual is enrolled in a qualifying assistance program: SNAP administered by the South Carolina Department of Social Services.

System(s) of Records

The records shared as part of this matching program reside in the Lifeline system of records, FCC/WCB–1, Lifeline, which was published in the **Federal Register** at 86 FR 11526 (Feb. 25, 2021).

The records shared as part of this matching program reside in the ACP system of records, FCC/WCB–3, Affordable Connectivity Program, which was published in the **Federal Register** at 86 FR 71494 (Dec. 16, 2021).

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2022–05243 Filed 3–11–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: March 22, 2022 at 10 a.m.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1- 202–599–1426, Code: 614 746 295#; or via web: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZWZmZDI2MGEtYjEwNi00MzczLWI5YTctODJmYTdjN2ZlYzZm%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%227c8d802c-5559-41ed-9868-8bfad5d44af9%22%7d.*

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION: Board Meeting Agenda

Open Session

1. Approval of the February 23, 2022 Board Meeting Minutes
2. Monthly Reports
   (a) Participant Activity Report
   (b) Investment Performance
   (c) Legislative Report
3. Quarterly Report
   (d) Vendor Risk Management
4. Enterprise Risk Management Update
5. Internal Audit Update
6. Converge Update

Closed Session

7. Information covered under 5 U.S.C. 552b(c)(9)(B) and 552b(c)(10).

Authority: 5 U.S.C. 552b (e)(1).

Dated: March 9, 2022.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2022–05319 Filed 3–11–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–22DF; Docket No. CDC–2022–0034]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies to take this opportunity to comment on a proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Assessing the Availability of COVID–19 Testing at U.S. Airports. This project is designed to collect information on the availability of testing for COVID–19 to travelers at U.S. airports.

DATES: Written comments must be received on or before May 13, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0034, by either of the following methods:

- *Federal eRulemaking Portal: regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeff Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses); and

(5) Assess information collection costs.

Proposed Project

Information Collection for Assessing the Availability of COVID–19 Testing at U.S. Airports—New—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention's (CDC), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Division of Global Migration and Quarantine (DGMQ), Quarantine and Border Health Services Branch (QBHSB) requests approval for a new information collection request. This project pertains to collecting information on the availability of testing for COVID–19 to travelers at U.S. airports.

The respondents are airport directors or their designees at 522 airports in the continental United States, the District of Columbia, or any territory or possession of the United States. These airports serve passenger-carrying operations conducted on certified air carriers. This project will initially pilot with a sample of 100 airports and subsequently expand to include the remaining 422 Schedule A passenger-carrying U.S. or territorial airports following the initial rollout, for a total of 522 airports. The 100 sampled airports were selected based on the following criteria: (1) Having more than 1,000 international arrivals in 2019, or (2) having a CDC quarantine station, or if not meeting one of the above criteria, and (3) ranking among the top in domestic arrival passenger volume for 2019 (U.S. Bureau of Transportation). These airports represent 89% of domestic and international travel for 2019.

To achieve DGMQ's mission, QBHSB works with domestic and international programs to protect the U.S. public by preventing importation of infectious disease through travel. Some U.S. airports have facilitated COVID–19 testing locations for departing or arriving domestic and international travelers (passengers and crew). QBHSB seeks to regularly obtain comprehensive and updated information on COVID–19 testing activities occurring at U.S. airports, which allows CDC to monitor trends in testing offered at airports. The information collected in this project will be used primarily to ascertain the scope of testing activities and to eventually provide information to the traveling public on testing availability at U.S. airports. Existing surveillance systems do not collect this type of information, thereby preventing CDC from monitoring airport testing trends and improving program effectiveness, particularly during an emergency response.

Currently, CDC is requesting this data be sent by airport directors or their designees at least twice per year, with monthly reminder emails being sent to encourage response. The consequences of reducing this frequency would be the inability to obtain comprehensive and updated information in a timely manner which could affect program improvement.

CDC requests OMB approval for an estimated 33,060 annual burden hours. There is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Airport directors or managers (All airports).	COVID–19 Airport Testing Planner web form.	522	20	190/60	33,060

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–05300 Filed 3–11–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–1105]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''One Health Harmful Algal Bloom System (OHHABS)'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 16, 2021 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

One Health Harmful Algal Bloom System (OHHABS) (OMB Control No. 0920–1105, Exp. 3/31/2022)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), National Center for Emerging and Zoonotic Infectious Diseases (NCEZID) requests a three-year Revision for the One Health Harmful Algal Bloom System (OHHABS) for harmful algal bloom (HAB) and HAB-associated illness surveillance.

HABs are the rapid growth of algae or cyanobacteria (also called blue-green algae) that can cause harm to people, animals, or the local ecology. Toxins from HABs include some of the most potent natural chemicals; these toxins can contaminate surface water used for recreation and drinking, as well as food sources. HABs pose a threat to both humans and animals. Human and animal illnesses from exposures to HABs in fresh and marine waters have been documented throughout the United States. Animal illness may be an indicator of bloom toxicity; thus, it is necessary to provide a One Health approach for reporting HAB-associated illnesses and events.

HABs are an emerging public health concern. For 2016—2019, 22 states adopted use of the OHHABS and entered 669 reports, including information about 452 human illnesses and at least 481 animal illnesses associated with HAB events. Of the 669 HAB event reports, 84% were associated with freshwater, resulting in 428 (95%) of human illnesses. In these freshwater settings, the most common signs and symptoms reported include generalized (*e.g.,* headache, fever, fatigue), gastrointestinal, and dermatologic.

Known adverse health effects from HABs in marine waters include respiratory illness and seafood poisoning. In 2007, 15 persons were affected with respiratory illness from exposures to brevetoxins, an algal toxin, during a Florida red tide. From 2007–2011, HAB-associated foodborne exposures were identified for 273 case reports of human illness through a separate five-year data collection effort with a subset of states. Of these reports, 248 reported ciguatera fish poisoning (CFP) or poisoning by other toxins in seafood, including saxitoxin and brevetoxin. A review of national outbreak data reported to CDC for the time period 1998–2015, identified outbreaks CFP as the second most common cause of fish-associated foodborne disease outbreaks in the United States, among those outbreaks with a confirmed etiology. For this time period, 227 CFP outbreaks resulted in 894 illnesses and 96 hospitalizations. For 2016–2018, an additional 47 outbreak investigations implicated CFP, resulting in 147 illnesses and 12 hospitalizations.

Domestic animal, livestock, and wildlife HAB-associated illnesses have also been documented in the United States. Between 2016 and 2019, 79 cases of domestic pet illness were reported to OHHABS, with 39% (n=31) resulting in death. During the same time period, there were at least 53 livestock illnesses and 349 wildlife illnesses reported. The

majority of livestock (96%) and wildlife (58%) cases resulted in death.

Factors that influence the occurrence of HABs include water temperature and nutrient levels. Warm waters with abundant phosphorus and nitrogen content (*e.g.,* from urban or agricultural run-off) are more likely to form HABs. These conditions promote the growth of phytoplankton or algae that can produce toxins or otherwise cause illness in animals, people, and negatively impact the local ecology (*e.g.,* reduced oxygen and light available for aquatic organisms) or economy (*e.g.,* beach closures, shellfish bed closures). There is evidence that the frequency and severity of HABs may be affected by climate change, but that the impacts might vary due to the causal species, bloom location, or other factors.

In response to HAB-related public health events in 2018, Congress appropriated funds to CDC to enhance HAB exposure activities, including surveillance, mitigation, and event response efforts. In years since, Congress has directed CDC to continue efforts to respond to HAB events, including OHHABS as a tool for national surveillance. OHHABS is a centralized data source for public health surveillance of HAB events and HAB-associated illnesses. It uses a One Health approach that takes into consideration information from the environment, animal cases, and human cases. Outbreaks of HAB-associated human illnesses may already be reported to CDC by state and territorial public health agencies within the electronic National Outbreak Reporting System (NORS) (OMB Control No. 0920–0004). OHHABS is the national database used for public health surveillance of HAB events and single cases of HAB-associated human or animal illness. A standardized data-collection system for HAB events and HAB-associated illnesses continues to be necessary to quantify and characterize HAB-associated illnesses, refine HAB event and case definitions, and inform One Health prevention efforts.

OHHABS was approved for data collection in 2016. The system was launched in June 2016 along with a CDC HAB-associated illnesses website to provide more information for the general public about potential illnesses and to share resources for HAB awareness and OHHABS with public health partners. Since 2016, CDC has provided technical assistance and training to states and territories interested in OHHABs and worked with contractors to implement new features for OHHABS. In 2020, CDC and partners published the first summary of OHHABS data (years 2016—2018) in the Morbidity and Mortality Weekly Report (MMWR). In 2021, CDC released a 2019 OHHABS data summary online (*https://www.cdc.gov/habs/data/index.html*) and upgraded the electronic platform to improve the user interface and system functionality. During this time CDC has also continued to coordinate a series of conference calls where state and federal partners may discuss their surveillance activities, needs, and priorities. CDC has also had the opportunity to communicate with additional HAB surveillance stakeholders, such as members of the veterinary community, state and federal environmental health staff, and others to provide information about OHHABS reporting through webinars, posters, and other presentations.

This activity is authorized by Section 301 of the Public Health Service Act (42 U.S.C. 241). CDC requests OMB approval for an estimated 76 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State/Territory	One Health Harmful Algal Bloom System (OHHABS) (electronic, year-round).	57	4	20/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–05299 Filed 3–11–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–22–1092]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Sudden Death in the Young (SDY) Case Registry'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on September 7, 2021 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. Comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the

search function. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Sudden Death in the Young (SDY) Case Registry (OMB Control No. 0920–1092, Exp. 04/30/2022)—Revision—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Sudden Death in the Young (SDY) is defined as a sudden and unexpected death among an infant, child, or young adults (up to age 20), which is not explained by homicide, suicide, overdose, or the result of an external cause that was the only and obvious reason for the fatal injury, or terminal illnesses. Injury deaths where there may have been an initiating natural cause (*e.g.,* drowning or death of the driver in a motor vehicle accident, which may have been triggered by an underlying cardiac or neurological condition) are also included in the definition.

SDY deaths are not systematically monitored and estimates of the annual incidence of SDY vary due to differences in definitions, inconsistencies in classifying cause, variable age and study populations, and differing case ascertainment methodologies. Because standardized information has not been collected on the incidence, causes, and risk factors, developing evidence-based prevention measures has been challenging.

To address these gaps, CDC, in collaboration with the National Heart, Lung, and Blood Institute and the National Institute of Neurological Disorders and Stroke at the National Institutes of Health, implemented the SDY Case Registry. Standardized data collected through the SDY Case Registry has been used by the NIH and CDC awardees to generate estimates of the incidence of SDY; to elucidate risk factors; and to develop evidence-based prevention strategies for SDY. The SDY Registry also creates infrastructure for future research about previously unknown or unrecognized risk factors for, and causes of, these deaths.

This information collection request is to extend OMB approval for the SDY Registry. By continuing the prior work of the SDY Registry, the information collected under this request will allow CDC to provide technical assistance to awardees so they can improve their state or local jurisdiction's information on SDY. This includes two additions to their existing Child Death Review (CDR) program: (1) Entering SDY information from existing data sources (*e.g.,* medical records, autopsy reports) used during CDR review into the established web-based NCFRP Case Reporting System; and (2) convening clinicians with three different types of expertise (pediatric cardiology; pediatric neurology or epileptology; and forensic pathology) to conduct advanced clinical reviews of a subset of SDY cases to allow for a more thorough review of information compiled, and to generate additional data about the classification of the death. The intended result will be data that can establish incidence and guide program and policy decisions at the state/local jurisdiction levels.

CDC estimates that the participating state/local jurisdictions will collect data on approximately 720 SDY cases per year. For participating state/local jurisdictions, burden is estimated for reporting required case information. Based on historical program information, it is estimated that approximately half (360) of the 720 estimated SDY cases each year will undergo an advanced clinical review and classification of cause by a team of three medical experts.

OMB approval is requested for three years. The total estimated annual burden is 511 hours which is a decrease of 10 hours from the previously approved information collection request due to a decrease in the number of participating states/local jurisdictions from 14 to 13. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State or Local Health Department Personnel	SDY Module I	13	55	10/60
Medical Experts	Advanced Review	39	28	15/60
State or Local Health Department Personnel	SDY Module N	13	55	10/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–05298 Filed 3–11–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–0457; Docket No. CDC–2022–0033]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on an information collection titled, Aggregate Reports for Tuberculosis Program Evaluation. The goal of the study is to allow CDC to collect and monitor indicators for key program activities, such as finding tuberculosis infections in recent contacts of cases and in other high-risk persons likely to be infected, and providing therapy for latent

tuberculosis infection, in an effort to eliminate tuberculosis in the United States.

DATES: CDC must receive written comments on or before May 13, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0033 by either of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *Regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected;

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and

5. Assess information collection costs.

Proposed Project

Aggregate Reports for Tuberculosis Program Evaluation (OMB Control No. 0920–0457, Exp. 12/31/2022)—Extension—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC requests an Extension of the Aggregate Reports for Tuberculosis Program Evaluation project, previously approved under OMB Control No. 0920–0457, for a period of three years. There are no revisions to the report forms, data definitions, or reporting instructions.

To ensure the elimination of tuberculosis in the United States, CDC monitors indicators for key program activities, such as finding tuberculosis infections in recent contacts of cases and in other persons likely to be infected, and providing therapy for latent tuberculosis infection. In 2000, CDC implemented two program evaluation reports for annual submission: Aggregate report of follow-up and treatment for contacts of tuberculosis cases, and Aggregate report of targeted testing and treatment for latent tuberculosis infection. The respondents for these reports are the 67 state and local tuberculosis control programs receiving federal cooperative agreement funding through the CDC Division of Tuberculosis Elimination (DTBE). These reports emphasize treatment outcomes, high-priority target populations vulnerable to tuberculosis, and electronic report entry and submission to CDC through the National Tuberculosis Indicators Project (NTIP), a secure web-based system for program evaluation data. No other federal agency collects this type of national tuberculosis data, and the aggregate report of follow-up and treatment for contacts of tuberculosis cases, and aggregate report of targeted testing and treatment for latent tuberculosis infection are the only data source about latent tuberculosis infection for monitoring national progress toward tuberculosis elimination with these activities. CDC provides ongoing assistance in the preparation and utilization of these reports at the local and state levels of public health jurisdiction. CDC also provides respondents with technical support for the NTIP software.

CDC requests OMB approval for an estimated 268 annual burden hours. There is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Data clerks and Program Managers (electronic).	Follow-up and Treatment of Contacts to Tuberculosis Cases Form.	67	1	2	134
Data clerks and Program Managers (electronic).	Targeted Testing and Treatment for Latent Tuberculosis Infection.	67	1	2	134
Total					268

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–05301 Filed 3–11–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–22–0765; Docket No. CDC–2022–0032]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comments on an information collection titled, CDC's Fellowship Management System (FMS). CDC uses the information collected to aid and enhance the selection of fellowship participants and host sites and to track participant information that helps strengthen the current, emerging, and ever-changing public health workforce.

DATES: CDC must receive written comments on or before May 13, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0032 by any of the following methods:

- *Federal eRulemaking Portal: Regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *regulations.gov*.

Please note: Submit all comments through the Federal eRulemaking portal (*regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses; and
5. Assess information collection costs.

Proposed Project

Data collection for fellowship programs using CDC's Fellowship Management System (OMB Control No. 0920–0765, Exp. 3/31/2023)—Revision—Center for Surveillance, Education, and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Scientific Education and Professional Development (DSEPD/CSELS) requests a three-year revision to continue the use of the CDC Fellowship Management System (FMS) to collect data under the approved OMB Control Number (0920–0765). The mission of DSEPD is to improve health outcomes through a competent, sustainable, and empowered public health workforce. Professionals in public health, epidemiology, medicine, economics, information science, veterinary medicine, nursing, public policy, and other related professionals seek opportunities, through CDC fellowships, to broaden their knowledge and skills, and to improve the science and practice of public health. CDC fellows are assigned to state, tribal, local, and territorial public health agencies; federal government agencies, including CDC and Department of Health and Human Services' (HHS) operational divisions, such as Centers for Medicare & Medicaid Services; and to nongovernmental organizations, including academic institutions, tribal organizations, and private public health organizations.

CDC uses FMS to collect, process, and manage data from nonfederal applicants seeking training or public health support services through CDC fellowships. FMS is used to electronically submit fellowship applications, submit fellowship host site proposals, track completion of fellowship activities, and maintain fellowship alumni directories online. FMS is a flexible and robust electronic information system standardized and tailored for each CDC fellowship, collecting only the minimum amount of information needed. The system is critical to streamlining data management for CDC and reducing burden for respondents. FMS is key to CDC's ability to protect the public's health by supporting training opportunities that strengthen the public health workforce.

The proposed Revision has two purposes: (1) Increase the number of likely respondents and (2) change the software platform on which FMS operates. The increase in likely respondents is a result of increased funding that will allow DSEPD to expand many of the fellowships managed through FMS. The change in software platform will provide CDC with an even more efficient, effective, and secure electronic mechanism for collecting, processing, and monitoring fellowship information. The proposed software platform is the Microsoft® Power Platform® (Microsoft Corporation, Cary, Washington). Integration of the suite of Microsoft tools for data management, analysis, and visualization will allow CDC to access

fellowship data in real time; moreover, data cleaning and manipulation do not need to be done outside the system, which will increase the security of these data. These increased functionalities will facilitate the enhanced use of administrative data collections for program improvement and evidence building activities across CDC and other federal agencies. The update to the software platform will also make it easier for additional fellowships to opt in to use FMS, expanding the benefits of the system to a broader set of CDC programs. Finally, the platform change should also enhance user experience. This Revision does not propose substantive changes to the nature or extent of information collected from respondents, and will allow all respondents—fellowship applicants, public health agencies hosting fellowship participants, and fellowship alumni—the continued use of FMS for submission of electronic data with increased efficiency and reduced burdens.

The burden table reflects OMB-approved changes since 2020 and anticipated growth in fellowships from 2022 onward. CDC requests approval for an estimated total of 14,914 annual burden hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Fellowship applicants	FMS Fellowship Application Information Collection Instrument.	5146	1	87/60	7,462
Reference Letter Writers	FMS Fellowship Application Information Collection Instrument.	6842	1	15/60	1,711
Public Health Agency or Organization Staff.	FMS Host Site Information Collection Instrument.	960	1	75/60	1,200
Public Health Agency or Organization Staff.	FMS Activity Tracking Information Collection Instrument.	555	2	30/60	555
Fellowship Alumni	FMS Alumni Tracking Information Collection Instrument.	6463	1	37/60	3,986
Total					14,914

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–05302 Filed 3–11–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–P–0959]

Determination That MPI DMSA KIDNEY REAGENT (Technetium Tc-99m Succimer Kit), Injectable, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that MPI DMSA KIDNEY REAGENT (Technetium Tc-99m Succimer Kit), Injectable, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for Technetium Tc-99m Succimer Kit, Injectable, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Michelle Weiner, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6208, Silver Spring, MD 20993–0002, 240 402–0374, *Michelle.Weiner@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Section 505(j) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) Has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

MPI DMSA KIDNEY REAGENT (Technetium Tc-99m Succimer Kit), Injectable, is the subject of NDA N017944, held by GE Healthcare, and initially approved on May 18, 1982. MPI DMSA KIDNEY REAGENT is indicated to be used as an aid in the scintigraphic evaluation of renal parenchymal disorders. MPI DMSA KIDNEY REAGENT (Technetium Tc-99m Succimer Kit), Injectable, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Hyman, Phelps, & McNamara, P.C. submitted a citizen petition dated August 27, 2021 (Docket No. FDA–

2021–P–0959), under 21 CFR 10.30, requesting that the Agency determine whether MPI DMSA KIDNEY REAGENT (Technetium Tc-99m Succimer Kit), Injectable, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that MPI DMSA KIDNEY REAGENT (Technetium Tc-99m Succimer Kit), Injectable, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that MPI DMSA KIDNEY REAGENT (Technetium Tc-99m Succimer Kit), Injectable, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of MPI DMSA KIDNEY REAGENT (Technetium Tc-99m Succimer Kit), Injectable, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have reviewed the available evidence and determined that this drug product was not withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list MPI DMSA KIDNEY REAGENT ((Technetium Tc-99m Succimer Kit), Injectable, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to MPI DMSA KIDNEY REAGENT ((Technetium Tc-99m Succimer Kit), Injectable, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: March 7, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–05324 Filed 3–11–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0150]

Revocation of Two Authorizations of Emergency Use of In Vitro Diagnostic Devices for Detection and/or Diagnosis of COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorizations (EUAs) (the Authorizations) issued to LifeHope Labs for the LifeHope 2019-nCoV Real-Time RT–PCR Diagnostic Panel, and Omnipathology Solutions Medical Corporation for the Omni COVID–19 Assay by RT–PCR. FDA revoked these Authorizations under the Federal Food, Drug, and Cosmetic Act (FD&C Act). The revocations, which include an explanation of the reasons for each revocation, are reprinted in this document.

DATES: The Authorization for the LifeHope 2019-nCoV Real-Time RT–PCR Diagnostic Panel is revoked as of February 7, 2022. The Authorization for the Omni COVID–19 Assay by RT–PCR is revoked as of February 14, 2022.

ADDRESSES: Submit written requests for a single copy of the revocations to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a Fax number to which the revocations may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocations.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 240–402–8155 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb-3) as amended by the Project BioShield Act of 2004 (Pub. L. 108–276) and the Pandemic and All-Hazards Preparedness Reauthorization Act of 2013 (Pub. L. 113–5) allows FDA to strengthen the public health protections against biological, chemical, nuclear, and radiological agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On June 29, 2020, FDA issued an EUA to LifeHope Labs for the LifeHope 2019-nCoV Real-Time RT–PCR Diagnostic Panel, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. On June 17, 2020, FDA issued an EUA to Omnipathology Solutions Medical Corporation for the Omni COVID–19 Assay by RT–PCR, subject to the terms of the Authorization. Notice of the issuance of this Authorization was published in the **Federal Register** on November 20, 2020 (85 FR 74346), as required by section 564(h)(1) of the FD&C Act. Subsequent updates to the Authorizations were made available on FDA's website. The authorization of a device for emergency use under section 564 of the FD&C Act may, pursuant to section 564(g)(2) of the FD&C Act, be revoked when the criteria under section 564(c) of the FD&C Act for issuance of such authorization are no longer met (section 564(g)(2)(B) of the FD&C Act), or other circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the FD&C Act).

II. EUA Revocation Requests

In a request received by FDA on January 6, 2022, LifeHope Labs requested discontinuation of, and on February 7, 2022, FDA revoked, the Authorization for the LifeHope 2019-nCoV Real-Time RT–PCR Diagnostic Panel. Because LifeHope Labs notified FDA that it is no longer using the LifeHope 2019-nCoV Real-Time RT–PCR Diagnostic Panel and requested FDA discontinue the LifeHope 2019-nCoV Real-Time RT–PCR Diagnostic Panel, FDA has determined that it is appropriate to protect the public health or safety to revoke this Authorization.

In requests received by FDA on February 7, 2022, and February 9, 2022, Omnipathology Solutions Medical Corporation requested revocation of, and on February 14, 2022, FDA revoked, the Authorization for the Omni COVID–19 Assay by RT–PCR. Because Omnipathology Solutions Medical Corporation notified FDA that it is no longer using the Omni COVID–19 Assay by RT–PCR and requested FDA revoke the EUA for the Omni COVID–19 Assay by RT–PCR, FDA has determined that it

is appropriate to protect the public health or safety to revoke this Authorization.

III. Electronic Access

An electronic version of this document and the full text of the revocations are available on the internet at *https://www.regulations.gov/*.

IV. The Revocations

Having concluded that the criteria for revocation of the Authorizations under section 564(g)(2)(C) of the FD&C Act are met, FDA has revoked the EUA of LifeHope Labs for the LifeHope 2019-nCoV Real-Time RT–PCR Diagnostic Panel and of Omnipathology Solutions Medical Corporation for the Omni COVID–19 Assay by RT–PCR. The revocations in their entirety follow and provide an explanation of the reasons for each revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

February 7, 2022

Beth Hoover
Associate Director
LifeHope Labs
5009 Roswell Road
Sandy Springs, GA 30342
Re: Revocation of EUA200796

Dear Beth Hoover:

This letter is in response to a request from LifeHope Labs received via email on January 6, 2022, that the U.S. Food and Drug Administration (FDA) discontinue the LifeHope 2019-nCoV Real-Time RT-PCR Diagnostic Panel for which an EUA was issued on June 29, 2020 and revised on September 23, 2021. LifeHope Labs confirmed that it is no longer using the LifeHope 2019-nCoV Real-Time RT-PCR Diagnostic Panel, having transitioned to another FDA EUA-authorized test.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because LifeHope Labs has notified FDA that it is no longer using the LifeHope 2019-nCoV Real-Time RT-PCR Diagnostic Panel and requested FDA discontinue the LifeHope 2019-nCoV Real-Time RT-PCR Diagnostic Panel, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA200796 for the LifeHope 2019-nCoV Real-Time RT-PCR Diagnostic Panel, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the LifeHope 2019-nCoV Real-Time RT-PCR Diagnostic Panel is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

U.S. FOOD & DRUG ADMINISTRATION

February 14, 2022

Mohammad Kamal, MD
Omnipathology Solutions Medical Corporation
11 West Del Mar Blvd. Suite 203
Pasadena, CA 91105
Re: Revocation of EUA200170

Dear Dr. Kamal:

This letter is in response to requests from Omnipathology Solutions Medical Corporation received via email on February 7, 2022 and February 9, 2022, that the U.S. Food and Drug Administration (FDA) revoke the EUA for the COVID-19 Assay by RT-PCR issued on June 17, 2020 and amended on December 28, 2020 and September 23, 2021. Omnipathology Solutions Medical Corporation confirmed that due to discontinuation of the commercial primer and probe products used in the Omni COVID-19 Assay by RT-PCR it has decided to discontinue use of this test but continue to offer COVID-19 testing using another FDA EUA-authorized test.

The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2) of the Act, be revoked when circumstances make such revocation appropriate to protect the public health or safety (section 564(g)(2)(C) of the Act). Because Omnipathology Solutions Medical Corporation has notified FDA that it is no longer using the Omni COVID-19 Assay by RT-PCR and requested FDA revoke the EUA for the Omni COVID-19 Assay by RT-PCR, FDA has determined that it is appropriate to protect the public health or safety to revoke this authorization. Accordingly, FDA hereby revokes EUA200170 for the Omni COVID-19 Assay by RT-PCR, pursuant to section 564(g)(2)(C) of the Act. As of the date of this letter, the Omni COVID-19 Assay by RT-PCR is no longer authorized for emergency use by FDA.

Notice of this revocation will be published in the *Federal Register*, pursuant to section 564(h)(1) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

Dated: March 3, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–05310 Filed 3–11–22; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics

AGENCY: Centers for Disease Control and Prevention.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting. This meeting is open to the public. The public is welcome to obtain the link to attend this meeting by following the instructions posted on the Committee website: *https://ncvhs.hhs.gov/meetings/full-committee-meeting-10/.*

Name: National Committee on Vital and Health Statistics (NCVHS), Meeting of the full Committee.

DATES: The meeting will be held Wednesday, March 30, 2022: 11:00 a.m.–3:00 p.m. EST.

ADDRESSES: Virtual open meeting.

FOR FURTHER INFORMATION CONTACT: Substantive program information may be obtained from Rebecca Hines, MHS, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Hyattsville, Maryland 20782, or via electronic mail to *vgh4@cdc.gov;* or by telephone (301) 458–4715. Summaries of meetings and a roster of Committee members are available on the home page of the

NCVHS website, *https://ncvhs.hhs.gov/,* where further information including an agenda and instructions to access the broadcast of the meeting will be posted.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (770) 488–3210 as soon as possible.

SUPPLEMENTARY INFORMATION:

Purpose: As outlined in its Charter, the National Committee on Vital and Health Statistics assists and advises the Secretary of HHS on health data, data standards, statistics, privacy, national health information policy, and the Department's strategy to best address those issues. This includes the adoption and implementation of transaction standards, unique identifiers, operating rules and code sets adopted under the Health Insurance and Portability Act of 1996 (HIPAA).[1]

At this meeting, the Committee will discuss two letters for approval, each containing a set of recommendations for HHS action. The first set conveys recommendations regarding privacy, confidentiality, and security considerations for data collection and use during a public health emergency. The second set conveys recommendations regarding standards for prior authorization, attachments, and HIPAA-designated transactions in general to support the goal to improve data sharing among patients, providers, payers, public health systems, and other actors in health care.

The Committee will reserve time for public comment toward the end of the agenda. Meeting times and topics are subject to change. Please refer to the agenda posted at the NCVHS website for this meeting at: *https://ncvhs.hhs.gov/meetings/full-committee-meeting-10/* for updates.

Sharon Arnold,

Associate Deputy Assistant Secretary, Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 2022–05289 Filed 3–11–22; 8:45 am]

BILLING CODE 4150–05–P

[1] Public Law 104–191, 110 Stat. 1936 (Aug 21, 1996), available at *https://www.congress.gov/104/plaws/publ191/PLAW-104publ191.pdf.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Contraception Development Research Center Program (P50 Clinical Trial Optional).

Date: March 23, 2022.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2125B, Bethesda, MD 20892–7002 (Video Assisted Meeting).

Contact Person: Derek J. McLean, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institute Health, 6710B Rockledge Drive, Room 2125B, Bethesda, MD 20892–7002, *Derek.McLean@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; National Institutes of Health, HHS)

Dated: March 9, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05330 Filed 3–11–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR19–202 High Impact, Interdisciplinary Science in NIDDK Research Areas: Hematology (RC2).

Date: April 5, 2022.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIDDK, NIH, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ann A. Jerkins, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7119, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, 301–594–2242, *jerkinsa@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 8, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05284 Filed 3–11–22; 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; Multi-Component Application.

Date: March 31, 2022.

Time: 9:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dario Dieguez, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institutes of Health, National Institute on Aging, Bethesda, MD 20814, (301) 827–3101, *dario.dieguez@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: March 8, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05283 Filed 3–11–22; 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; Member Conflict: Vision Pathology and Dysfunction.

Date: April 8, 2022.

Time: 1:30 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6701 Rockledge Dr., Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Robert C Elliott, Ph.D., AB, MS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–21–015: 2022 Pioneer Award Review.

Date: April 12–14, 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.

Contact Person: James W Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@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: March 8, 2022.

David W Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05282 Filed 3–11–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: May 3, 2022.

Time: 8:30 a.m. to 5:45 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institute on Drug Abuse, NIH, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD 21224 (Virtual Meeting).

Contact Person: Deon M. Harvey, Ph.D., Management Analyst, Office of the Scientific Director, National Institute on Drug Abuse, 251 Bayview Boulevard, Room 04A314, Baltimore, MD 21224, (443) 740–2466 *deon.harvey@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: March 8, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05285 Filed 3–11–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Innate Immune Memory Impacting HIV Acquisition and/or Control (R21 Clinical Trial Not Allowed).

Date: April 11–12, 2022.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Lee G. Klinkenberg, Ph.D., Scientific Review Officer, Scientific Review

Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E71, Rockville, MD 20852, 301–761–7749, *lee.klinkenberg@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 8, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05286 Filed 3–11–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0019]

Vessel Entrance or Clearance Statement

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day notice and request for comments; revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than April 13, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 86 FR Page 63036) on November 15, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Vessel Entrance or Clearance Statement.

OMB Number: 1651–0019.

Form Number: CBP Form 1300.

Current Actions: Revision of an existing information collection.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: CBP Form 1300, Vessel Entrance or Clearance Statement, is used to collect essential commercial vessel data at time of formal entrance and clearance in U.S. ports, allows the master to attest to the truthfulness of all CBP forms associated with the manifest package, and collects relevant information about the vessel and cargo. The form was developed through agreement by the United Nations Intergovernmental Maritime Organization (IMO) in conjunction with the United States and various other countries. The form was developed as a single form to replace the numerous other forms used by various countries for the entrance and clearance of vessels. CBP Form 1300 is authorized by 19 U.S.C. 1431, 1433, and 1434, and provided for by 19 CFR 4.

This form is accessible at *http://www.cbp.gov/newsroom/publications/forms?title=1300&=Apply.*

This form is currently submitted in paper format and is anticipated to be submitted electronically as part of CBP's efforts to automate maritime forms through the Vessel Entrance and Clearance System (VECS), which will reduce the need for paper submission of any vessel entrance or clearance requirements under the above referenced statutes and regulations. VECS will still collect and maintain the same data as CBP Form 1300 but will automate the capture of data to reduce or eliminate redundancy with other data collected by CBP.

Proposed Changes:

1. *New ACE Account Type:* CBP is adding a new ACE Account type for Vessel Agencies: The Vessel Agency Portal Account. The new account type within ACE will operate as a portal to the Vessel Entrance and Clearance System (VECS), which will run as its own separate system.

Vessel Agents will be required to provide identifying information such as; their name, their employer identification number (EIN), company address, and their phone numbers, which will be requested at the time Vessel Agents apply for the new ACE account type.

After creating an ACE account, Vessel Agencies, Vessel Operating Common Carriers (VOCCs), and their designees maybe able to use the new Vessel Entrance and Clearance System (VECS) as part of a forthcoming pilot program to test the functionality of VECS, and will be able to file vessel entrance, clearance, and related data to CBP electronically.

2. *VECS Public Pilot:* VECS will automate and digitize the collection and processing of the data and filing requirements for which the CBP Form 1300 is used. CBP plans to run an initial public pilot to test the system. All users who obtained a Vessel Agency Account through the ACE Portal will be automatically enrolled into the VECS

public pilot. Initially, the pilot will begin at one of several ports where VECS has been internally tested. CBP will provide training to each CBP port and the Vessel Agency personnel at each port, prior to beginning/expanding the public pilot in another port.

The VECS public pilot will expand to other internal CBP testing ports based on knowledge and familiarity with the system. The VECS public pilot will continue to expand to additional ports, in an effort to progressively test and implement the system nationwide. There will be no change to the paper format of CBP Form 1300, and CBP Form 1300 in paper format will continue to be accepted.

Type of Information Collection: Vessel Entrance or Clearance Statement (CBP Form 1300).

Estimated Number of Respondents: 2,624.

Estimated Number of Annual Responses per Respondent: 72.

Estimated Number of Total Annual Responses: 188,928.

Estimated Time per Response: 30 minutes (0.5 hours).

Estimated Total Annual Burden Hours: 94,464.

Dated: March 9, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–05290 Filed 3–11–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0105]

Application To Use Automated Commercial Environment (ACE)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Revision of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted (no later than April 13, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice 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: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/*.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (86 FR 63037) on November 15, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Application to use Automated Commercial Environment (ACE).

OMB Number: 1651–0105.

Form Number: N/A.

Current Actions: Revision of an existing collection of information.

Type of Review: Revision.

Affected Public: Businesses.

Abstract: The Automated Commercial Environment (ACE) is a trade data processing system that is replacing the Automated Commercial System (ACS), the current import system for U.S. Customs and Border Protection (CBP) operations. ACE is authorized by Executive Order 13659 which mandates implementation of a Single Window through which businesses will transmit data required by participating agencies for the importation or exportation of cargo. *See* 79 FR 10655 (February 25, 2014). ACE supports government agencies and the trade community with border-related missions with respect to moving goods across the border efficiently and securely. Once ACE is fully implemented, all related CBP trade functions and the trade community will be supported from a single common user interface.

To establish an ACE Portal account, participants submit information such as their name, their employer identification number (EIN) or social security number (SSN), and if applicable, a statement certifying their capability to connect to the internet. This information is submitted through the ACE Secure Data Portal which is accessible at: *http://www.cbp.gov/trade/automated.*

Please Note: A CBP-assigned number may be provided in lieu of your SSN. If you have an EIN, that number will automatically be used and no CBP number will be assigned. A CBP-assigned number is for CBP use only.

There is a standalone capability for electronically filing protests in ACE. This capability is available for participants who have not established ACE Portal Accounts for other trade activities, but desire to file protests electronically. A protest is a procedure whereby a private party may administratively challenge a CBP decision regarding imported merchandise and certain other CBP decisions. Trade members can establish a protest filer account in ACE through a separate application and the submission of specific data elements. *See* 81 FR 57928 (August 24, 2016).

Proposed Changes

1. New ACE Account Type

CBP is creating a new ACE Account type for ACE Import Trade Carriers and their designees. This new account type, Vessel Agency, enables users to file vessel entrance, clearance, and related data to CBP electronically through the new Vessel Entrance and Clearance System (VECS).

The ACE Account Application will be changed to collect identifying information such as name, employer identification number (EIN), company address, and phone numbers, to be used to setup the Vessel Agency accounts. Users who create a Vessel Agency Account are automatically enrolled into the VECS public pilot.

2. Removing ACE Account Types

In a separate action, unrelated to the Vessel Agency account type creation, CBP will also be removing account types ''Cartman'' and ''Lighterman'' from the ACE Account Application. These account types were never used and are being removed due to that lack of use.

Type of Information Collection: Application to ACE (Import).

Estimated Number of Respondents: 21,571.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 21,571.

Estimated Time per Response: 20 minutes (0.33 hours).

Estimated Total Annual Burden Hours: 7,118.

Type of Information Collection: Application to ACE (Export).

Estimated Number of Respondents: 9,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 9,000.

Estimated Time per Response: 4 minutes (0.066 hours).

Estimated Total Annual Burden Hours: 594.

Type of Information Collection: Application to Establish an ACE Protest Filer Account.

Estimated Number of Respondents: 3,750.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 3,750.

Estimated Time per Response: 4 minutes (0.066 hours).

Estimated Total Annual Burden Hours: 248.

Dated: March 9, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–05288 Filed 3–11–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6312–N–01]

Mortgage and Loan Insurance Programs Under the National Housing Act—Debenture Interest Rates

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: This notice announces changes in the interest rates to be paid on debentures issued with respect to a loan or mortgage insured by the Federal Housing Administration under the provisions of the National Housing Act (the Act). The interest rate for debentures issued under section 221(g)(4) of the Act during the 6-month period beginning January 1, 2022, is 1½ percent. The interest rate for debentures issued under any other provision of the Act is the rate in effect on the date that the commitment to insure the loan or mortgage was issued, or the date that the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. The interest rate for debentures issued under these other provisions with respect to a loan or mortgage committed or endorsed during the 6-month period beginning January 1, 2022, is 1⅞ percent.

FOR FURTHER INFORMATION CONTACT: Elizabeth Olazabal, Department of Housing and Urban Development, 451 Seventh Street SW, Room 5146, Washington, DC 20410–8000; telephone (202) 402–4608 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Section 224 of the National Housing Act (12 U.S.C. 1715o) provides that debentures issued under the Act with respect to an insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4) of the Act) will bear interest at the rate in effect on the date the commitment to insure the loan or mortgage was issued, or the date the loan or mortgage was endorsed (or initially endorsed if there are two or more endorsements) for insurance, whichever rate is higher. This provision is implemented in HUD's regulations at 24 CFR 203.405, 203.479, 207.259(e)(6), and 220.830. These regulatory provisions state that the applicable rates of interest will be published twice each year as a notice in the **Federal Register**.

Section 224 further provides that the interest rate on these debentures will be set from time to time by the Secretary of HUD, with the approval of the Secretary of the Treasury, in an amount not in excess of the annual interest rate determined by the Secretary of the Treasury pursuant to a statutory formula based on the average yield of all outstanding marketable Treasury obligations of maturities of 15 or more years.

The Secretary of the Treasury (1) has determined, in accordance with the provisions of section 224, that the statutory maximum interest rate for the period beginning January 1, 2022, is 1⅞ percent; and (2) has approved the establishment of the debenture interest rate by the Secretary of HUD at 1⅞ percent for the 6-month period beginning January 1, 2022. This interest rate will be the rate borne by debentures issued with respect to any insured loan or mortgage (except for debentures issued pursuant to section 221(g)(4)) with insurance commitment or endorsement date (as applicable) within the first 6 months of 2022).

For convenience of reference, HUD is publishing the following chart of debenture interest rates applicable to mortgages committed or endorsed since January 1, 1980:

Effective interest rate	On or after	Prior to
9½	Jan. 1, 1980	July 1, 1980.
9⅞	July 1, 1980	Jan. 1, 1981.
11¾	Jan. 1, 1981	July 1, 1981.
12⅞	July 1, 1981	Jan. 1, 1982.
12¾	Jan. 1, 1982	Jan. 1, 1983.
10¼	Jan. 1, 1983	July 1, 1983.
10⅜	July 1, 1983	Jan. 1, 1984.
11½	Jan. 1, 1984	July 1, 1984.
13⅜	July 1, 1984	Jan. 1, 1985.
11⅝	Jan. 1, 1985	July 1, 1985.
11⅛	July 1, 1985	Jan. 1, 1986.
10¼	Jan. 1, 1986	July 1, 1986.
8¼	July 1, 1986	Jan. 1. 1987.
8	Jan. 1, 1987	July 1, 1987.
9	July 1, 1987	Jan. 1, 1988.
9⅛	Jan. 1, 1988	July 1, 1988.
9⅜	July 1, 1988	Jan. 1, 1989.
9¼	Jan. 1, 1989	July 1, 1989.
9	July 1, 1989	Jan. 1, 1990.
8⅛	Jan. 1, 1990	July 1, 1990.
9	July 1, 1990	Jan. 1, 1991.
8¾	Jan. 1, 1991	July 1, 1991.
8½	July 1, 1991	Jan. 1, 1992.
8	Jan. 1, 1992	July 1, 1992.
8	July 1, 1992	Jan. 1, 1993.
7¾	Jan. 1, 1993	July 1, 1993.

Effective interest rate	On or after	Prior to
7	July 1, 1993	Jan. 1, 1994.
6⅝	Jan. 1, 1994	July 1, 1994.
7¾	July 1, 1994	Jan. 1, 1995.
8⅜	Jan. 1, 1995	July 1, 1995.
7¼	July 1, 1995	Jan. 1, 1996.
6½	Jan. 1, 1996	July 1, 1996.
7¼	July 1, 1996	Jan. 1, 1997.
6¾	Jan. 1, 1997	July 1, 1997.
7⅛	July 1, 1997	Jan. 1, 1998.
6⅜	Jan. 1, 1998	July 1, 1998.
6⅛	July 1, 1998	Jan. 1, 1999.
5½	Jan. 1, 1999	July 1, 1999.
6⅛	July 1, 1999	Jan. 1, 2000.
6½	Jan. 1, 2000	July 1, 2000.
6½	July 1, 2000	Jan. 1, 2001.
6	Jan. 1, 2001	July 1, 2001.
5⅞	July 1, 2001	Jan. 1, 2002.
5¼	Jan. 1, 2002	July 1, 2002.
5¾	July 1, 2002	Jan. 1, 2003.
5	Jan. 1, 2003	July 1, 2003.
4½	July 1, 2003	Jan. 1, 2004.
5⅛	Jan. 1, 2004	July 1, 2004.
5½	July 1, 2004	Jan. 1, 2005.
4⅞	Jan. 1, 2005	July 1, 2005.
4½	July 1, 2005	Jan. 1, 2006.
4⅞	Jan. 1, 2006	July 1, 2006.
5⅜	July 1, 2006	Jan. 1, 2007.
4¾	Jan. 1, 2007	July 1, 2007.
5	July 1, 2007	Jan. 1, 2008.
4½	Jan. 1, 2008	July 1, 2008.
4⅝	July 1, 2008	Jan. 1, 2009.
4⅛	Jan. 1, 2009	July 1, 2009.
4⅛	July 1, 2009	Jan. 1, 2010.
4¼	Jan. 1, 2010	July 1, 2010.
4⅛	July 1, 2010	Jan. 1, 2011.
3⅞	Jan. 1, 2011	July 1, 2011.
4⅛	July 1, 2011	Jan. 1, 2012.
2⅞	Jan. 1, 2012	July 1, 2012.
2¾	July 1, 2012	Jan. 1, 2013.
2½	Jan. 1, 2013	July 1, 2013.
2⅞	July 1, 2013	Jan. 1, 2014.
3⅝	Jan. 1, 2014	July 1, 2014.
3¼	July 1, 2014	Jan. 1, 2015.
3	Jan. 1, 2015	July 1, 2015.
2⅞	July 1, 2015	Jan. 1, 2016.
2⅞	Jan. 1, 2016	July 1, 2016.
2½	July 1, 2016	Jan. 1, 2017.
2¾	Jan. 1, 2017	July 1, 2017.
2⅞	July 1, 2017	Jan. 1, 2018.
2¾	Jan. 1, 2018	July 1, 2018.
3⅛	July 1, 2018	Jan. 1, 2019.
3⅜	Jan. 1, 2019	July 1, 2019.
2¾	July 1, 2019	Jan. 1, 2020.
2¼	Jan. 1, 2020	July 1, 2020.
1¼	July 1, 2020	Jan. 1, 2021.
1⅜	Jan. 1, 2021	July 1, 2021.
2¼	July, 1 2021	Jan. 1, 2022.
1⅞	Jan. 1, 2022	July 1, 2022.

Section 215 of Division G, Title II of Public Law 108–199, enacted January 23, 2004 (HUD's 2004 Appropriations Act) amended section 224 of the Act, to change the debenture interest rate for purposes of calculating certain insurance claim payments made in cash. Therefore, for all claims paid in cash on mortgages insured under section 203 or 234 of the National Housing Act and endorsed for insurance after January 23, 2004, the debenture interest rate will be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of 10 years, as found in Federal Reserve Statistical Release H–15. The Federal Housing Administration has codified this provision in HUD regulations at 24 CFR 203.405(b) and 24 CFR 203.479(b).

Similarly, section 520(a) of the National Housing Act (12 U.S.C. 1735d) provides for the payment of an insurance claim in cash on a mortgage or loan insured under any section of the National Housing Act before or after the enactment of the Housing and Urban Development Act of 1965. The amount of such payment shall be equivalent to the face amount of the debentures that would otherwise be issued, plus an amount equivalent to the interest which the debentures would have earned, computed to a date to be established pursuant to regulations issued by the Secretary. The implementing HUD regulations for multifamily insured mortgages at 24 CFR 207.259(e)(1) and (e)(6), when read together, provide that debenture interest on a multifamily insurance claim that is paid in cash is paid from the date of the loan default at the debenture rate in effect at the time of commitment or endorsement (or initial endorsement if there are two or more endorsements) of the loan, whichever is higher.

Section 221(g)(4) of the Act provides that debentures issued pursuant to that paragraph (with respect to the assignment of an insured mortgage to the Secretary) will bear interest at the ''going Federal rate'' in effect at the time the debentures are issued. The term ''going Federal rate'' is defined to mean the interest rate that the Secretary of the Treasury determines, pursuant to a statutory formula based on the average yield on all outstanding marketable Treasury obligations of 8- to 12-year maturities, for the 6-month periods of January through June and July through December of each year. Section 221(g)(4) is implemented in the HUD regulations at 24 CFR 221.255 and 24 CFR 221.790.

The Secretary of the Treasury has determined that the interest rate to be borne by debentures issued pursuant to section 221(g)(4) during the 6-month period beginning January 1, 2022, is 1½ percent. The subject matter of this notice falls within the categorical exemption from HUD's environmental clearance procedures set forth in 24 CFR 50.19(c)(6). For that reason, no environmental finding has been prepared for this notice.

(Authority: Sections 211, 221, 224, National Housing Act, 12 U.S.C. 1715b, 1715l, 1715o; Section 7(d), Department of HUD Act, 42 U.S.C. 3535(d).)

Lopa P. Kolluri,

Principal Deputy Assistant Secretary, Office of Housing-Federal Housing Administration.

[FR Doc. 2022–05307 Filed 3–11–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

Metlakatla Indian Community, Annette Islands Reserve; Alcohol Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Alcohol Control Ordinance of the Metlakatla Indian Community, Annette Islands Reserve. The Alcohol Control Ordinance is to regulate and control the possession, sale, manufacture, and distribution of alcohol in conformity with the laws of the State of Alaska for the purpose of generating new Tribal revenues. Enactment of this statute will help provide a source of revenue to strengthen Tribal government, provide for the economic viability of Tribal enterprises, and improve delivery of Tribal government services.

DATES: This code shall become effective March 14, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Norton, Tribal Government Specialist, Northwest Regional Office, Bureau of Indian Affairs, 911 Northeast 11th Avenue, Portland, Oregon 97232, Telephone: (503) 231–6702, Fax: (503) 231–2201.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Metlakatla Indian Community Council duly adopted the Metlakatla Indian Community, Annette Islands Reserve Alcohol Control Ordinance via Resolution 21–57 on November 23, 2021.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the

Assistant Secretary—Indian Affairs. I certify that the Metlakatla Indian Community Council duly adopted by Resolution the Metlakatla Indian Community, Annette Islands Reserve Alcohol Control Ordinance by Resolution No. 21–57 dated November 23, 2021.

Bryan Newland,

Assistant Secretary—Indian Affairs.

TITLE FOUR CIVIL CODE

CHAPTER 12

ALCOHOL CONTROL ORDINANCE

SECTION FOUR.12.1 TITLE.

This Ordinance shall be known as the Metlakatla Indian Community Alcohol Control Ordinance. This Ordinance may be referred to as the ''Alcohol Control Ordinance.''

SECTION FOUR.12.2 PURPOSE AND AUTHORITY.

A. The purpose of this Ordinance is to regulate and control the possession and sale of alcohol within the Community's territory, as specifically authorized and approved by Tribal Council resolution under Article IV, Section 1 of the Metlakatla Indian Community's Constitution. The authority for enactment of this Ordinance is as follows:

1. The Act of August 15, 1953, (Publ. L. 83–277, 67 Stat. 586, codified at 18 U.S.C. 1161), which provides a federal statutory basis for the Community to regulate the activities of the manufacture, distribution, sale and consumption of alcohol on Indian lands under the jurisdiction of the Community, so long as such ordinance is in conformance with the laws of the State of Alaska; and

2. Article IV, Section 1 of the Constitution of the Metlakatla Indian Community, which vests the Tribal Council with legislative and administrative authority, and otherwise empowers the Tribal Council to act for the Community.

SECTION FOUR.12.3 DEFINITIONS.

A. As used in this Ordinance, the following words or phrases shall have the following meaning unless the context clearly requires otherwise:

1. ''Alcohol'' means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions of this substance.

2. ''Alcoholic Beverage'' means a spirituous, vinous, malt, or other fermented or distilled liquid, whatever the origin, that is intended for human consumption as a beverage by the person who possesses or attempts to possess it and that contains alcohol in any amount if the liquid is produced privately, or that contains one-half of one percent or more of alcohol by volume, if the liquid is produced commercially.

3. ''Bar'' means any establishment with special space and accommodations for sale by the glass and for consumption on the premises of alcohol, as herein defined.

4. ''Bottling'' means to put into a bottle, can, or other container.

5. ''Alcohol Control Committee'' for the purposes of this Ordinance shall mean the Tribal Council of Metlakatla.

6. ''Community'' means Metlakatla Indian Community.

7. ''Liquor'' is synonymous with the term ''Alcoholic Beverage.''

8. ''Liquor Store'' means any store at which liquor is sold, and for the purposes of this Ordinance, includes a store at which only a portion of which is devoted to the sale of liquor, wine or beer.

9. ''Minor'' means any person under the age of 21.

10. ''Package'' means any container or receptacle used for holding alcoholic beverages.

11. ''Public Place'' includes state or county or tribal or federal highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishment, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theater, gaming facilities, entertainment centers, store garages, and filling stations which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds of character; and all other places of like or similar nature to which the general public has right of access, and which are generally used by the public. For the purposes of this Ordinance, ''Public Place'' shall also include any establishment other than a single family home which is designed for or may be used by more than just the owner of the establishment.

12. ''Reserve'' means the Annette Islands Reserve, which is held in trust by the United States Government for the benefit of the Community; any land located within the exterior boundaries of said reserve; and any lands held in trust by the United States for the benefit of the Community or held in trust for the benefit of an individual member of the Community.

13. ''Sale'' and ''Sell'' include exchange, barter, and traffic; and also include the selling or supplying or distributing by any means whatsoever, of alcohol, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or wine by any person to any person.

14.''Tribal Council'' means the Metlakatla Indian Community Tribal Council.

B. So long as the definitions are consistent with tribal or federal law, the terms used in this ordinance shall have the same meaning as defined in Title 4, Alaska Statutes, Chapter 21, and as defined in Title 3, Alaska Administrative Code, Chapter 304.

C. References in this Ordinance to federal and Alaska state law shall be those laws and regulations in effect as of March 7, 2017. Subsequent changes in those laws and regulations shall be considered incorporated into this Ordinance and effective unless the Community or the Tribal Council amends this Ordinance.

SECTION FOUR.12.4 CONFORMITY TO STATE LAW.

A. Jurisdiction. The Community will retain sole and exclusive jurisdiction over the enforcement of this ordinance. All disputes under this ordinance shall be heard by the tribal court.

B. Statement of Objection. The Community does not agree with the alleged authority of the United States or the State of Alaska to interfere with the Community's sovereign authority to regulate and control of alcohol sales and possession within the Community's sovereign boundaries. Accordingly, nothing in this Ordinance shall be interpreted as waiving the Community's right and power to challenge such authority in any judicial forum of competent jurisdiction, or by use of the political process. This Ordinance shall conform with the laws of the State of Alaska as required by 18 U.S.C. 1161, and *Rice* v. *Rehner*, 463 U.S. 713 (1983).

C. Conformity to State Law. The Metlakatla Indian Community agrees to perform in the sale and possession of alcohol in the same manner as any other Alaska business entity for the purpose of alcohol licensing and regulations, including but not limited to licensing, compliance with the regulations of the Alaska State Alcoholic Beverage Control Board, and other applicable subjects as the State may address by statute or regulation from time to time. Upon final approval of this Ordinance the Alcohol Control Committee shall receive a briefing on Alaska State Alcoholic Beverage laws and regulations, and shall

receive an update brief no fewer than once per year.

SECTION FOUR.12.5 CREATION AND POWERS.

A. The Tribal Council of Metlakatla is hereby designated as the ''Alcohol Control Committee'' in order to administer and enforce the provisions of this ordinance.

B. The Alcohol Control Committee, in furtherance of the Ordinance, shall have the following powers and duties, or may delegate such duties by resolution:

1. To publish and enforce the rules and regulations governing the sale, manufacture, and distribution of alcoholic beverages on the Reserve;

2. To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Alcohol Control Committee to perform its functions. Such employees shall be tribal employees;

3. To issue licenses permitting the sale, manufacture or distribution of alcohol on the Community's Reserve;

4. To hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;

5. To bring suit in the tribal court to enforce this Ordinance as necessary;

6. To determine and seek damages for violation of this Ordinance;

7. To make such reports as may be required;

8. To collect taxes and fees levied or set by the Alcohol Control Committee, and to keep accurate records, books and accounts; and

9. To exercise such other powers as are necessary and appropriate to fulfill the purposes of this Ordinance.

C. The Alcohol Control Committee shall have the authority to authorize the sale of alcohol only on those areas of the Community's Reserve that have been specifically approved by the Tribal Council, by resolution, and under such conditions as may be included in said resolution.

SECTION FOUR.12.6 LIMITATION ON POWERS.

In the exercise of its powers and duties under this Ordinance, the Alcohol Control Committee and its individual members shall not accept any gratuity, compensation or other thing of value from any alcohol wholesaler, retailer, or distributor or from any licensee.

SECTION FOUR.12.7 INSPECTION RIGHTS.

The premises on which alcohol is sold or distributed shall be open for inspection by the Alcohol Control Committee at all reasonable times for the purposes of ascertaining whether the rules and regulations of this Ordinance are being complied with.

SECTION FOUR.12.8 LICENSE REQUIRED.

Sales of alcohol and alcoholic beverages on lands within the Community's jurisdiction may only be made at businesses which hold a Tribal Alcohol License.

SECTION FOUR.12.9 SALES FOR CASH.

All alcohol sales within the Reserve boundaries shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the use of major credit cards.

SECTION FOUR.12.10 SALES FOR PERSONAL CONSUMPTION.

All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverage purchased within the exterior boundaries of the Reserve is prohibited. Any person who is not licensed according to this Ordinance who purchases an alcoholic beverage within the boundaries of the Reserve and sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to paying damages to the Community as set forth herein.

SECTION FOUR.12.11 REQUIREMENTS FOR APPLICATION FOR TRIBAL ALCOHOL LICENSE.

A. No individual tribal license shall issue under this Ordinance except upon a sworn application filed with the Alcohol Control Committee containing a full and complete showing of the following:

1. Satisfactory proof that the applicant is or will be duly licensed by the State of Alaska.

2. Satisfactory proof that the applicant is of good character and reputation among the people of the Reserve and that the applicant is financially responsible.

3. The description of the premises in which the intoxicating beverages are to be sold, proof that the applicant is the owner of such premises, or lessee of such premises, for at least the term of the license.

4. Agreement by the applicant to accept and abide by all conditions of the tribal license.

5. Payment of a license fee as prescribed by the Alcohol Control Committee.

6. Satisfactory proof that neither the applicant nor the applicant's spouse has ever been convicted of a felony.

7. Satisfactory proof that notice of the application has been posted in a prominent, noticeable place on the premises where intoxicating beverages are to be sold for at least thirty (30) days prior to consideration by the Alcohol Control Committee and has been published at least twice in such local newspaper serving the community that may be affected by the license. The notice shall state the date, time, and place when the application shall be considered by the Alcohol Control Committee according to Section Four.12.12 of this Ordinance.

SECTION FOUR.12.12 HEARING ON APPLICATION FOR TRIBAL ALCOHOL LICENSE.

A. All applications for a tribal alcohol license shall be considered by the Alcohol Control Committee in open session at which the applicant, his/her attorney, and any person protesting the application shall have the right to be present, and to offer sworn oral or documentary evidence relevant to the application. After the hearing, the Alcohol Control Committee, by secret ballot, shall determine whether to grant or deny the application based on:

1. Whether the requirements of SECTION FOUR.12.11 have been met; and

2. Whether the Alcohol Control Committee, in its discretion, determines that granting the license is in the best interest of the Community.

In the event that the applicant is a member of the Tribal Council, or a member of the immediate family of a Tribal Council member, such member shall not vote on the application or participate in the hearings as a Alcohol Control Committee member.

SECTION FOUR.12.13 TEMPORARY PERMITS.

The Alcohol Control Committee or its designee may grant a temporary permit for the sale of intoxicating beverages for a period not to exceed three (3) days to any person applying for the same in connection with a tribal or community activity, provided that the conditions prescribed in SECTION FOUR.12.13 of this Ordinance shall be observed by the permittee. Each permit issued shall specify the types of intoxicating beverages to be sold. Further, a fee, as set by the Alcohol Control Committee, will be assessed on temporary permits.

SECTION FOUR.12.14 CONDITIONS OF TRIBAL LICENSE.

A. Any tribal license issued under this Ordinance shall be subject to such reasonable conditions as the Alcohol Control Committee shall fix, including, but not limited to the following:

1. The license shall be for a term not to exceed 2 years;

2. The licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the licensed premises;

3. The licensed premises shall be subject to patrol by the tribal police department, and such other law enforcement officials as may be authorized under applicable law;

4. The licensed premises shall be open to inspection by duly authorized tribal officials at all times during the regular business hours;

5. Subject to the provisions of subsection (7) to this section, no intoxicating beverages shall be sold, served, disposed of, delivered or given to any person, or consumed on the licensed premises except in conformity with the hours and days prescribed by the laws of the State of Alaska, and in accordance with the hours fixed by the Alcohol Control Committee, provided that the licensed premises shall not operate or open earlier or operate or close later than is permitted by the laws of the State of Alaska.

6. No alcohol shall be sold within 200 feet of a polling place on tribal election days, when a referendum is held of the people of the Community, and including special days of observance as designated by the Alcohol Control Committee.

7. All acts and transactions under authority of the tribal alcohol license shall be in conformity with the laws of the State of Alaska, as required by federal law, and shall be in accordance with this ordinance and any tribal license issued according to this Ordinance.

8. No person under the age permitted under the laws of the State of Alaska shall be sold, served, delivered, given, or allowed to consume alcoholic beverages in the licensed establishment and/or area.

9. There shall be no discrimination in the operations under the tribal license by reason of race, color, or creed.

SECTION FOUR.12.15 LICENSE NOT A PROPERTY RIGHT.

Notwithstanding any other provision of this ordinance, a tribal alcohol license is a mere permit for a fixed duration of time. A tribal alcohol license shall not be deemed a property right or vested right of any kind, nor shall the granting of a tribal alcohol license give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

SECTION FOUR.12.16 ASSIGNMENT OR TRANSFER.

No tribal license issued under this Ordinance shall be assigned or transferred without the written approval of the Alcohol Control Committee expressed by formal resolution.

SECTION FOUR.12.17 SALE OR POSSESSION WITH INTENT TO SELL WITHOUT A LICENSE.

Any offense of Title One, Section 1.55 LIQUOR POSSESSION FOR SALE shall also be considered a violation under this Ordinance.

SECTION FOUR.12.18 PURCHASE FROM OTHER THAN LICENSED FACILITIES.

Any person within the boundaries of the Reserve who buys alcohol from any person other than at a properly licensed facility shall be guilty of a violation of this Ordinance.

SECTION FOUR.12.19 SALES TO PERSONS UNDER THE INFLUENCE OF ALCOHOL.

Any person who sells alcohol to a person apparently under the influence of alcohol shall be guilty of a violation of this Ordinance.

SECTION FOUR.12.20 CONSUMING ALCOHOL IN PUBLIC CONVEYANCE.

Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant or employee of such person who shall knowingly permit any person to drink any alcoholic beverages in any public conveyance shall be guilty of a violation of this Ordinance. Any person who shall drink any alcoholic beverage in a public conveyance shall be guilty of a violation of this Ordinance.

SECTION FOUR.12.21 CONSUMPTION OR POSSESSION OF ALCOHOL BY MINORS.

The possession of alcohol by any minor is prohibited by Section 1.56b of the Criminal Law & Procedure Code. Any offense committed under Section 1.56b shall also constitute a violation of this Ordinance.

SECTION FOUR.12.22 SALE OF ALCOHOL TO MINORS.

The sale of alcohol to any minor is prohibited by Section 1.49a of the Criminal Law & Procedure Code. Any offense committed under Section 1.49a shall also constitute a violation of this Ordinance.

SECTION FOUR.12.23 TRANSFER OF IDENTIFICATION TO MINOR.

Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain alcohol shall be guilty of an offense; provided, that corroborative testimony of a witness other than the minor shall be a requirement of finding a violation of this ordinance.

SECTION FOUR.12.24 USE OF FALSE OR ALTERED IDENTIFICATION.

Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification that falsely purports to show the individual to be over the age of 21 years shall be guilty of violating this Ordinance.

SECTION FOUR.12.25 VIOLATION OF THIS ORDINANCE.

A. The Metlakatla Police Department shall notify the Alcohol Control Committee in writing of any suspected violations of this Ordinance. Upon the request of the Alcohol Control Committee, the Metlakatla Police Department shall appear at the time and place specified for a hearing under subsection B to present the evidence against accused.

B. Any person accused of violating this ordinance shall be entitled to a hearing before the Alcohol Control Committee after 10 days' written notice. The notice must specify the facts underlying the allegation and the specific provision of the Ordinance the person is accused of violating. The accused shall be entitled to the Basic Rights included in Title 1, Chapter 2, Section 2.3, with the exception of a right to trial by an impartial jury. The accused shall be found guilty upon a two-third vote of the members of the Alcohol Control Committee present at the hearing. Any person guilty of a violation of this Ordinance by the Alcohol Control Committee shall be liable to pay the Community a penalty not to exceed $500 per violation as civil damages to defray the Community's cost of enforcement of this Ordinance.

C. In addition to any penalties so imposed, any license issued hereunder may be suspended or canceled by the Alcohol Control Committee for the violation of any of the provisions of this Ordinance, or of the tribal license, upon hearing before the Alcohol Control Committee after 10 days' notice to the licensee. The decision of the Alcohol Control Committee shall be final.

D. A licensee that loses any license granted under this Chapter pursuant to Section Four.12.25(B) may reapply for a license according to the terms of this chapter after a period of six (6) months.

SECTION FOUR.12.26 ACCEPTABLE IDENTIFICATION.

A. Where there may be a question of a person's right to purchase alcohol by reason of his/her age, such person shall be required to present any one of the following issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

1. Driver's license of any state or identification card issued by any State Department of Motor Vehicles;

2. United States Active Duty Military Identification;

3. Passport.

SECTION FOUR.12.27 POSSESSION OF ALCOHOL CONTRARY TO THIS ORDINANCE.

Alcoholic beverages which are possessed contrary to the terms of this Ordinance are declared to be contraband. Alcoholic beverages declared contraband shall be subject to seizure under Title IV, Chapter 6 of the Civil Code.

SECTION FOUR.12.28 SALES TAX.

The Alcohol Control Committee shall have the authority, by regulation, to levy and collect a sales tax on each sale of alcoholic beverages on the Reserve. The amount of such tax shall be set by resolution, shall include credit card payments, and shall include all retail sales of alcohol on the Reserve.

SECTION FOUR.12.29 PAYMENT OF TAXES TO COMMUNITY.

All taxes from the sale of alcoholic beverages on the Reserve shall be paid over to the Secretary of the Community.

SECTION FOUR.12.30 TAXES DUE.

All taxes for the sale of alcoholic beverages on the Reserve are due within thirty (30) days of the end of the calendar quarter for which the taxes are due.

SECTION FOUR.12.31 REPORTS.

Along with payment of the taxes imposed herein, the taxpayers shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

SECTION FOUR.12.32 AUDIT.

As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the Reserve. Said review or audit may be done annually by the Community through its agents or employees whenever, in the opinion of the Alcohol Control Committee, such a review or audit is necessary to verify the accuracy of reports.

SECTION FOUR.12.33 DISPOSITION OF PROCEEDS.

A. The gross proceeds collected by the Alcohol Control Committee from all licensing and provided from the taxation of the sales of alcoholic beverages on the Reserve shall be distributed as follows:

1. For the payment of all necessary personnel, administrative costs, and legal fees for the operation of the Alcohol Control Committee and its activities.

2. The remainder shall be turned over the account of the Community.

SECTION FOUR.12.34 SEVERABILITY.

If any provision or application of this ordinance is determined by review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this Ordinance or to render such provisions inapplicable to other persons or circumstances.

SECTION FOUR.12.35 PRIOR ENACTMENTS.

All prior enactments of the Tribal Council that are inconsistent with the provisions of this Ordinance are hereby rescinded.

SECTION FOUR.12.36 CONFORMANCE WITH STATE OF ALASKA LAWS.

All acts and transactions under this Ordinance shall be in conformity with the laws of the State of Alaska as that term is used in 18 U.S.C. 1161.

SECTION FOUR.12.37 EFFECTIVE DATE.

This Ordinance shall be effective as of the date of publication in the **Federal Register**.

SECTION FOUR.12.38 AMENDMENT.

This Ordinance may only be amended or repealed by a majority vote of the Tribal Council. The authorized areas of the Community's Reserve where alcohol may be sold may only be amended or repealed by the Tribal Council. No amendment or modification of the regulation by the Community of the sale and possession of alcohol is effective until approved by the Secretary of the Interior and published in the **Federal Register**.

SECTION FOUR.12.39 SOVEREIGN IMMUNITY.

This Ordinance in no way limits, alters, restricts, or waives the Community's sovereign immunity from unconsented suit.

[FR Doc. 2022–05344 Filed 3–11–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/A0A501010.999900; OMB Control Number 1076–0152]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Tribal Revenue Allocation Plans

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Assistant Secretary—Indian Affairs (AS–IA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 13, 2022.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; or by email to *comments@bia.gov.* Please reference OMB Control Number 1076–0152 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Paula Hart, Director, Office of Indian Gaming, AS–IA, by telephone: (202) 219–4066; or by email to *indiangaming@bia.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork

Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 12, 2021 (86 FR 44401). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: An Indian tribe must ask the Secretary to approve a Tribal revenue allocation plan. In order for Indian Tribes to distribute net gaming revenues in the form of per capita payments, information is needed by the AS–IA to ensure that Tribal revenue allocation plans include: (1) Assurances that certain statutory requirements are met, (2) a breakdown of the specific uses to which net gaming revenues will be allocated, (3) eligibility requirements for participation, (4) tax liability notification, and (5) the assurance of the protection and preservation of the per capita share of minors and legal incompetents. Sections 290.12, 290.17, 290.24 and 290.26 of 25 CFR part 290, Tribal Revenue Allocation Plans, specify the information collection requirement. The information to be collected includes: The name of the Tribe, Tribal documents, the allocation plan, and other documents deemed necessary.

Title of Collection: Tribal Revenue Allocation Plans.

OMB Control Number: 1076–0152.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 20.

Total Estimated Number of Annual Responses: 20.

Estimated Completion Time per Response: 100 hours.

Total Estimated Number of Annual Burden Hours: 2,000 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2022–05272 Filed 3–11–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/ A0A501010.999900; OMB Control Number 1076–0158]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Gaming on Trust Lands Acquired After October 17, 1988

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Assistant Secretary—Indian Affairs (AS–IA) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 13, 2022.

ADDRESSES: Send written comments on this information collection request (ICR) to the Office of Management and Budget's Desk Officer for the Department of the Interior by email at *OIRA_Submission@omb.eop.gov;* or via facsimile to (202) 395–5806. Please provide a copy of your comments to Steven Mullen, Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs, U.S. Department of the Interior, 1001 Indian School Road NW, Suite 229, Albuquerque, New Mexico 87104; or by email to *comments@bia.gov.* Please reference OMB Control Number 1076–0158 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Ms. Paula Hart, Director, Office of Indian Gaming, AS–IA, by telephone: (202) 219–4066; or by email to *indiangaming@bia.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on August 12, 2021 (86 FR 44401). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are

especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The collection of information will ensure that the provisions of IGRA, Federal law, and the trust obligations of the United States are met when Federally recognized Tribes submit an application under 25 CFR part 292. The applications covered by this OMB Control No. are those seeking a secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988, would be in the best interest of the Indian Tribe and its members, and would not be detrimental to the surrounding community.

Title of Collection: Gaming on Trust Lands Acquired After October 17, 1988.

OMB Control Number: 1076–0158.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Federally recognized Indian Tribes.

Total Estimated Number of Annual Respondents: 2.

Total Estimated Number of Annual Responses: 2.

Estimated Completion Time per Response: 1,000 hours.

Total Estimated Number of Annual Burden Hours: 2,000 hours.

Respondent's Obligation: Required to obtain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $0.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq*).

Steven Mullen,

Information Collection Clearance Officer, Office of Regulatory Affairs and Collaborative Action—Indian Affairs.

[FR Doc. 2022–05271 Filed 3–11–22; 8:45 am]

BILLING CODE 4337–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1121 (Advisory Opinion Proceeding)]

Certain Earpiece Devices and Components Thereof; Institution of an Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute an advisory opinion proceeding as requested by Fantasia Trading, LLC (''Fantasia''). The Commission has also determined to set a target date of 180 days from the date of institution for completion of this proceeding, and to refer this matter to the Chief Administrative Law Judge (''CALJ'') for assignment to an administrative law judge (''ALJ'') for appropriate proceedings and an initial advisory opinion (''IAO''). The IAO is to be issued at the earliest practicable time, preferably within 120 days from the date of institution, but no later than 7 months after institution.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 29, 2018, based on a complaint filed on behalf of Bose Corporation (''Bose'') of Framingham, Massachusetts. 83 FR 30,776 (Jun. 29, 2018). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain earpiece devices and components thereof by reason of infringement of one or more claims of U.S. Patent Nos. 9,036,852 (''the '852 patent''); 9,036,853 (''the '853 patent''); 9,042,590 (''the '590 patent''); 8,249,287 (''the '287 patent''); 8,311,253 (''the '253 patent''); and 9,398,364 (''the '364 patent''). The notice of investigation named fourteen respondents. The Office of Unfair Import Investigations (''OUII'') was also named as a party in this investigation.

On February 8, 2019, Bose moved for summary determination of a violation of section 337. On March 22, 2019, OUII filed a response supporting Bose's motion in substantial part and supporting the requested remedy of a general exclusion order (''GEO'').

On June 28, 2019, the presiding ALJ issued an initial determination (''ID'') (Order No. 16) granting in part Bose's motion for summary determination of a violation of section 337 with respect to the '852, '853, '590, '287, and '253 patents by certain respondents who were in default or did not participate in the investigation.

On August 14, 2019, the Commission reviewed *inter alia* the economic prong of the domestic industry requirement with respect to the '364 patent and affirmed with modifications the ID's finding of a violation of section 337 with respect to the '852, '853, '590, '287, and '253 patents. 84 FR 43159–161 (Aug. 20, 2019). The Commission also requested additional briefing from the parties on the issue under review and invited the parties, interested government agencies, and any other interested parties to file written submissions on the issues of remedy, the public interest, and bonding. *Id.* at 43160–161.

On October 31, 2019, the Commission issued a GEO, a limited exclusion order, and cease and desist orders with respect to certain claims of the asserted patents other than the '364 patent. 84 FR 59838–840 (Nov. 6, 2019). The GEO prohibits the unlicensed importation of certain

earpiece devices and components thereof that infringe claims 1 and 7 the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; and claims 1, 7, and 8 of the '287 patent. The Commission also imposed a bond in the amount of one hundred percent (100%) of the entered value of the imported articles during the period of Presidential review. The Commission remanded certain issues to the ALJ and thereafter the '364 patent was withdrawn from the investigation and the investigation was terminated in its entirety. 84 FR 72382–383 (Dec. 31, 2019).

On February 4, 2022, Fantasia, the importer of record, filed the subject request for an advisory opinion that Anker's Soundcore Liberty 2 Pro (''A3909''), Soundcore Liberty Neo (''A3911''), and Soundcore Life Dot 2 (''A3922'') products (collectively, the ''Anker Earphones'') do not infringe claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; and claims 1, 7, and 8 of the '287 patent, and thus are not covered by the GEO issued in this investigation.

Having reviewed Fantasia's request in view of the record below, the Commission has determined to institute an advisory opinion proceeding under Commission Rule 210.79 to ascertain whether the Anker Earphones infringe claims 1 and 7 of the '852 patent; claims 1 and 8 of the '853 patent; claims 1 and 6 of the '590 patent; and claims 1, 7, and 8 of the '287 patent, and are covered by the GEO issued in this investigation. The Commission has further determined to refer the matter to the CALJ for assignment to an ALJ for appropriate proceedings and to issue an IAO at the earliest practicable time, preferably within 120 days of institution, but no later than 7 months after institution. The ALJ shall set a target date at two months following the date of issuance of the IAO. The target date may be extended for good cause shown. The following entities are named as parties to the proceeding: (1) Bose; and (2) Fantasia.

The Commission vote for this determination took place on March 8, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: March 8, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–05275 Filed 3–11–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1237]

Certain Cloud-Connected Wood-Pellet Grills and Components Thereof; Commission Determination Not To Review a Final Initial Determination Finding a Violation of Section 337; Request for Written Submissions on Remedy, the Public Interest, and Bonding; and Extension of the Target Date for Completion of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined not to review a final initial determination (''ID'') of the presiding former chief administrative law judge (''CALJ'') finding a violation of section 337 by the accused products of respondent GMG Products LLC (''GMG''). The Commission requests written submissions from the parties, interested government agencies, and other interested persons on the issues of remedy, the public interest, and bonding, under the schedule set forth below. The Commission has also determined to extend the target date for completion of the investigation to May 12, 2022.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 4, 2021, based on a complaint filed on behalf of Traeger Pellet Grills LLC (''Traeger'') of Salt Lake City, Utah. 86 FR 129–30 (Jan. 4, 2021). The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cloud-connected wood-pellet grills and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 10,218,833 (''the '833 patent'') and 10,158,720 (''the '720 patent''). The Commission's notice of investigation named GMG of Lakeside, Oregon as the sole respondent. The Office of Unfair Import Investigations is not participating in the investigation.

The Commission previously found that Traeger has satisfied the economic prong of the domestic industry requirement with respect to the '833 and '720 patents. *See* Order No. 26 (Aug. 10, 2021), *unreviewed by* Comm'n Notice (Sept. 9, 2021).

On September 3, 2021, the former CALJ issued an ID (Order No. 28) granting in part GMG's motion for summary determination of non-infringement as to the '833 patent and terminating that patent from the investigation. *See* Order No. 28 (Sept. 3, 2021). On October 28, 2021, the Commission determined, on review, to affirm with modification the subject ID's finding of non-infringement. *See* Comm'n Notice (Oct. 28, 2021). Accordingly, the '833 patent was terminated from the investigation.

On December 6, 2021, the former CALJ issued the final ID finding a violation of section 337 based on infringement (*i.e.,* direct, contributory, and induced) of asserted claims 1 and 2 of the '720 patent. The ID further finds that: (1) Traeger has satisfied the technical prong of the domestic industry requirement; (2) GMG is estopped from challenging the validity of the '720 patent based on the prior art MAK and Fireboard systems; (3) the prior art MAK and Fireboard systems do not render the asserted claims of the '720 patent invalid due to anticipation under 35 U.S.C. 102(a) or obviousness under 35 U.S.C. 103; and (4) the '720 patent is not unenforceable due to inequitable conduct. The former CALJ recommended, should the Commission find a violation, the issuance of a limited exclusion order directed to GMG's infringing products and a cease and desist order directed to GMG, and requiring a bond in the amount of 53.1 percent of the entered value for

importation of infringing articles during the period of Presidential review.

On December 20, 2021, GMG petitioned for review of certain aspects of the final ID. Specifically, GMG petitioned for review of the ID's findings regarding claim construction, infringement, the technical prong of the domestic industry requirement, validity, and enforceability with respect to the '720 patent. On December 28, 2021, Traeger filed a response in opposition to GMG's petition for review.

The Commission received no public interest comments from the public in response to the Commission's **Federal Register** notice seeking comment on the public interest. 86 FR 70860–61 (Dec. 13, 2021). Traeger and GMG did not submit any public interest comments pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

Having reviewed the record of the investigation, including the parties' briefing, the Commission has determined not to review the final ID's finding of a violation of section 337. The Commission has also determined to extend the target date for completion of the investigation to May 12, 2022.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that results in the exclusion of the subject articles from entry into the United States, and/or (2) issue a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

When the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* section 337(j), 19 U.S.C. 1337(j) and the Presidential Memorandum of July 21, 2005. 70 *FR* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, bonding, and the public interest. Such submissions should address the recommended determination by the ALJ on remedy and bonding.

In its initial submission, Complainant is also requested to identify the remedy sought and to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the date that the asserted patent expires, to provide the HTSUS subheadings under which the accused products are imported, and to supply the identification information for all known importers of the products at issue in this investigation. The initial written submissions and proposed remedial orders must be filed no later than close of business on March 22, 2022. Reply submissions must be filed no later than the close of business on March 29, 2022. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Opening submissions are limited to 25 pages. Reply submissions are limited to 20 pages.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (March 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1237) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary, (202) 205–2000.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on March 8, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: March 8, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–05273 Filed 3–11–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–982]

Bulk Manufacturer of Controlled Substances Application: Janssen Pharmaceuticals Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Janssen Pharmaceuticals Inc., has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTAL INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 13, 2022. Such persons may also file a written request for a hearing on the application on or before May 13, 2022.

ADDRESSES: DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.''

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on December 10, 2021, Janssen Pharmaceuticals Inc., 1440 Olympic Drive Athens, Georgia 30601–1645, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II
Hydromorphone	9150	II
Hydrocodone	9193	II
Oripavine	9330	II
Thebaine	9333	II
Tapentadol	9780	II

The company plans to manufacture the above-listed controlled substances in bulk for distribution to its customers. No other activities for these drug codes are authorized for this registration.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–05314 Filed 3–11–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–978]

Bulk Manufacturer of Controlled Substances: ANI Pharmaceuticals, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: ANI Pharmaceuticals, Inc., has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTAL INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 13, 2022. Such persons may also file a written request for a hearing on the application on or before May 13, 2022.

ADDRESSES: The DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.''

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on January 6, 2022, ANI Pharmaceuticals, Inc., 70 Lake Drive, East Windsor, New Jersey 08520, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Psilocybin	7437	I
Psilocyn	7438	I
Levorphanol	9220	II

The company plans to bulk manufacture the listed controlled substances for the internal use or for sale to its customers. No other activities for these drug codes are authorized for this registration.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–05323 Filed 3–11–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–976]

Importer of Controlled Substances Application: Meridian Medical Technologies, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Meridian Medical Technologies, LLC, has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 13, 2022. Such persons may also file a written request for a hearing on the application on or before April 13, 2022.

ADDRESSES: The DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701

Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 2, 2022, Meridian Medical Technologies, LLC, 2555 Hermelin Drive, Saint Louis, Missouri 63144, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Morphine	9300	II

The company plans to import the control substance for analytical and research purposes. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–05291 Filed 3–11–22; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–981]

Importer of Controlled Substances Application: Sigma Aldrich Co. LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Sigma Aldrich Co. LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplemental Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 13, 2022. Such persons may also file a written request for a hearing on the application on or before April 13, 2022.

ADDRESSES: DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on January 21, 2022, Sigma Aldrich Co. LLC, 3500 Dekalb Street, Saint Louis, Missouri 63118–4103, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Cathinone	1235	I
Methcathinone	1237	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
Gamma Hydroxybutyric Acid	2010	I
Tetrahydrocannabinols	7370	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
2,5-Dimethoxyamphetamine	7396	I
3,4-Methylenedioxyamphetamine	7400	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I
Dimethyltryptamine	7435	I
N-Benzylpiperazine	7493	I
Heroin	9200	I
Normorphine	9313	I
Amobarbital	2125	II
Secobarbital	2315	II
Nabilone	7379	II
Phencyclidine	7471	II
Ecgonine	9180	II
Ethylmorphine	9190	II
Levorphanol	9220	II
Meperidine	9230	II
Thebaine	9333	II
Opium, powdered	9639	II
Levo-alphacetylmethadol	9648	II

The company plans to import the listed controlled substances for sale to research facilities for drug testing and analysis. In reference to drug code 7370 (Tetrahydrocannabinols) the company plans to import synthetic Tetrahydrocannabinols. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–05318 Filed 3–11–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–977]

Importer of Controlled Substances Application: Perkinelmer, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Perkinelmer, Inc. has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTAL INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before April 13, 2022. Such persons may also file a written request for a hearing on the application on or before April 13, 2022.

ADDRESSES: The DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on February 7, 2022, Perkinelmer, Inc., 120 East Dedham Street, Boston, Massachusetts 02118–2852, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lysergic Acid Diethylamide	7315	I
Thebaine	9333	II

The company plans to import the listed controlled substances for bulk manufacturing into radioactive formulations for sale to its customers for research purposes. Drug code 9333 (Thebaine) will be used to import the Thebaine derivative Diprenorphine. No other activity for these drug codes is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–05308 Filed 3–11–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–983]

Bulk Manufacturer of Controlled Substances Application: Bulk Manufacturer of Marihuana: Agriculture Technology Institute, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: The Drug Enforcement Administration (DEA) is providing notice of an application it has received from an entity applying to be registered to manufacture in bulk basic class(es) of controlled substances listed in schedule I. DEA intends to evaluate this and other pending applications according to its regulations governing the program of growing marihuana for scientific and medical research under DEA registration.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before May 13, 2022.

ADDRESSES: DEA requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.''

SUPPLEMENTARY INFORMATION: The Controlled Substances Act (CSA) prohibits the cultivation and distribution of marihuana except by persons who are registered under the CSA to do so for lawful purposes. In accordance with the purposes specified in 21 CFR 1301.33(a), DEA is providing notice that the entity identified below has applied for registration as a bulk manufacturer of schedule I controlled substances. In response, registered bulk manufacturers of the affected basic class(es), and applicants therefor, may submit electronic comments on or objections of the requested registration, as provided in this notice. This notice does not constitute any evaluation or determination of the merits of the application submitted.

The applicant plans to manufacture bulk active pharmaceutical ingredients (APIs) for product development and distribution to DEA registered researchers. If the application for registration is granted, the registrant would not be authorized to conduct other activity under this registration aside from those coincident activities specifically authorized by DEA regulations. DEA will evaluate the application for registration as a bulk manufacturer for compliance with all

applicable laws, treaties, and regulations and to ensure adequate safeguards against diversion are in place.

As this applicant has applied to become registered as a bulk manufacturer of marihuana, the application will be evaluated under the criteria of 21 U.S.C. 823(a). DEA will conduct this evaluation in the manner described in the rule published at 85 FR 82333 on December 18, 2020, and reflected in DEA regulations at 21 CFR part 1318.

In accordance with 21 CFR 1301.33(a), DEA is providing notice that on December 31, 2021, Agriculture Technology Institute, LLC, 4708 54th Street MAIP, Suite 201, Pryor, Oklahoma 74361, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substances:

Controlled substance	Drug code	Schedule
Marihuana	7360	I

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2022–05316 Filed 3–11–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1110–0077]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of an Approved Collection

AGENCY: Federal Bureau of Investigation, Criminal Justice Information Services Division, Department of Justice.

ACTION: 30 Day notice.

SUMMARY: The Department of Justice, Federal Bureau of Investigation (FBI), Criminal Justice Information Services Division, is submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The Department of Justice encourages public comment and will accept input until April 13, 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: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

➢ Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Federal Bureau of Investigation, Criminal Justice Information Services Division, including whether the information will have practical utility;

➢ Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

➢ Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

➢ Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. Type of Information Collection: Revision of a currently approved collection.

2. The Title of the Form/Collection: FIX NICS Act State Implementation Plan Survey

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection: There is no agency form number for this collection. The applicable component within the Department of Justice is the Federal Bureau of Investigation, Criminal Justice Services Division.

4. Affected public who will be asked or required to respond, as well as a brief abstract: Primary: State, local, federal and tribal law enforcement agencies. This collection is needed for the reporting or making available of appropriate records to the National Instant Criminal Background Check System (NICS) established under section 103 of the Brady Handgun Violence Prevention Act. Acceptable data is stored as part of the NICS of the FBI.

5. An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated 56 respondents will complete each form within approximately 2,400 minutes.

6. An estimate of the total public burden (in hours) associated with the collection: There are an estimate 2, 240 total annual burden hours anticipated for the collection.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: March 9, 2022.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2022–05312 Filed 3–11–22; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (''TAA'') for workers by (TA–W) issued during the period of *February 1, 2022 through February 28, 2022.*

This notice includes summaries of initial determinations such as Affirmative Determinations of Eligibility, Negative Determinations of Eligibility, and Determinations Terminating Investigations of Eligibility within the period. If issued in the period, this notice also includes summaries of post-initial determinations that modify or amend initial determinations such as Affirmative Determinations Regarding Applications for Reconsideration, Negative Determinations Regarding Applications for Reconsideration, Revised Certifications of Eligibility, Revised Determinations on Reconsideration, Negative Determinations on Reconsideration, Revised Determinations on remand from the Court of International Trade, and Negative Determinations on remand from the Court of International Trade.

Affirmative Determinations for Trade Adjustment Assistance

The following certifications have been issued.

TA–W No.	Subject firm	Location	Reason(s)
96,923	OECO, LLC	Milwaukie, OR	Secondary Component Supplier.
97,015	Marathon Petroleum Corporation	Kenai, AK	Company Imports of Articles.
97,032	ON Semiconductor	South Portland, ME	Shift in Production to a Foreign Country.
98,005	Stant USA Corporation	Pine Bluff, AR	Shift in Production to an FTA Country or Beneficiary.
98,100	Sulzer Pumps (US) Inc., Pumps Equipment Division.	Portland, OR	Actual/Likely Increase in Imports following a Shift Abroad.
98,104	Baxter Healthcare, Integrated Supply Chain & Quality Division.	Brooklyn Park, MN	Shift in Production to an FTA Country or Beneficiary.
98,105	Kemper Valve & Fittings Corp	Pleasanton, TX	Increased Customer Imports.
98,105A	Kemper Valve & Fittings Corp	Odessa, TX	Increased Customer Imports.
98,108	Belden DBA West Penn Wire	Washington, PA	Shift in Production to an FTA Country or Beneficiary.
98,128	Rebecca Taylor Inc	New York, NY	Increased Company Imports.
98,133	TE Connectivity	Carrollton, TX	Shift in Production to an FTA Country or Beneficiary.
98,148	Philips Ultrasound Inc. and Philips North America LLC.	Bothell, WA	Actual/Likely Increase in Imports following a Shift Abroad.
98,156	Sensata Technologies, Inc	Carpinteria, CA	Shift in Production to an FTA Country or Beneficiary.
98,160	Superior Industries International Arkansas.	Fayetteville, AR	Shift in Production to an FTA Country or Beneficiary.
98,161	Protek Medical Supplies, Inc	Coralville, IA	Shift in Production to an FTA Country or Beneficiary.
98,166	ZF	Lebanon, TN	Shift in Production to an FTA Country or Beneficiary.
98,171	NRI Electronics Inc	Rochester, MN	Shift in Production to an FTA Country or Beneficiary.
98,173	Resolute Forest Products US Inc.	Calhoun, TN	Increased Company Imports.
98,183	M–D Metal Source	West Columbia, SC	Shift in Production to an FTA Country or Beneficiary.

Negative Determinations for Trade Adjustment Assistance

The following investigations revealed that the eligibility criteria for TAA have not been met for the reason(s) specified.

TA–W No.	Subject firm	Location	Reason(s)
96,711	GMCH Kokomo Assembly	Kokomo, IN	No Shift in Production or Other Basis.
96,871	Beck Steel Inc	Lubbock, TX	No Shift in Production or Other Basis.
96,915	NIKE, Inc	Beaverton, OR	No Sales or Service Decline or Other Basis.
96,926	Steel Parts Manufacturing, Inc	Tipton, IN	No Shift in Production or Other Basis.
96,950	Dometic Corporation	Elkhart, IN	No Sales or Production Decline or Other Basis.
97,006	Halliburton Energy Services, Inc	Prudhoe Bay, AK	No Shift in Production or Other Basis.
97,025	Petro Star, Inc	North Pole, AK	No Employment Decline or Threat of Separation or ITC.
97,025A	Petro Star Inc	Valdez, AK	No Employment Decline or Threat of Separation or ITC.
97,073	Stanadyne, LLC.	Windsor, CT	No Shift in Services or Other Basis.
98,039	Siemens Energy, Inc	Orlando, FL	Workers Do Not Produce an Article.
98,076	Emerson Process Management, LLLP.	Eden Prairie, MN	Predominant Cause of Layoffs Unrelated to Imports, Shift in Production to Beneficiary Country, or Increase in Imports Following a Shift.
98,076A	Emerson Process Management, LLLP.	Round Rock, TX	Predominant Cause of Layoffs Unrelated to Imports, Shift in Production to Beneficiary Country, or Increase in Imports Following a Shift.
98,085	GM Saginaw Metal Casting Operations.	Saginaw, MI	No Sales or Production Decline/Shift in Production (Domestic Transfer).
98,090	TPI Iowa, LLC	Newton, IA	No Sales or Production Decline/Shift in Production (Domestic Transfer).
98,091	Maine Bucket Company Inc	Lewiston, ME	Predominant Cause of Layoffs Unrelated to Imports, Shift in Production to Beneficiary Country, or Increase in Imports Following a Shift.
98,101	Laminate Technologies of Oregon, LLC.	White City, OR	No Import Increase and/or Production Shift Abroad.
98,105B	Kemper Valve & Fittings Corp.	Houston, TX	No Employment Decline.
98,119	Cardinal Health	Whitestone, NY	Workers Do Not Produce an Article.
98,119A	Cardinal Health	Dublin, OH	Workers Do Not Produce an Article.
98,119B	Cardinal Health	Greensboro, NC	Workers Do Not Produce an Article.
98,122	RedSail Technologies, LLC	Anacortes, WA	No Import Increase and/or Production Shift Abroad.
98,123	K2 Advisors LLC	Stamford, CT	Workers Do Not Produce an Article.

TA–W No.	Subject firm	Location	Reason(s)
98,127	Comprehensive Decommissioning International.	Plymouth, MA	Workers Do Not Produce an Article.
98,138	Freres Lumber Company, Inc	Lyons, OR	No Sales or Production Decline/Shift in Production (Domestic Transfer).
98,138A	Freres Lumber Company, Inc	Lyons, OR	No Sales or Production Decline/Shift in Production (Domestic Transfer).
98,138B	Freres Lumber Company, Inc	Mill City, OR	No Sales or Production Decline/Shift in Production (Domestic Transfer).
98,153	BitTitan, Inc	Bellevue, WA	Workers Do Not Produce an Article.
98,155	Slant/Fin Corporation	Greenvale, NY	No Sales or Production Decline/Shift in Production (Domestic Transfer).
98,159	CNH Industrial America LLC	Burlington, IA	No Sales or Production Decline/Shift in Production (Domestic Transfer).
98,162	Astec-Carlson Paving Products Inc.	Tacoma, WA	Predominant Cause of Layoffs Unrelated to Imports, Shift in Production to Beneficiary Country, or Increase in Imports Following a Shift.
98,172	Moxie Solar, Inc	North Liberty, IA	Workers Do Not Produce an Article.
98,176	Nexplore US	Minneapolis, MN	No Sales or Production Decline/Shift in Production (Domestic Transfer).
98,177	Sierra Pacific Industries	Eugene, OR	No Sales or Production Decline/Shift in Production (Domestic Transfer).
98,179	Setterstix, Inc	Cattaraugus, NY	No Sales or Production Decline/Shift in Production (Domestic Transfer).
98,184	UPS, Global Business Service Division.	Dunmore, PA	Workers Do Not Produce an Article.
98,186	RAI Services Company (RAISC)	Winston-Salem, NC	Predominant Cause of Layoffs Unrelated to Imports, Shift in Production to Beneficiary Country, or Increase in Imports Following a Shift.

I hereby certify that the aforementioned determinations were issued during the period of *February 1, 2022 through February 28, 2022.* These determinations are available on the Department's website *https://www.dol.gov/agencies/eta/tradeact* under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 3rd day March 2022.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2022–05266 Filed 3–11–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligiblity To Apply for Trade Adjustment Assistance

In accordance with the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (''Act''), as amended, the Department of Labor herein presents notice of investigations regarding eligibility to apply for trade adjustment assistance under chapter 2 of the Act (''TAA'') for workers by (TA–W) started during the period of *February 1, 2022 through February 28, 2022.*

This notice includes instituted initial investigations following the receipt of validly filed petitions. Furthermore, if applicable, this notice includes investigations to reconsider negative initial determinations or terminated initial investigations following the receipt of a valid application for reconsideration.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. Any persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Administrator, Office of Trade Adjustment Assistance, at the address shown below, no later than ten days after publication in **Federal Register**.

Initial Investigations

The following are initial investigations commenced following the receipt of a properly filed petition.

TA–W No.	Subject firm	Location	Inv start date
98,186	RAI Services Company (RAISC)	Winston-Salem, NC	2/3/2022
98,187	Enstrom Helicopter Corporation	Menominee, MI	2/4/2022
98,188	Christian Anderson Companies, LLC	Eau Claire, WI	2/4/2022
98,189	Legendary Headware LLC	San Diego, CA	2/4/2022
98,190	Formfactor, Inc	Beaverton, OR	2/8/2022
98,191	Portland General Electric Boardman Coal Plant	Boardman, OR	2/8/2022
98,192	Tenet Health Corporation	Dallas, TX	2/8/2022
98,193	GenOn Energy Service LLC	Avon Lake, OH	2/9/2022
98,194	Amy's Kitchen, Inc	Pocatello, ID	2/10/2022
98,195	Endomines Idaho, LLC	Elk City, ID	2/10/2022
98,196	Nippon Carbide	Greenville, SC	2/10/2022
98,197	Zones, LLC	Auburn, WA	2/10/2022
98,198	Spectranetics	Colorado Springs, CO	2/11/2022
98,199	Anixter, Inc	Woodbury, NY	2/15/2022

TA–W No.	Subject firm	Location	Inv start date
98,200	Allied Global	Coral Gables, FL	2/17/2022
98,201	Molded Acoustical Products of Easton Inc	Granger, IN	2/17/2022
98,202	Clarivate	Philadelphia, PA	2/22/2022
98,203	East West Manufacturing	El Paso, TX	2/22/2022
98,204	Luminant Energy Co., LLC—Miami Fort Generating Station	North Bend, OH	2/23/2022
98,205	Auto Injury Solutions/CCC Information Services, Inc	Chicago, IL	2/25/2022
98,206	Ross Casting and Innovation, LLC	Sidney, OH	2/25/2022
98,207	Lakeside Book Company	Cranbury, NJ	2/28/2022
98,208	TOPS Products	Beresford, SD	2/28/2022

A record of these investigations and petitions filed are available, subject to redaction, on the Department's website *https://www.dol.gov/agencies/eta/tradeact* under the searchable listing or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 3rd day of March 2022.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2022–05267 Filed 3–11–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before April 13, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0009 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0009.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452, *Attention:* Song-Ae A. Noe, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–005–M.

Petitioner: Sierra Minerals, LLC, 10585 Double R Boulevard, Suite B, Reno, Nevada 89521.

Mine: Columbo Mine, MSHA ID No. 04–05951, located in Sierra County, California.

Regulation Affected: 30 CFR 57.11052(d), Refuge areas.

Modification Request: The petitioner requests a modification of 30 CFR 57.11052(d) to permit the use of commercially purchased water in sealed bottles in lieu of providing potable water through waterlines in the existing refuge chamber.

The petitioner states that:

(a) The mine is an underground historic gold mine being rehabilitated and developed.

(b) The mine has one refuge chamber.

(c) The maximum number of miners working underground during a shift is four.

(d) The mine is located at an elevation of 5,400 feet in the Sierra Nevada Mountains, 3.6 miles above the town of Sierra City, California. Installation of a potable water system is not practical at this location. External water lines and water storage facilities are subject to freezing during winter months. Installation of a potable water system at this remote location would be prohibitive.

(e) The waterline requirement diminishes safety in the mine as there is no natural or potable water source readily available.

(f) Equal or better safety can be provided to miners by maintaining a supply of commercially purchased water in sealed bottles in the refuge chamber.

The petitioner proposes the following alternative method:

(a) Drinking water will be supplied via commercially purchased water in sealed bottles in the refuge chamber.

(b) The water provided will be sufficient for four miners for a 10 day period. Six cases of commercially bottled water will be maintained in the refuge chamber. Each case consists of 32, 16.9 fluid ounce bottles.

(c) The bottled water will be visually inspected on a weekly basis.

(d) The bottled water will be replaced every two years or sooner in the event of damage, usage, or degradation.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same

measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–05269 Filed 3–11–22; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before April 13, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0015 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0015.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Acting Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–006–M.

Petitioner: Nevada Gold Mines, LLC, 1655 Mountain City Highway, Elko, Nevada, 89801.

Mine: Turquoise Ridge Mine, MSHA ID No. 26–02286, located in Humboldt County, Nevada.

Regulation Affected: 30 CFR 57.11052(d), Refuge areas.

Modification Request: The petitioner requests a modification of 30 CFR 57.11052(d) to permit the use of sealed purified drinking water in lieu of providing potable water through waterlines in the existing refuge chambers and future refuge chambers and locations.

The petitioner states that:

(a) The mine is an underground shaft gold mine with 15 refuge chambers located throughout the underground portion of the mine. In the refuge areas, drinkable water is supplied via commercially purchased water in sealed pouches.

(b) The refuge chambers are MineARC refuge chambers and are made of steel. Thirteen refuge chambers are equipped for a maximum capacity of 12 miners, and two refuge chambers are equipped for a maximum capacity of four miners. This capacity exceeds the normal work crew of approximately 155 miners underground on any shift.

(c) Each refuge chamber is provided with a waterline. The water flowing through these lines is not potable due to the configuration of the waterlines and the water source. Installing waterlines to provide potable drinking water to each refuge chamber is not feasible due to the lack of essential infrastructure.

(d) The waterlines are susceptible to damage during an emergency and under normal working conditions. The water supply could be cut off completely.

(e) In an emergency, there can be no guarantee of potable drinking water via the waterline for miners using the refuge area. Application of the standard could adversely impact the safety of the affected miners if they were to rely on waterlines running from the portal to the refuge chambers, as these lines are subject to interruption and are inherently less safe than sanitary sealed water pouches located inside the refuge chambers. Sealed water stored inside each refuge chamber ensures that affected miners will have sanitary drinking water available to them in an emergency.

(f) The 15 refuge chambers at the mine are portable. Allowing the use of refuge chambers which do not have to be connected to waterlines provides greater flexibility in the location of the refuge chambers. Refuge chambers can be located in direct relation to where miners are working and relocated quickly to working areas as needed for the protection of miners.

The petitioner proposes the following alternative method:

(a) Drinking water will be supplied via commercially purchased water in sealed individual portion-sized pouches in each refuge chamber. The water is supplied by the case and packaged into 4.227 fluid ounce/125 milliliter portions with 50 individual portion sizes per case.

(b) At a minimum, the refuge chamber will be supplied with 2.25 quarts of water per day per person for 4 days. The total amount of water provided will vary depending on the maximum capacity of the refuge chamber. In a 4-man refuge chamber, a minimum of six cases of water will be provided. In a 12-man refuge chamber, a minimum of 17 cases of water will be provided.

(c) The water will have a maximum shelf life of 5 years. The operator will replace the existing water supply with fresh water before the water's expiration date. The condition and quantity of water will be confirmed by inspection on no less than a monthly basis.

(d) Written instructions for conservation of water will be provided with the refuge chamber supplies.

(e) All miners affected will receive training in the operation of the refuge chamber and will receive refresher training annually.

(f) The refuge chamber will be inspected monthly and documented by the Mine Manager or the Manager's designee.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–05268 Filed 3–11–22; 8:45 am]

BILLING CODE 4520–43–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 16–CRB–0010–SD (2014–17)]

Distribution of 2015–17 Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges announce partial settlement of controversies and request comments on a motion for partial distribution of satellite television retransmission royalties for royalty years 2015–17.

DATES: Comments are due on or before April 13, 2022.

ADDRESSES: Interested claimants must submit timely comments using eCRB, the Copyright Royalty Board's online electronic filing application, at *https://app.crb.gov.*

Instructions: All submissions must include a reference to the CRB and docket number 16–CRB–0010–SD (2014–17). All submissions will be posted without change to eCRB at *https://app.crb.gov* including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's online electronic filing and case management system, at *https://app.crb.gov* and search for docket No. 16–CRB–0010–SD (2014–17).

FOR FURTHER INFORMATION CONTACT: Anita Brown, CRB Program Specialist, (202) 707–7658, *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year satellite television providers must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 119 of the Copyright Act for the retransmission to satellite service subscribers of over-the-air television broadcast signals. *See* 17 U.S.C. 119(b). The Copyright Royalty Judges (Judges) oversee distribution of royalties to copyright owners whose works were included in a qualifying retransmission and who timely filed a claim for royalties.

Allocation of the royalties collected occurs in one of two ways. In the first instance, the Judges may authorize distribution in accordance with a negotiated settlement among all claiming parties. *See id.* at 119(b)(5)(B), (C). If all claimants do not reach agreement with respect to the royalties, the Judges must conduct a proceeding to determine the distribution of any royalties that remain in controversy. *Id.* at 119(b)(5)(B). Alternatively, the Judges may, on motion of claimants and on notice to all interested parties, authorize a partial distribution of royalties, reserving on deposit sufficient funds to resolve identified disputes. *Id.;* 17 U.S.C. 801(b)(3)(C).[1]

On September 15, 2021, the Judges received a Joint Notice of Final Allocation Phase Settlement and Motion for Further Distribution of 2015–17 Satellite Royalties (Notice and Motion). The parties to the Notice and Motion are all participants self-identifying as ''Allocation Phase Parties'' in the 2014–17 satellite royalty distribution proceeding.[2] The Allocation Phase Parties seek distribution of the funds in question under 17 U.S.C. 801(b)(3)(A).[3] The Allocation Phase Parties represent that there are no remaining controversies regarding allocation of the 2015–17 satellite royalty funds among the self-identified *categories* of claimants.

The moving parties concede, however, the existence of controversies within most of the claimant categories, *viz.,* claims asserted by Multigroup Claimants to funds otherwise allocable to Program Suppliers, Joint Sports Claimants, and Devotional Claimants, and claims asserted by Global Music Rights LLC to funds allocable to the Music Claimants category. Accordingly, the Allocation Phase Parties request that the Judges reserve 5% of the 2015–17 Satellite Funds currently being held by the Copyright Office to address unresolved Distribution Phase controversies and distribute the remaining 95% of those to the Allocation Phase Parties pursuant to 17 U.S.C. 801(b)(3)(A). Notice and Motion at 1–2. The parties do not seek final distribution with respect to any of the allocation categories in which there are no allocation or distribution phase controversies.

While the Judges cannot make the necessary finding to authorize the requested distribution under section 801(b)(3)(A), they will consider whether the requested distribution is warranted under section 801(b)(3)(C). The Judges hereby solicit comments on the requested distribution to determine whether any claimant entitled to receive such royalty fees has a reasonable objection to the partial distribution and whether all claimants entitled to receive such fees is willing to agree to the stipulations for such distribution under section 801(b)(3)(C) (i)–(iv). The Notice and Motion is available for review in eCRB, the CRB electronic filing site, at *https://app.crb.gov.*

Dated: March 8, 2022.

Suzanne M. Barnett,

Chief Copyright Royalty Judge.

[FR Doc. 2022–05270 Filed 3–11–22; 8:45 am]

BILLING CODE 1410–72–P

[1] In authorizing a partial distribution under Section 801(b)(3)(C), the Judges must conclude that no claimant entitled to receive the requested funds has stated a reasonable objection to the partial distribution and all such claimants must (1) agree to the partial distribution, (2) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees under section 801(b)(3)(B); file the agreement with the Judges; and agree that such funds are available for distribution. 17 U.S.C. 801(b)(3)(C).

[2] Participants self-identifying as Allocation Phase Parties are: Commercial Television Claimants; Settling Devotional Claimants; Joint Sports Claimants; Music Claimants comprising American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC Performing Rights, LLC; and Program Suppliers.

[3] Under section 801(b)(3)(A), the Judges may authorize distribution of funds deposited under 17 U.S.C. 119, to the extent the Judges find that the distribution is not subject to controversy.

NATIONAL ENDOWMENT FOR THE ARTS

Privacy Act of 1974; System of Records

AGENCY: National Endowment for the Arts.

ACTION: Notice of a new System of Records.

SUMMARY: The National Endowment for the Arts (Endowment or NEA) is publishing a notice of its Reasonable Accommodations system. The system is used to collect and maintain medical and religious documentation used to determine reasonable accommodations for NEA staff.

DATES: This system of records will go into effect without further notice April 13, 2022 unless otherwise revised pursuant to comments received.

ADDRESSES: Chief Information Officer; National Endowment for the Arts, 400 7th Street SW, Washington, DC 20506; telephone at (202) 682–5706 or by electronic mail at *tunnessenj@arts.gov.*

FOR FURTHER INFORMATION CONTACT: Chief Information Officer, *tunnessenj@arts.gov.*

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 552a(e)(4), the Endowment is today publishing a notice of the existence and character of its Reasonable Accommodation system in order to make available in one place in the **Federal Register**.

SYSTEM NAME AND NUMBER:

Reasonable Accommodations/NEA–19.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Human Resources, 400 7th Street SW, Washington, DC 20506.

SYSTEM MANAGER(S):

Deputy Director HR; Office of Human Resources, 400 7th Street SW, Washington, DC 20506; *williamsl@arts.gov,* (202) 682–5527.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 et seq).

Rehabilitation Act, 29 U.S.C. 791.

Title VII of the Civil Rights Act, 42 U.S.C. 2000e.

Executive Order 13164.

29 CFR 1605 and 1614.

PURPOSE(S) OF THE SYSTEM:

To provide a central repository for information about reasonable accommodations for employees at the NEA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have filed for medical and/or religious accommodations at the NEA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, telephone number, Social Security number, medical information, religious information.

RECORD SOURCE CATEGORIES:

Data in this system is obtained from Endowment employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. A record may be disclosed as a routine use to a Member of Congress or his or her staff, when the Member of Congress or his or her staff requests the information on behalf of and at the request of the individual who is the subject of the record.

2. A record may be disclosed as a routine use to designated officers and employees of other agencies and departments of the Federal government having an interest in the subject individual for employment purposes (including the hiring or retention of any employee; the issuance of a security clearance; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency) to the extent that the information is relevant and necessary to the requesting agency's decision on the matter involved.

3. In the event that a record in this system of records maintained by the Endowment indicates, either by itself or in combination with other information in the Endowment's possession, a violation or potential violation of the law (whether civil, criminal, or regulatory in nature, and whether arising by statute or by regulation, rule, or order issued pursuant thereto), that record may be referred, as a routine use, to the appropriate agency, whether Federal, state, local, or foreign, charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto. Such referral shall be deemed to authorize: (1) Any and all appropriate and necessary uses of such records in a court of law or before an administrative board or hearing; and (2) Such other interagency referrals as may be necessary to carry out the receiving agencies' assigned law enforcement duties.

4. A record may be disclosed as a routine use in a proceeding before a court or adjudicative body before which the Endowment is authorized to appear, when

(a) The agency; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The United States, where the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation.

5. A record may be disclosed as a routine use to a contractor, expert, or consultant of the Endowment (or an office within the Endowment) on a ''need-to-know'' basis for a purpose within the scope of the pertinent Endowment task. This access will be granted to an Endowment contractor or employee of such contractor by a system manager only after satisfactory justification has been provided to the system manager.

6. A record from this system of records may be disclosed as a routine use to the National Archives and Records Administration in records management inspections conducted under authority of 44 U.S.C. 2904 and 2906.

7. A record from this system of records may be disclosed as a routine use to appropriate agencies, entities, and persons when (1) the Endowment suspects or has confirmed that there has been a breach of the system of records; (2) the Endowment has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Endowment (including information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Endowment's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

8. A record from this system of records may be disclosed as a routine use to another Federal agency or Federal entity, when the Endowment determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are maintained in an electronic database. Paper records are maintained in a locked file cabinet.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by name.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are maintained and updated on a continuing basis, as new information is received by the National Endowment for the Arts staff. Endowment staff will periodically request updated information from individuals who already have a reasonable accommodation record. Endowment staff will also periodically purge the reasonable accommodations records in accordance with the General Records Schedule 2.3 for Reasonable accommodations case files. These records will be destroyed 3 years after

the employee has separated from the agency.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL, SAFEGUARDS:

Reasonable accommodations files on computer servers are limited in access to NEA Human Resources personnel only. Endowment staff authorized to access electronic records are assigned permission levels. Permission level assignments allow authorized users to access only the system functions and records specific to their agency work need. The Endowment also has technical security measures including restrictions on computer access to authorized individuals and required use of personal identity verification (PIV) card and password. Paper files are kept in a locked file cabinet. Only authorized Endowment staff have access to the paper files which are stored within a locking file cabinet in a locked room in secured facilities with controlled access.

RECORD ACCESS PROCEDURES:

See 45 CFR part 1159.

CONTESTING RECORD PROCEDURES:

See 45 CFR part 1159.

NOTIFICATION PROCEDURES:

See 45 CFR part 1159.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Dated: March 8, 2022.

Meghan Jugder,

Support Services Specialist, Office of Administrative Services & Contracts, National Endowment for the Arts.

[FR Doc. 2022–05255 Filed 3–11–22; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

STEM Education Advisory Panel; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: STEM Education Advisory Panel (#2624).

DATE AND TIME: April 27, 2022; 11:00 a.m.–4:30 p.m. EST.

PLACE: National Science Foundation, Directorate for Education and Human Resources, 2415 Eisenhower Avenue, Alexandria, VA 22314; Virtual Meeting. No onsite Participants.

All visitors must register at least 48 hours before the meeting. To attend this virtual meeting in listen-in only mode, send your request to *stemedadvisory@nsf.gov.* The final meeting agenda will be posted to: *https://www.nsf.gov/ehr/advisory.jsp.*

TYPE OF MEETING: Open.

CONTACT PERSON: Keaven Stevenson, Directorate Administrative Coordinator, Room C11001, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 Contact Information: 703–292–8600/*kstevens@nsf.gov.*

SUMMARY OF MINUTES: Agenda and Minutes will be available on the STEM Education Advisory Panel website at *https://nsf.gov/ehr/STEMEdAdvisory.jsp* or can be obtained from Jolene Jesse, National Science Foundation, 2415 Eisenhower Avenue, Room C11000, Alexandria, VA 22314; (703) 292–8600; *stemedadvisory@nsf.gov.*

PURPOSE OF MEETING: To provide advice to the Committee on Science, Technology, Engineering, and Mathematics Education (CoSTEM) and to assess CoSTEM's progress.

Agenda

- Welcoming Remarks
- Reflections on the Stem Strategic Plan
- Update—Fc-Stem Interagency Working Groups
- Meeting With Costem Leadership
- Panel Discussion
- Closing Remarks

Dated: March 9, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–05325 Filed 3–11–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request; Grantee Reporting Requirements for Materials Research Science and Engineering Centers

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting Office of Management and Budget (OMB) clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by May 13, 2022 to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite W18200, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

SUPPLEMENTARY INFORMATION:

Title of Collection: Grantee Reporting Requirements for Materials Research Science and Engineering Centers (MRSECs).

OMB Number: 3145–0230.

Expiration Date of Approval: September 30, 2022.

Type of Request: Intent to seek approval to renew an information collection.

Overview of This Information Collection

The Materials Research Science and Engineering Centers (MRSECs) Program supports innovation in interdisciplinary research, education, and knowledge transfer. MRSECs build intellectual and physical infrastructure within and between disciplines, weaving together knowledge creation, knowledge integration, and knowledge transfer. MRSECs conduct world-class research through partnerships of academic institutions, national laboratories, industrial organizations, and/or other public/private entities. New knowledge thus created is meaningfully linked to society.

MRSECs enable and foster excellent education, integrate research and education, and create bonds between learning and inquiry so that discovery and creativity more fully support the learning process. MRSECs capitalize on diversity through participation in center activities and demonstrate leadership in the involvement of groups underrepresented in science and engineering.

MRSECs are required to submit annual reports on progress and plans, which are used as a basis for performance review and determining the level of continued funding. To support this review and the management of a Center, MRSECs will be required to develop a set of management and performance indicators for submission annually to

NSF via the Research Performance Project Reporting module in *Research.gov* and an external technical assistance contractor that collects programmatic data electronically. These indicators are both quantitative and descriptive and may include, for example, the characteristics of center personnel and students; sources of financial support and in-kind support; expenditures by operational component; characteristics of industrial and/or other sector participation; research activities; education activities; knowledge transfer activities; patents, licenses; publications; degrees granted to students involved in Center activities; descriptions of significant advances and other outcomes of the MRSEC effort. Such reporting requirements are included in the cooperative agreement that is binding between the academic institution and NSF.

Each Center's annual report will address the following categories of activities: (1) Research, (2) education, (3) knowledge transfer, (4) partnerships, (5) shared experimental facilities, (6) diversity, (7) management, and (8) budget issues.

For each of the categories the report will describe overall objectives for the year, problems the Center has encountered in making progress towards goals, anticipated problems in the following year, and specific outputs and outcomes.

MRSECs are required to file a final report through the RPPR and external technical assistance contractor. Final reports contain similar information and metrics as annual reports, effectively they constitute the last annual report; the Program Officer maintains a cumulative database with all relevant achievements and metrics.

Use of the Information: NSF will use the information to continue funding of the Centers, and to evaluate the progress of the program.

Estimate of Burden: 80 hours per center for 20 centers for a total of 1,600 hours.

Respondents: Non-profit institutions.

Estimated Number of Responses per Report: One from each of the 20 MRSECs.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: March 9, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–05276 Filed 3–11–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317, 50–318, 50–373, and 50–374; NRC–2020–0110]

Issuance of Multiple Exemptions in Response to COVID–19 Public Health Emergency

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) granted two exemptions in response to requests from one licensee for relief due to the coronavirus 2019 disease (COVID–19) public health emergency (PHE). The exemptions afford this licensee temporary relief from certain requirements under NRC regulations. The NRC is issuing a single notice to announce the issuance of the exemptions.

DATES: During the period from February 4, 2022, to February 15, 2022, the NRC granted two exemptions in response to requests submitted by one licensee from February 3, 2022, to February 10, 2022.

ADDRESSES: Please refer to Docket ID NRC–2020–0110 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0110. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the ''For Further Information Contact'' section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James Danna, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7422, email: *James.Danna@nc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

During the period from February 4, 2022, to February 15, 2022, the NRC granted two exemptions in response to requests submitted by one licensee from February 3, 2022, to February 10, 2022. These exemptions temporarily allow the licensee to deviate from certain requirements of chapter 1 of title 10 *Code of Federal Regulations* (10 CFR), part 26, ''Fitness for Duty Programs,'' section 26.205, ''Work hours.''

The exemptions from certain requirements of 10 CFR part 26 for Constellation Energy Generation, LLC (for Calvert Cliffs Nuclear Power Plant, Units 1 and 2; and LaSalle County Station, Units 1 and 2) afford this licensee temporary relief from the work-hour control requirements under 10 CFR 26.205(d)(1) through (d)(7). The exemptions from 10 CFR 26.205(d)(1) through (d)(7) ensure that the control of work hours and management of worker fatigue does not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID–19 PHE on maintaining the safe operation of these facilities. Specifically, this licensee has stated that its staffing levels are affected or are expected to be affected by the COVID–19 PHE, and it can no longer meet or likely will not meet the work-hour

controls of 10 CFR 26.205(d)(1) through (d)(7). This licensee has committed to effecting site-specific administrative controls for COVID–19 PHE fatigue-management for personnel specified in 10 CFR 26.4(a).

The tables in this notice provide transparency regarding the number and type of exemptions the NRC has issued. Additionally, the NRC publishes tables of approved regulatory actions related to the COVID–19 PHE on its public website at *https://www.nrc.gov/about-nrc/covid-19/reactors/licensing-actions.html.*

II. Availability of Documents

The tables in this notice provide the facility name, docket number, document description, and ADAMS accession number for each exemption issued. Additional details on each exemption issued, including the exemption request submitted by the licensee and the NRC's decision, are provided in each exemption approval listed in the tables in this notice. For additional directions on accessing information in ADAMS, see the **ADDRESSES** section of this document.

CALVERT CLIFFS NUCLEAR POWER PLANT, UNITS 1 AND 2; DOCKET NOS. 50–317 AND 50–318

Document description	ADAMS accession No.
Calvert Cliffs Nuclear Power Plant, Units 1 and 2—COVID–19 Related Request for Exemption from 10 CFR part 26 Work Hours Requirements, dated February 3, 2022.	ML22035A078
Calvert Cliffs Nuclear Power Plant, Units 1 and 2—Exemption from Specific Requirements of 10 CFR part 26 (EPID L–2022–LLE–0006 [COVID–19]), dated February 4, 2022.	ML22034A812

LASALLE COUNTY STATION, UNITS 1 AND 2; DOCKET NOS. 50–373 AND 50–374

Document description	ADAMS Accession No.
LaSalle County Station, Units 1 and 2—COVID–19 Related Request for Exemption from 10 CFR part 26 Work Hours Requirements, dated February 10, 2022.	ML22041A451
LaSalle County Station, Units 1 and 2—Exemption from Specific Requirements of 10 CFR part 26, (EPID L–2022–LLE–0008 [COVID–19]), dated February 15, 2022.	ML22042A076

Dated: March 8, 2022.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Plant Licensing Branch I, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–05262 Filed 3–11–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of March 14, 21, 28, April 4, 11, 18, 2022. All listed meeting times are local to the meeting location.

PLACE: Hilton Garden Inn, 1530 W Maloney Ave, Gallup, New Mexico.

STATUS: Public.

Week of March 14, 2022

There are no meetings scheduled for the week of March 14, 2022.

Week of March 21, 2022—Tentative

There are no meetings scheduled for the week of March 21, 2022.

Week of March 28, 2022—Tentative

There are no meetings scheduled for the week of March 28, 2022.

Week of April 4, 2022—Tentative

There are no meetings scheduled for the week of April 4, 2022.

Week of April 11, 2022—Tentative

There are no meetings scheduled for the week of April 11, 2022.

Week of April 18, 2022—Tentative

Friday, April 22, 2022

6:00 p.m. Discussion of the Ten-Year Plan to Address Impacts of Uranium Contamination on the Navajo Nation and Lessons Learned from the Remediation of Former Uranium Mill Sites (Public Meeting); (Contact: Wesley Held: 301–287–3591)

Additional Information: The public is invited to attend the Commission's meeting live by webcast at the Web address—*https://video.nrc.gov/*. For those who would like to attend in person, note that all visitors are required to complete the NRC Self-Health Assessment and Certification of Vaccination forms. Visitors who certify that they are not fully vaccinated or decline to complete the certification must have proof of a negative Food and Drug Administration-approved PCR or Antigen (including rapid tests) COVID–19 test specimen collection from no later than the previous 3 days prior to entry to an NRC facility. The forms and additional information can be found here *https://www.nrc.gov/about-nrc/covid-19/guidance-for-visitors-to-nrc-facilities.pdf.*

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.* The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Wendy.Moore@nrc.gov* or *Betty.Thweatt@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: March 10, 2022.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2022–05455 Filed 3–10–22; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–45 and CP2022–51]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing recent Postal Service filings for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filings, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* March 16, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–45 and CP2022–51; *Filing Title:* USPS Request to Add Priority Mail Contract 737 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* March 8, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Katalin K. Clendenin; *Comments Due:* March 16, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–05313 Filed 3–11–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. N2022–1; Order No. 6115]

Service Standard Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is acknowledging a filing by the Postal Service of its intent to conduct a pre-filing conference regarding its proposed changes to the service standards for Retail Ground and Parcel Select Ground. This document informs the public of this proceeding and the pre-filing conference, and takes other administrative steps.

DATES: *Pre-filing conference:* March 15, 2022, 1:00 p.m. to 3:00 p.m., Eastern Daylight Time—Virtual Online.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION: Pursuant to 39 CFR 3020.111(d), on March 4, 2022, the Postal Service filed a notice of its intent to conduct a pre-filing conference regarding its proposed changes to the service standards for Retail Ground and Parcel Select Ground.[1] Due to the COVID–19 pandemic, the conference will be held virtually on March 15, 2022, from 1:00 p.m. to 3:00 p.m. Eastern Daylight Time (EDT). *See* Notice at 1, 3. At this conference, Postal Service representatives capable of discussing the Postal Service's proposal will be available to educate the public and to allow interested persons to provide feedback to the Postal Service. *See id.* The registration instructions, which are available at *https://about.usps.com/what/strategic-plans/delivering-for-america/#conference,* direct interested persons to a website to register to participate using Zoom, and participants have until March 10, 2022, at 3:00 p.m. Eastern Standard Time to register.

The Commission establishes Docket No. N2022–1 to consider the Postal Service's proposed changes to the service standards for Retail Ground and Parcel Select Ground.

The Postal Service ties its proposed changes to its ''Delivering for America'' plan and avers that the instant proposal furthers the fundamental goals of service excellence and financial

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

[1] Notice of Pre-Filing Conference, March 4, 2022 (Notice). Retail Ground is an ''economical ground shipping solution'' for retail customers comprised of ''packages, thick envelopes, and tubes weighing less than 70 pounds and smaller than 130 inches combined length and width,'' and that are not otherwise required to be sent as First-Class Mail. Notice at 1 n.1. Parcel Select Ground differs in that it is targeted at large- and medium-sized commercial shippers. *Id.* at 1 n.2.

stability.[2] The Postal Service states that the proposal would align competitive products (within the contiguous United States) service standards, specifically by raising Retail Ground and Parcel Select Ground standards to the level of the First-Class Package Service standard. Notice at 2–3. The First-Class Package Service standard is planned to be reduced from a 2-to-3 day standard to a 2-to-5 day standard and was the subject of a Commission advisory opinion issued September 29, 2021.[3] With regard to the improved standards for Retail Ground and Parcel Select Ground, the Postal Service submits that ''customers would benefit from a low-cost, medium-speed, shipping service for packages in excess of one pound.'' Notice at 3. The Postal Service also notes that the parcel market has seen significant recent growth and is expected to continue to grow. *Id.*

The Postal Service must file its formal request for an advisory opinion with the Commission at least 90 days before implementing any of the proposed changes. 39 CFR 3020.112.[4] This formal request must certify that the Postal Service has made good faith efforts to address the concerns raised at the pre-filing conference and meet other content requirements. 39 CFR 3020.113. After the Postal Service files the formal request for an advisory opinion, the Commission will set forth a procedural schedule and provide additional information in a notice and order that will be published in the **Federal Register**. 39 CFR 3020.110. Before issuing its advisory opinion, the Commission must provide an opportunity for a formal, on-the-record hearing pursuant to 5 U.S.C. 556 and 557. 39 U.S.C. 3661(c). The procedural rules in 39 CFR part 3020 apply to Docket No. N2021–2.

Pursuant to 39 U.S.C. 3661(c) and 39 CFR 3020.111(d), the Commission appoints Joseph K. Press to represent the interests of the general public (Public Representative) in this proceeding. Pursuant to 39 CFR 3020.111(d), the Secretary shall arrange for publication of this order in the **Federal Register**.

It is ordered:

1. The Commission establishes Docket No. N2022–1 to consider the Postal Service's proposed changes to the service standards for Retail Ground and Parcel Select Ground.

2. The Postal Service shall conduct a virtual pre-filing conference regarding its proposal on March 15, 2022, from 1:00 p.m. to 3:00 p.m. EDT.

3. Pursuant to 39 U.S.C. 3661(c) and 39 CFR 3020.111(d), Joseph K. Press is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. Pursuant to 39 CFR 3020.111(d), the Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2022–05241 Filed 3–11–22; 8:45 am]

BILLING CODE 7710–FW–P

[2] *See id.* at 2; *see also* United States Postal Service, Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence, March 23, 2021, at 53, available at *https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf.*

[3] *Id.; see* Docket No. N2021–2, Advisory Opinion on the Service Standard Changes Associated with First-Class Package Service, September 29, 2021. The Postal Service intends to implement the general reduction in the First-Class Package Service standards either before or concurrently with the general promotion of Retail Ground and Parcel Select Ground standards. Notice at 2 n.4.

[4] The Commission may consider whether to extend the 90 days for a decision based on good cause.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, the Securities and Exhange Commission will hold an Open Meeting on Monday, March 21, 2022 at 11:00 a.m.

PLACE: The meeting will be webcast on the Commission's website at *www.sec.gov*.

STATUS: This meeting will begin at 11:00 a.m. (ET) and will be open to the public via webcast on the Commission's website at *www.sec.gov*.

MATTERS TO BE CONSIDERED:

1. The Commission will consider whether to propose amendments that would enhance and standardize registrants' climate-related disclosures for investors.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b.)

Dated: March 10, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–05405 Filed 3–10–22; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34530; File No. 812–15277]

Alpha Alternative Assets Fund and Alpha Growth Management LLC

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of an application for an order pursuant to section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c), and 18(i) of the Act, pursuant to sections 6(c) and 23(c) of the Act for certain exemptions from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end management investment companies to issue multiple classes of common shares of beneficial interest with varying sales loads and asset-based service and/or distribution fees and to impose early withdrawal charges.

APPLICANTS: Alpha Alternative Assets Fund and Alpha Growth Management LLC.

FILING DATES: The application was filed on October 21, 2021, and amended on December 22, 2021 and February 3, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on, April 4, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants:

JoAnn M. Strasser, *JoAnn.Strasser@ThompsonHine.com.*

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, or Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' second amended and restated application, dated February 3, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, at *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

Dated: March 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05345 Filed 3–11–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–644, OMB Control No. 3235–0692]

Proposed Collection; Comment Request; Extension: Regulation S–ID

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S–ID (17 CFR 248), including the information collection requirements thereunder, is designed to better protect investors from the risks of identity theft. Under Regulation S–ID, SEC-regulated entities are required to develop and implement reasonable policies and procedures to identify, detect, and respond to relevant red flags (the ''Identity Theft Red Flags Rules'') and, in the case of entities that issue credit or debit cards, to assess the validity of, and communicate with cardholders regarding, address changes. Section 248.201 of Regulation S–ID includes the following information collection requirements for each SEC-regulated entity that qualifies as a ''financial institution'' or ''creditor'' under Regulation S–ID and that offers or maintains covered accounts: (i) Creation and periodic updating of an identity theft prevention program (''Program'') that is approved by the board of directors, an appropriate committee thereof, or a designated senior management employee; (ii) periodic staff reporting to the board of directors on compliance with the Identity Theft Red Flags Rules and related guidelines; and (iii) training of staff to implement the Program. Section 248.202 of Regulation S–ID includes the following information collection requirements for each SEC-regulated entity that is a credit or debit card issuer: (i) Establishment of policies and procedures that assess the validity of a change of address notification if a request for an additional or replacement card on the account follows soon after the address change; and (ii) notification of a cardholder, before issuance of an additional or replacement card, at the previous address or through some other previously agreed-upon form of communication, or alternatively, assessment of the validity of the address change request through the entity's established policies and procedures.

SEC staff estimates of the hour burdens associated with section 248.201 under Regulation S–ID include the one-time burden of complying with this section for newly-formed SEC-regulated entities, as well as the ongoing costs of compliance for all SEC-regulated entities.

All newly-formed financial institutions and creditors would be required to conduct an initial assessment of covered accounts, which SEC staff estimates would entail a one-time burden of 2 hours. Staff estimates that this burden would result in a cost of $910 to each newly-formed financial institution or creditor.[1] To the extent a financial institution or creditor offers or maintains covered accounts, SEC staff estimates that the financial institution or creditor would also incur a one-time burden of 25 hours to develop and obtain board approval of a Program, and a one-time burden of 4 hours to train the financial institution's or creditor's staff, for a total of 29 additional burden hours. Staff estimates that these burdens would result in additional costs of $15,603 for each financial institution or creditor that offers or maintains covered accounts.[2]

SEC staff estimates that approximately 571 SEC-regulated financial institutions and creditors are newly formed each year.[3] Each of these 571 entities will need to conduct an initial assessment of covered accounts, for a total of 1,142 hours at a total cost of $519,610.[4] Of these 571 entities, staff estimates that approximately 90% (or 514) maintain covered accounts.[5] Accordingly, staff estimates that the additional initial burden for SEC-regulated entities that are likely to qualify as financial institutions or creditors and maintain covered accounts is 14,906 hours at an

[1] This estimate is based on the following calculation: 2 hours × $455 (hourly rate for internal counsel) = $910. *See infra* note 2 (discussing the methodology for estimating the hourly rate for internal counsel).

[2] SEC staff estimates that, of the 29 hours incurred to develop and obtain board approval of a Program and train the financial institution's or creditor's staff, 10 hours will be spent by internal counsel at an hourly rate of $455, 17 hours will be spent by administrative assistants at an hourly rate of $89, and 2 hours will be spent by the board of directors as a whole at an hourly rate of $4,770. Thus, the estimated $15,603 in additional costs is based on the following calculation: (10 hours × $455 = $4,550) + (17 hours × $89 = $1,513) + (2 hours × $4,770 = $9,540) = $15,603.

The cost estimate for internal counsel is derived from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, entity size, employee benefits, and overhead, and adjusted for inflation. The cost estimated for administrative assistants is derived from SIFMA's Office Salaries in the Securities Industry 2013, modified to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, entity size, employee benefits and overhead, and adjusted for inflation. The cost estimate for the board of directors is derived from estimates made by SEC staff regarding typical board size and compensation that is based on information received from fund representatives and publicly available sources, and adjusted for inflation.

[3] Based on a review of new registrations typically filed with the SEC each year, SEC staff estimates that approximately 1,277 investment advisers, 109 broker dealers, 34 investment companies, and 2 ESCs typically apply for registration with the SEC or otherwise are newly formed each year, for a total of 1,422 entities that could be financial institutions or creditors. Of these, staff estimates that all of the investment companies, ESCs, and broker-dealers are likely to qualify as financial institutions or creditors, and 33% of investment advisers (or 426) are likely to qualify. *See* Identity Theft Red Flags, Investment Company Act Release No. 30456 (Apr. 10, 2013) (''Adopting Release'') at n.190 (discussing the staff's analysis supporting its estimate that 33% of investment advisers are likely to qualify as financial institutions or creditors). We therefore estimate that a total of 571 total financial institutions or creditors will bear the initial one-time burden of assessing covered accounts under Regulation S–ID.

[4] These estimates are based on the following calculations: 571 entities × 2 hours = 1,142 hours; 571 entities × $910 = $519,610.

[5] In the Proposing Release, the SEC requested comment on the estimate that approximately 90% of all financial institutions and creditors maintain covered accounts; the SEC received no comments on this estimate.

additional cost of $8,019,942.[6] Thus, the total initial estimated burden for all newly-formed SEC-regulated entities is 16,048 hours at a total estimated cost of $8,539,552.[7]

Each financial institution and creditor would be required to conduct periodic assessments to determine if the entity offers or maintains covered accounts, which SEC staff estimates would entail an annual burden of 1 hour per entity. Staff estimates that this burden would result in an annual cost of $455 to each financial institution or creditor.[8] To the extent a financial institution or creditor offers or maintains covered accounts, staff estimates that the financial institution or creditor also would incur an annual burden of 2.5 hours to prepare and present an annual report to the board, and an annual burden of 7 hours to periodically review and update the Program (including review and preservation of contracts with service providers, as well as review and preservation of any documentation received from service providers). Staff estimates that these burdens would result in additional annual costs of $8,638 for each financial institution or creditor that offers or maintains covered accounts.[9]

SEC staff estimates that there are 9,915 SEC-regulated entities that are either financial institutions or creditors, and that all of these will be required to periodically review their accounts to determine if they offer or maintain covered accounts, for a total of 9,915 hours for these entities at a total cost of $4,511,325.[10] Of these 9,915 entities, staff estimates that approximately 90 percent, or 8,924, maintain covered accounts, and thus will need the additional burdens related to complying with the rules.[11] Accordingly, staff estimates that the additional annual burden for SEC-regulated entities that qualify as financial institutions or creditors and maintain covered accounts is 84,778 hours at an additional cost of $77,085,512.[12] Thus, the total estimated ongoing annual burden for all SEC-regulated entities is 94,693 hours at a total estimated annual cost of $81,596,837.[13]

The collections of information required by section 248.202 will apply only to SEC-regulated entities that issue credit or debit cards.[14] SEC staff understands that SEC-regulated entities generally do not issue credit or debit cards, but instead partner with other entities, such as banks, that issue cards on their behalf. These other entities, which are not regulated by the SEC, are already subject to substantially similar change of address obligations pursuant to the Agencies' identity theft red flags rules. Therefore, staff does not expect that any SEC-regulated entities will be subject to the information collection requirements of section 248.202, and accordingly, staff estimates that there is no hour or cost burden for SEC-regulated entities related to section 248.202.

In total, SEC staff estimates that the aggregate annual information collection burden of Regulation S–ID is 110,741 hours (16,048 hours + 94,693 hours). This estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act and is not derived from a quantitative, comprehensive, or even representative survey or study of the burdens associated with Commission rules and forms. Compliance with Regulation S–ID, including compliance with the information collection requirements thereunder, is mandatory for each SEC-regulated entity that qualifies as a ''financial institution'' or ''creditor'' under Regulation S–ID (as discussed above, certain collections of information under Regulation S–ID are mandatory only for financial institutions or creditors that offer or maintain covered accounts). Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (i) 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) the accuracy of the agency's estimate of the burden of the collection of information; (iii) ways to enhance the quality, utility, and clarity of the information collected; and (iv) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication May 13, 2022.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O John R. Pezzullo, 100 F Street NE, Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov*.

Dated: March 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05350 Filed 3–11–22; 8:45 am]

BILLING CODE 8011–01–P

[6] These estimates are based on the following calculations: 514 financial institutions and creditors that maintain covered accounts × 29 hours = 14,906 hours; 514 financial institutions and creditors that maintain covered accounts × $15,603 = $8,019,942.

[7] These estimates are based on the following calculations: 1,142 hours + 14,906 hours = 16,048 hours; $519,610 + $8,019,942 = $8,539,552.

[8] This estimate is based on the following calculation: 1 hour × $455 (hourly rate for internal counsel) = $455. *See supra* note 2 (discussing the methodology for estimating the hourly rate for internal counsel).

[9] Staff estimates that, of the 9.5 hours incurred to prepare and present the annual report to the board and periodically review and update the Program, 8.5 hours will be spent by internal counsel at an hourly rate of $455, and 1 hour will be spent by the board of directors as a whole at an hourly rate of $4,770. Thus, the estimated $7,874 in additional annual costs is based on the following calculation: (8.5 hours × $455 = $3,868) + (1 hour × $4,770 = $4,770) = $8,638. *See supra* note 2 (discussing the methodology for estimating the hourly rate for internal counsel and the board of directors).

[10] Based on a review of entities that the SEC regulates, SEC staff estimates that, as of September 30, 2021, there are approximately 14,705 investment advisers, 3,533 broker-dealers, 1,380 active open-end investment companies, and 100 ESCs. Of these, staff estimates that all of the broker-dealers, open-end investment companies and ESCs are likely to qualify as financial institutions or creditors. We also estimate that approximately 33% of investment advisers, or 4,902 investment advisers, are likely to qualify. *See* Adopting Release, *supra* note 3, at n.190 (discussing the staff's analysis supporting its estimate that 33% of investment advisers are likely to qualify as financial institutions or creditors). We therefore estimate that a total of 9,915 financial institutions or creditors will bear the ongoing burden of assessing covered accounts under Regulation S–ID. (The SEC staff estimates that the other types of entities that are covered by the scope of the SEC's rules will not be financial institutions or creditors and therefore will not be subject to the rules' requirements.)

The estimates of 9,915 hours and $3,784,800 are based on the following calculations: 9,915 financial institutions and creditors × 1 hour = 9,915 hours; 9,915 financial institutions and creditors × $455 = $4,511,325.

[11] *See supra* note 5 and accompanying text. If a financial institution or creditor does not maintain covered accounts, there would be no ongoing annual burden for purposes of the PRA.

[12] These estimates are based on the following calculations: 8,924 financial institutions and creditors that maintain covered accounts × 9.5 hours = 84,778 hours; 8,924 financial institutions and creditors that maintain covered accounts × $8,638 = $77,085,512.

[13] These estimates are based on the following calculations: 9,915 hours + 84,778 hours = 94,693 hours; $4,511,325 + $77,085,512 = $81,596,837.

[14] § 248.202(a).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, March 17, 2022.

PLACE: The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov*.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

(Authority: 5 U.S.C. 552b.)

Dated: March 10, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–05473 Filed 3–10–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94376; File No. SR–CBOE–2022–008]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

March 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2022, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule by removing certain fee codes related to routed XSP options orders in light of the recent delisting of XSP options on the Exchange's affiliate Cboe BZX Exchange, Inc. (''BZX Options''), effective March 1, 2022.

The Exchange assesses various fees for orders that are routed and executed on away markets.[3] The proposed rule change removes fees codes RX, RY, TX and TY from the Routing Fees table, all of which apply specifically to XSP orders that are routed away. The Exchange proposes to eliminate these fee codes as XSP is a proprietary product and the only other exchange that listed XSP (*i.e.,* BZX Options) has now delisted it. As such, XSP currently trades exclusively on the Exchange and therefore cannot route to any other market. Accordingly, the Exchange proposes to eliminate the now obsolete fee codes and corresponding fees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Trading Permit Holders and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory as it does not change the fees or rebates assessed by the Exchange, but rather updates the Fee Schedule to remove fee codes associated with routed orders in XSP options because the only other exchange that listed XSP options (and that such options could therefore route to) no longer lists XSP options for trading. Therefore, the proposed rule change is reasonably designed to update the Fee Schedule to accurately reflect classes available for routing and is designed to reduce any potential confusion regarding the availability of XSP options on an exchange other than the Exchange. The Exchange also believes that the proposed rule change is equitable and not unfairly discriminatory because all Trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Cboe Options Fees Schedule, Routing Fees.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

Permit Holders are equally unable to route orders in XSP, and the removal of references to routed XSP orders merely updates the Fee Schedule to reflect this.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change merely updates the Fee Schedule to reflect that a product (*i.e.,* XSP options) can no longer be routed to another options exchange and is designed to reduce any potential confusion without having any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and paragraph (f) of Rule 19b–4 [8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2022–008 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–CBOE–2022–008. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2022–008 and should be submitted on or before April 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05250 Filed 3–11–22; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94379; File No. SR–CboeBZX–2022–014]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating To Amend Its Fee Schedule

March 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule for its equity options platform (''BZX Options'') by removing certain fee codes in light of the delisting of XSP options on the Exchange effective March 1, 2022.

The Exchange proposes to eliminate fee codes associated with orders in XSP options as the Exchange has delisted XSP options for trading on the Exchange. Specifically, under the Fees and Associated Fee Codes section of the Fee Schedule, the proposed rule change removes fees codes XA, XC, XF, XM, XN, XO, XP, XR and XY, all of which were appended to various orders in XSP options. The proposed rule change also removes references to fee codes associated with orders in XSP options from (i) the Customer Penny Add Volume Tiers in footnote 1, (ii) Firm, Broker Dealer, and Joint Back Office Penny Add Volume Tiers in footnote 2, (iii) NBBO Setter Tiers in footnote 4, (iv) Market Maker Penny Pilot Add Volume Tiers in footnote 6, (v) Professional Penny Add Volume Tiers in footnote 9 and (vi) Away Market Maker Penny Add Volume Tier in footnote 10.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[3] in general, and furthers the objectives of Section 6(b)(4),[4] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5) [5] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change is reasonable, equitable and not unfairly discriminatory as it does not change the fees or rebates assessed by the Exchange, but rather updates the Fee Schedule to remove fee codes associated with orders in XSP options, as well as references in the Fee Schedule to such orders, because the Exchange no longer lists XSP options for trading. Therefore, the proposed rule change is reasonably designed to update the Fee Schedule to accurately reflect the Exchange's current product offerings and is designed to reduce any potential confusion regarding the availability of XSP options on the Exchange. The Exchange also believes that the proposed rule change is equitable and not unfairly discriminatory because all Members are equally unable to submit orders in the delisted product, and the removal of references to orders in XSP options merely updates the Fee Schedule to reflect this.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change merely updates the Fee Schedule to reflect that a product (*i.e.,* XSP options) has been delisted and is designed to reduce any potential confusion without having any impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and paragraph (f) of Rule 19b–4 [7] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–014 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–CboeBZX–2022–014. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–014 and should be submitted on or before April 4, 2022.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05245 Filed 3–11–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94377; File No. SR–CboeBZX–2022–011]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

March 8, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'' or ''BZX Equities'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

I. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its fee schedule to modify the Add/Remove Volume Tiers 1 and 2, and to eliminate the Single MPID Investor Tier 1. The Exchange proposes to implement the proposed change to its fee schedule on March 1, 2022.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Securities Exchange Act of 1934 (the ''Act''), to which market participants may direct their order flow. Based on publicly available information,[3] no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. The Exchange in particular operates a ''Maker-Taker'' model whereby it pays credits to Members that add liquidity and assesses fees to those that remove liquidity. The Exchange's fee schedule sets forth the standard rebates and rates applied per share for orders that provide and remove liquidity, respectively. Particularly, for securities at or above $1.00, the Exchange provides a standard rebate of $0.0016 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

Under footnote 1 of the Fee Schedule, the Exchange currently offers various Add/Remove Volume Tiers. In particular, the Exchange offers six displayed add volume tiers that each provide an enhanced rebate for Members' qualifying orders yielding fee codes B,[4] V,[5] or Y,[6] where a Member reaches certain add volume-based criteria. Currently Tiers 1 and 2 are as follows:

- Tier 1 provides a rebate of $0.0020 per share to qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where the Member has an ADAV[7] as a percentage of TCV[8] equal to or greater than 0.10%, or the Member has an ADAV equal to or greater than 10 million shares.
- Tier 2 provides a rebate of $0.0025 per share to qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where the Member has an ADAV as a percentage of TCV equal to or greater than 0.20%, or the Member has an ADAV equal to or greater than 20 million shares.

Now, the Exchange proposes to amend the criteria of Tier 1 and reduce the rebate applicable to Tier 2. Specifically, the Exchange proposes to amend Tiers 1 and 2 as follows:

- Proposed Tier 1 will provide a rebate of $0.0020 per share to qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where the Member has an ADAV as a percentage of TCV equal to or greater than 0.15%, or the Member has an ADAV equal to or greater than 15 million shares.
- Tier 2 provides a rebate of $0.23 per share to qualifying orders (*i.e.,* orders yielding fee codes B, V, or Y) where the Member has an ADAV as a percentage of TCV equal to or greater than 0.20%, or the Member has an ADAV equal to or greater than 20 million shares.

Under footnote 4 of the Fee Schedule, the Exchange currently offers two Single MPID Investor Tiers. In particular, the Single MPID Investor Tier 1 provides an enhanced rebate of $0.0030 per share for

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (February 22, 2022), available at *https://markets.cboe.com/us/equities/market_statistics/.*

[4] Orders yielding Fee Code ''B'' are orders adding liquidity to BZX (Tape B).

[5] Orders yielding Fee Code ''V'' are orders adding liquidity to BZX (Tape A).

[6] Orders yielding Fee Code ''Y'' are orders adding liquidity to BZX (Tape C).

[7] ''ADAV'' means average daily added volume calculated as the number of shares added per day and ''ADV'' means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis.

[8] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

Members qualifying orders yielding fee codes B, V, or Y where (1) an MPID has a Step-Up ADV [9] from May 2021 equal to or greater than 0.10% of TCV or a Step-Up ADV from May 2021 equal to or greater than 8 million shares; and (2) the MPID adds a Step-Up ADAV [10] from May 2021 equal to or greater than 0.05% of TCV. Now, the Exchange proposes to eliminate the Single MPID Investor Tier 1 as no Member has reached this tier in several months and the Exchange therefore no longer wishes to, nor is it required to, maintain such a tier. Based on the proposed elimination of Single MPID Investor Tier 1, the Exchange also proposes to renumber existing Single MPID Investor Tier 2 to Single MPID Investor Tier 1.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[11] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule changes reflect a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members, and thus is in the public interest. Additionally, the Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges,[13] including the Exchange,[14] and are reasonable, equitable and non-discriminatory because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

While the proposed changes to the criteria of the displayed add volume Tier 1 is more stringent than the current criteria, the Exchange believes that the change is reasonable as it continues to incentivize Members to increase their displayed liquidity adding volume on the Exchange. Additionally, while the displayed add volume Tier 2 provides a lesser rebate than that currently offered under the same criteria, the Exchange similarly believes that the change is reasonable as it continues to incentivize Members to increase their displayed liquidity adding volume on the Exchange. Furthermore, the Exchange believes that the existing and proposed enhanced rebates under Tiers 1 and 2, respectively, are commensurate with the proposed and existing criteria, respectively. Proposed Tiers 1 and 2 will continue to be available to all Members and provide all Members with an additional opportunity to receive an enhanced rebate. An overall increase in activity would deepen the Exchange's liquidity pool, offers additional cost savings, support the quality of price discovery, promote market transparency and improve market quality, for all investors.

The Exchange also believes that the proposal represents an equitable allocation of fees and rebates and is not unfairly discriminatory because all Members will be eligible for the displayed add volume Tiers 1 and 2 and have the opportunity to meet the Tiers' criteria and receive the corresponding enhanced rebate if such criteria is met. Without having a view of activity on other markets and off-exchange venues, the Exchange has no way of knowing whether these proposed changes would definitely result in any Members qualifying for Tiers 1 and 2. While the Exchange has no way of predicting with certainty how the proposed changes will impact Member activity, based on trading activity from the prior month, the Exchange anticipates that no Member will achieve proposed Tier 1 and two Members will satisfy the criteria under proposed Tier 2. The Exchange also notes that proposed changes will not adversely impact any Member's ability to qualify for reduced fees or enhanced rebates offered under other tiers. Should a Member not meet the proposed new criteria, the Member will merely not receive that corresponding enhanced rebate.

The Exchange believes the proposed amendment to remove Single MPID Investor Tier 1 is reasonable because no Member has achieved this tier in several months. Moreover, the Exchange is not required to maintain this tier and Members still have a number of other opportunities and a variety of ways to receive enhanced rebates for displayed liquidity, including the enhanced rebate under the proposed Single MPID Investor Tier 1. The Exchange believes the proposal to eliminate this tier is also equitable and not unfairly discriminatory because it applies to all Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed changes apply to all orders equally, and thus applies to all Members equally. Additionally, the Exchange believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purpose of the Act.

As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including other equities exchanges, off-exchange venues, and alternative trading systems. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no single equities exchange has more than 16% of the market share.[15] Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to

[9] ''Step-Up ADV'' means ADV in the relevant baseline month subtracted from current day ADV.

[10] ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4) and (5).

[13] *See* EDGX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[14] *See* BZX Equities Fee Schedule, Footnote 1, Add/Remove Volume Tiers.

[15] *Supra* note 3.

investors and listed companies.'' [16] The fact that this market is competitive has also long been recognized by the courts. *In NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[17] Accordingly, the Exchange does not believe its proposed fee changes imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and paragraph (f) of Rule 19b–4 [19] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–011 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–CboeBZX–2022–011. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–011 and should be submitted on or before April 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05246 Filed 3–11–22; 8:45 am]

BILLING CODE 8011–01–P

[16] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[17] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca-2006–21)).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94378; File No. SR–NYSE–2022–12]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Sections 902.03 and 902.11 of the NYSE Listed Company Manual To Establish Fees for the Listing of Rights

March 8, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 25, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 902.03 and 902.11 of the NYSE Listed Company Manual (the ''Manual'') to establish fees for the listing of rights and to remove rule text that is no longer applicable. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently adopted a new listing standard to provide for the listing of rights (*See* Section 703.12(II) of the Manual).[4] The Exchange now proposes to adopt fees for listed rights.

The Exchange proposes to adopt a fee schedule for listed rights equivalent to that currently applicable to listed warrants. Both types of securities represent the right to acquire shares of a listed equity security at a future time. The distinction is that, unlike warrants, rights are generally distributed without charge to all of the holders of a class of existing listed securities. Given the similarities, the Exchange anticipates that the resources devoted to the listing and regulation of rights will be substantially the same as is already the case for listed warrants. As such, the Exchange proposes to apply the same fee schedule to listed rights as it currently applies to warrants under Section 902.03 of the Manual. In connection with the listing of a class of warrants, Section 902.03 provides for a fee of $0.004 per warrant. Section 902.03 provides that listed warrants are subject to annual fees at a rate of $0.0017 per warrant, subject to a minimum annual fee of $5,000 per series of warrants. While the aforementioned fees currently apply to listed warrants, there are specific provisions for warrants of two types of issuers—foreign issuers and Acquisition Companies. As described below, the Exchange proposes to apply the same fees for rights associated with those types of companies.

Section 902.03 includes text that describes fees for warrants issued by foreign companies, where the common equity securities into which the warrants are exercisable trade in the form of American Depositary Receipts on the Exchange. Specifically, Section 902.03 provides that, where a listed company's primary listed security is an ADR and it lists warrants that are exercisable into the equity securities underlying such ADRs, it will be charged: (i) Initial listing fees for the warrants adjusted to reflect the maximum number of ADRs that could be created upon exercise of such warrants; and (ii) annual fees for the outstanding warrants adjusted to reflect the maximum number of ADRs that could be created upon exercise of such warrants. The Exchange proposes to apply these same provisions to rights issued by a foreign company where the company's primary listed security is an ADR and it lists rights that are exercisable into the equity securities underlying such ADRs.

Section 902.11 sets forth the fees applicable to Acquisition Companies (*i.e.,* Special Purpose Acquisition Companies or ''SPACs'') listed under Section 102.06 of the Manual. SPACs typically sell units in their initial public offering consisting of a common share and one or more warrants (or a fraction of a warrant). Under Section 902.11, a listed Acquisition Company is subject to a flat annual fee of $85,000, covering both its common shares and its warrants. The Exchange proposes to amend this provision to specify that the flat annual fee also covers any rights issued by the Acquisition Company.

The Exchange also proposes to delete rule text from both Section 902.03 and Section 902.11 regarding fees that were in effect for calendar years prior to 2022 but are no longer in effect, as this rule text is now irrelevant.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4)[6] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[7] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange operates in a highly competitive marketplace for the listing of the various categories of securities, including the rights affected by the proposed fees. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS,[8] the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [9]

The Exchange believes that the ever-shifting market share among the exchanges with respect to new listings and the transfer of existing listings between competitor exchanges demonstrates that issuers can choose different listing markets in response to fee changes. Accordingly, competitive forces constrain exchange listing fees. Stated otherwise, changes to exchange listing fees can have a direct effect on the ability of an exchange to compete for new listings and retain existing listings.

As discussed above, rights are very similar in their structure to warrants. And the Exchange anticipates devoting substantially the same resources to the listing of a series of rights as it does to the listing of a series of warrants. Therefore, the Exchange believes that it is reasonable and represents an equitable allocation of its fees among market participants to apply to listed rights the existing fees currently charged to issuers of listed warrants.

The Exchange believes that the proposal is not unfairly discriminatory because the same fee schedule will apply to all issuers of listed rights. In addition, rights have substantial structural similarities to warrants and the Exchange believes it is therefore appropriate to apply the same fee schedule to the two classes of securities. Conversely, rights are not similar in nature to any other class of securities listed on the Exchange, so the Exchange does not believe it is unfairly discriminatory to charge different fees for the listed rights than for any other class of listed securities other than warrants. Further, the Exchange operates in a competitive environment and its fees are constrained by competition in the marketplace. Other national securities exchanges currently list rights, and if a company believes that the Exchange's fees are unreasonable it can decide either not to list its rights or to list them on an alternative venue.

The Exchange believes that the proposal to charge listing fees for rights on an ADR-equivalent basis is equitable and not unfairly discriminatory because

[4] *See* Securities Exchange Act Release No. 94075 (January 27, 2022); 87 FR 5915 (February 2, 2022) (SR–NYSE–2022–03).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] Release No. 34–51808 (June 9, 2005); 70 FR 37496 (June 29, 2005).

[9] *See* Regulation NMS, 70 FR at 37499.

it would remove the anomalous outcome that a company whose listed ADRs represent multiple underlying common shares would otherwise be required to pay higher fees for the listing of rights exercisable into its listed equity securities than are paid by a company whose common stock is listed directly or whose listed ADRs represent a single common share.

The Exchange recognizes that the proposal would result in a differential treatment of rights issued by companies with ADRs listed on the Exchange from that of other issuers of rights, leading to lower bills in many cases for the companies with listed ADRs. However, the Exchange notes that companies with listed ADRs that represent multiple underlying shares (or fractional shares) face unique circumstances when deciding how to structure their rights. If those companies want to market their rights in both their home market and the United States, there are clear advantages to the company and its investors if the same security is issued in both markets. In particular, issuing the same security avoids pricing confusion and, by ensuring complete fungibility, facilitates the movement of rights between the two markets in aftermarket trading. As the ADRs would not be traded in the home market and might not be properly understood by investors there, it is clear why a company would make the decision to issue rights to purchase a single common share in both markets rather than issuing rights to purchase ADRs in the US market and rights to purchase a single share in the home market. While other categories of listed companies may also sometimes choose to issue rights that are exercisable for multiple listed common shares or a fraction of a common share, their reasons for doing so are not the same unique market structural reasons that cause foreign companies to do so when their listed equity security is an ADR. Consequently, while the proposal does result in a different treatment of foreign companies with listed ADRs in a very limited circumstance, the Exchange believes that this proposed difference in treatment is not unfairly discriminatory. The Exchange also notes that foreign companies with listed ADRs would not always pay lower fees on rights if this proposal was adopted. Rather, the issuer would always pay fees on an ADR-equivalent basis, which would result in lower fees if the listed ADR represents multiple common shares and higher fees if it represents a fractional common share.

The changes the Exchange proposes to make to Sections 902.02 and 902.11 to remove provisions that are no longer needed, as they do not apply by their terms to any calendar year starting after January 1, 2022, are non-substantive in nature.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the fees charged by the Exchange accurately reflect the services provided and benefits realized by listed companies. The market for listing services is extremely competitive. Each listing exchange has a different fee schedule that applies to issuers seeking to list securities on its exchange. Issuers have the option to list their securities on these alternative venues based on the fees charged and the value provided by each listing. Because issuers have a choice to list their securities on a different national securities exchange, the Exchange does not believe that the proposed fee changes impose a burden on competition.

Intramarket Competition

The proposed amended fees will be charged to all listed issuers on the same basis. The Exchange does not believe that the proposed fees will have any meaningful effect on the competition among issuers listed on the Exchange.

Intermarket Competition

The Exchange operates in a highly competitive market in which issuers can readily choose to list new securities on other exchanges and transfer listings to other exchanges if they deem fee levels at those other venues to be more favorable. Because competitors are free to modify their own fees in response, and because issuers may change their chosen listing venue, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and subparagraph (f)(2) of Rule 19b–4 [11] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [12] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–12. 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

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 15 U.S.C. 78s(b)(2)(B).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–12 and should be submitted on or before April 4, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05248 Filed 3–11–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–188, OMB Control No. 3235–0212]

Proposed Collection; Comment Request; Extension: Rule 12b–1

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 12b–1 under the Investment Company Act of 1940 (17 CFR 270.12b–1) permits a registered open-end investment company (''fund'') to bear expenses associated with the distribution of its shares, provided that the fund complies with certain requirements, including, among other things, that it adopt a written plan (''rule 12b–1 plan'') and that it preserves in writing any agreements relating to the rule 12b–1 plan. The rule in part requires that (i) the adoption or material amendment of a rule 12b–1 plan be approved by the fund's directors, including its independent directors, and, in certain circumstances, its shareholders; (ii) the board review quarterly reports of amounts spent under the rule 12b–1 plan; and (iii) the board, including the independent directors, consider continuation of the rule 12b–1 plan and any related agreements at least annually. Rule 12b–1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the rule 12b–1 plan and any related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a rule 12b–1 plan.

Rule 12b–1 also prohibits funds from paying for distribution of fund shares with brokerage commissions on their portfolio transactions. The rule requires funds that use broker-dealers that sell their shares to also execute their portfolio securities transactions, to implement policies and procedures reasonably designed to prevent: (i) The persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking into account broker-dealers' promotional or sales efforts when making those decisions; and (ii) a fund, its adviser, or its principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's (or any other fund's) shares.

The board and shareholder approval requirements of rule 12b–1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b–1 plan and, thus, are necessary for investor protection. The requirement of quarterly reporting to the board is designed to ensure that the rule 12b–1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule. The requirement that funds or their advisers implement, and fund boards approve, policies and procedures in order to prevent persons charged with allocating fund brokerage from taking distribution efforts into account is designed to ensure that funds' selection of brokers to effect portfolio securities transactions is not influenced by considerations about the sale of fund shares.

Commission staff estimates that there are approximately 6,358 funds (for purposes of this estimate, registered open-end investment companies or series thereof) that have at least one share class subject to a rule 12b–1 plan and approximately 454 fund families with common boards of directors that have at least one fund with a 12b–1 plan. The Commission further estimates that the annual hour burden for complying with the rule is 425 hours for each fund family with a portfolio that has a rule 12b–1 plan. We therefore estimate that the total hourly burden per year for all funds to comply with current information collection requirements under rule 12b–1 is 192,950 hours. Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b–1 plan. The staff further estimates that the cost of each fund's proxy is $30,000. Thus, the total annual cost burden of rule 12b–1 to the fund industry is $90,000.

Estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms. The collections of information required by rule 12b–1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication by May 13, 2022.

Please direct your written comments to David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, C/O John Pezzullo, 100 F Street NE, Washington,

[13] 17 CFR 200.30–3(a)(12).

DC 20549; or send an email to: *PRA_Mailbox@sec.gov* .

All submissions should refer to File Number 270–188. This file number should be included on the subject line if email is used. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov*). All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Dated: March 9, 2022.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05349 Filed 3–11–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before May 13, 2022.

ADDRESSES: Send all comments to JoAnn Braxton, Program Analyst, Office of Entrepreneurship Education, *joann.braxton@sba.gov* Small Business Administration.

FOR FURTHER INFORMATION CONTACT: JoAnn Braxton, Program Analyst, Office of Entrepreneurship Education, Small Business Administration. *Joann.braxton@sba.gov* 202–205–6451 or Curtis B. Rich Agency Clearance Officer 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION: This information collection will facilitate registration for the new e-learning and networking platform for women entrepreneurs interested in accessing resources to support growing an existing business. This information collection will enable the Agency to track customer use of the platform and its resources. By collecting basic demographic information and data on the registrant's entrepreneurial goals, the SBA will better understand who is using the platform and their business goals, and can develop a platform that would enable the user to tailor delivery of content to meet their needs. This data collection will also facilitate user connectivity to relevant resources (peer-to-peer learning, networking, mentoring, etc.). Information collected will be used for determining the scope of user participation on the platform, as well as user satisfaction with platform content.

Solicitation of Public Comments:

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection:

PRA NUMBER: 3245–0399.

(1) *Title:* Women's Digitalization (Entrepreneur Learning) Initiative Registration.

Description of Respondents: To aid, counsel, assist, and protect the interests of small business concerns to preserve free competitive enterprise.

Form Number: N/A.

Total Estimated Annual Responses: 350,00.

Total Estimated Annual Hour Burden: 46,667.

Curtis Rich,

Management Analyst.

[FR Doc. 2022–05329 Filed 3–11–22; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2022–0222]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Survey of Airman Satisfaction With Aeromedical Certification Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves soliciting feedback from airmen on service quality of Aeromedical Certification Services. The information to be collected will be used to inform improvements in Aeromedical Certification Services.

DATES: Written comments should be submitted by May 13, 2022.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Dr. Kylie N. Key, Bldg. 13, Rm. 250A, 6500 S MacArthur Blvd., Oklahoma City, OK 73169.

By fax: (405) 954–4852.

FOR FURTHER INFORMATION CONTACT: Ashley Awwad by email at: *ashley.awwad@faa.gov;* phone: (816) 786–5716.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility, and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0707.

Title: Survey of Airman Satisfaction with Aeromedical Certification Services.

Form Numbers: N/A.

Type of Review: Renewal of an information collection.

Background: The Federal Aviation Administration (FAA), through the Office of Aerospace Medicine (OAM), is responsible for the medical certification of pilots and certain other personnel under 14 CFR 67 to ensure they are medically qualified to operate aircraft and perform their duties safely. In the accomplishment of this responsibility, OAM provides a number of services to pilots, and has established goals for the performance of those services, including a biennial survey designed to meet the requirement to survey stakeholder satisfaction under Executive Order No. 12862, ''Setting Customer Service Standards,'' and the Government Performance and Results Act of 1993 (GPRA).

The survey of airman satisfaction with Aeromedical Certification Services assesses airman opinion of key dimensions of service quality. These

dimensions, identified by the OMB Statistical Policy Office in the 1993 ''Resource Manual for Customer Surveys,'' are courtesy, competence, reliability, and communication. The survey also provides airmen with the opportunity to provide feedback on the services and a medical certificate application tool they use. This information is used to inform improvements in Aeromedical Certification Services.

The survey was initially deployed in 2004, and deployed again in 2006, 2008, 2012, 2014, 2016, 2019, and 2021 (OMB Control No. 2120–0707). Across collections, minor revisions have been made to the survey items and response options to reflect changes in operational services and survey technology. To reduce the burden on the individual respondent and potentially improve the response rate, this information collection will be electronic.

Respondents: 5,300 Airmen.

Frequency: Biannually.

Estimated Average Burden per Response: 15 minutes.

Estimated Total Annual Burden: 15 minutes per respondent, 1,325 total burden hours.

Issued in Oklahoma City, Oklahoma on March 9, 2022.

Ashley Catherine Awwad,

Management & Program Analyst, Aerospace Medical Institute (CAMI), Flight Deck Human Factors Research Lab, AAM–510.

[FR Doc. 2022–05343 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From All Terms, Conditions, Reservations and Restrictions of a Quitclaim Deed Agreement Between the City of Melbourne and the Federal Aviation Administration for the Melbourne International Airport, Melbourne, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release 5.0 acres at the Melbourne International Airport, Melbourne, FL from the conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the FAA and the City of Melbourne, dated August 6, 1947. The release of property will allow the City of Melbourne to use the property for other than aeronautical purposes. The property is located located on 680 N Apollo Boulevard at the Melbourne International Airport in Brevard County. The parcel is currently designated as surplus property. The property will be released of its federal obligations for the purpose of selling the property at fair market value for commercial operation of an existing building and parking lot for the United States Postal Service. The fair market value lease of this parcel has been determined to be $1,800,000. Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Melbourne International Airport and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the ''waiver'' or ''modification'' of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATES: Comments are due on or before April 13, 2022.

ADDRESSES: Documents are available for review at Melbourne International Airport, and the FAA Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819. Written comments on the Sponsor's request must be delivered or mailed to: Marisol Elliott, Community Planner, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819.

FOR FURTHER INFORMATION CONTACT: Marisol Elliott, Community Planner, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819.

Bartholomew Vernace,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 2022–05348 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2022–0001]

Proposed 2022 Renewal of Memorandum of Understanding (MOU) Assigning Certain Federal Environmental Responsibilities to the State of California, Including National Environmental Policy Act (NEPA) Authority for Certain Categorical Exclusions (CEs)

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

ACTION: Notice of proposed renewal of MOU, request for comments.

SUMMARY: The FHWA and the State of California, acting by and through its Department of Transportation (Caltrans), propose renewing the MOU authorizing Caltrans' participation in the Categorical Exclusion Assignment program. This program allows FHWA to assign its authority and responsibility for determining whether certain designated activities within the geographic boundaries of the State, as specified in the proposed MOU, are categorically excluded from preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act.

DATES: Comments must be received on or before April 13, 2022.

ADDRESSES: You may submit comments, identified by DOT Document Management System (DMS) Docket Number FHWA–2022–0001, by any of the methods described below. To ensure that you do not duplicate your submissions, please submit them by only one of the means below. Electronic comments are preferred because Federal offices experience intermittent mail delays from security screening.

Federal eRulemaking Portal: Go to website: *http://www.regulations.gov/.* Follow the instructions for submitting comments on the DOT electronic docket site.

Facsimile (Fax): 1–202–493–2251.

Mail: Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590.

Hand Delivery: 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

For access to the docket to view a complete copy of the proposed 2022 renewal MOU, or to read background documents or comments received, go to *http://www.regulations.gov/* at any time, or to 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Eastern Time, Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: For FHWA: Shawn Oliver; by email at *Shawn.Oliver@dot.gov* or by telephone at 916–498–5048. The California Division Office's normal business hours

are 8 a.m. to 4:30 p.m. (Pacific Time), Monday through Friday, except Federal holidays. For the State of California: Chris Benz-Blumberg: By email at *Chris.Benz-Blumberg@dot.ca.gov* or by telephone at 916–956–8660. The Caltrans' business hours are the same as above although State holidays may not completely coincide with Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may reach the Office of the Federal Register's home page at: *http://www.archives.gov/* and the Government Publishing Office's database at: *http://www.govinfo.gov/.* An electronic version of the proposed 2022 renewal MOU may be downloaded by accessing the DOT DMS docket, as described above, at *http://www.regulations.gov.*

Background

Section 326 of Title 23 U.S. Code, creates a program that allows the Secretary of the U.S. Department of Transportation (Secretary), to assign, and a State to assume, responsibility for determining whether certain highway projects are included within classes of action that are categorically excluded (CE) from requirements for environmental assessments or environmental impact statements pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). In addition, this program allows the assignment of other environmental review requirements applicable to Federal highway projects. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The FHWA renewed California's participation in this program for a fourth time on April 18, 2019. The original MOU became effective on June 7, 2007, for an initial term of 3 years. The first renewal followed on June 7, 2010, the second renewal followed on June 7, 2013. The third renewal followed on May 31, 2016, and was amended on December 30, 2016. The fourth renewal has an expiration date of April 18, 2022.

Prior MOUs in this program had 3-year terms. Changes to 23 U.S.C. 326(c)(3) under the Bipartisan Infrastructure Law (Infrastructure Investment and Jobs Act, Pub. L. 117–58), enacted on November 15, 2021, require that MOUs have a term of 5 years for a State that has assumed the responsibility for CEs under the program for 10 years or longer. Caltrans has participated in this program for 14 years. Therefore, this proposed renewal MOU will have a term of 5 years.

Statewide decision making responsibility would be assigned for all activities identified in the MOU within the categories listed in 23 CFR 771.117(c) and those listed as examples in 23 CFR 771.111(d), and any activities added through FHWA rulemaking to those listed in 23 CFR 771.117(c) or example activities listed in 23 CFR 771.117(d) after the date of the execution of this MOU. In addition to the NEPA CE determination responsibilities, the MOU would assign to the State the responsibility for conducting Federal environmental review, consultation, and other related activities for projects that are subject to the MOU with respect to the following Federal laws and Executive Orders:

- Clean Air Act (CAA), 42 U.S.C. 7401–7671q. *Including determinations for project-level conformity if required for the project, except as specified in Stipulation II.B.2 of the MOU*
- Noise Control Act of 1972, 42 U.S.C. 4901–4918
- Compliance with the noise regulations in 23 CFR part 772 (except approval of the State noise policy in accordance with 23 CFR 772.7)
- Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and 1536
- Marine Mammal Protection Act, 16 U.S.C. 1361–1423h
- Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Migratory Bird Treaty Act, 16 U.S.C. 703–712
- Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801–1891d
- Section 106 of the National Historic Preservation Act of 1966, as amended, 54 U.S.C. 306108
- Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa–mm
- Title 54, Chapter 3125—Preservation of Historical and Archeological Data, 54 U.S.C. 312501–312508
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C. 1170
- Section 4(f) of the Department of Transportation Act of 1966, 23 U.S.C. 138 and 49 U.S.C. 303; 23 CFR part 774, *except as specified in Stipulation II.B.2 of the MOU*
- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209
- Clean Water Act, 33 U.S.C. 1251–1377, Sections 401, 404, and 319
- Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
- Coastal Zone Management Act, 16 U.S.C. 1451–1466
- Rivers and Harbors Act of 1899, 33 U.S.C. 403
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931
- Wetlands Mitigation, 23 U.S.C 103(b)(6)(m), 133(b)(3)
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777
- Flood Disaster Protection Act, 42 U.S.C. 4001–4128
- Safe Drinking Water Act (SDWA), 42 U.S.C. 300f–300j–6
- Land and Water Conservation Fund (LWCF), Public Law 88–578, 78 Stat. 897 (known as Section 6(f))
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
- Superfund Amendments and Reauthorization Act of 1986 (SARA), 42 U.S.C. 9671–9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k
- Landscaping and Scenic Enhancement (Wildflowers), 23 U.S.C. 319
- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR 650.113 and 650.115)
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 11593, Protection and Enhancement of Cultural Resources
- E.O. 13007, Indian Sacred Sites
- E.O. 13122, Invasive Species
- Planning and Environment Linkages, 23 U.S.C. 168, except for those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169 except for those FHWA responsibilities associated with 23 U.S.C. 134 and 135.

The MOU allows the State to act in the place of FHWA in carrying out the functions described above, except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the above-listed laws and Executive Orders.

The State may also assist FHWA with formal consultations, with consent of a tribe, but FHWA remains responsible for the consultation.

The FHWA will consider the comments submitted on the proposed fifth renewal MOU when making its decision on whether to execute this MOU. The FHWA will make the final, executed MOU publicly available.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Vincent Mammano,

Division Administrator, Federal Highway Administration.

[FR Doc. 2022–05332 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0082]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval: Drivers' Use of Camera-Based Rear Visibility Systems Versus Traditional Mirrors

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

ACTION: Notice and request for comments on a request for approval of a new information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. The proposed new collection of information supports research addressing safety-related aspects of drivers' use of camera-based rear visibility systems intended to serve as a replacement for traditional outside rearview mirrors.

A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on August 28, 2019. NHTSA received 22 public comments submitted online and one additional comment submitted via email. A second **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on May 24, 2021. NHTSA received 1,891 unique public comments. A summary of the comments and the changes NHTSA made in response to those comments is provided below.

DATES: Written comments should be submitted on or before April 13, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under 30-day Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Elizabeth Mazzae, Applied Crash Avoidance Research Division, Vehicle Research and Test Center, NHTSA, 10820 State Route 347—Bldg. 60, East Liberty, Ohio 43319; Telephone (937) 666–4511; Facsimile: (937) 666–3590; email address: *elizabeth.mazzae@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces the following information collection request will be submitted to OMB.

Title: Drivers' Use of Camera-Based Rear Visibility Systems Versus Traditional Mirrors.

OMB Control Number: To be issued at time of approval.

Form Numbers: NHTSA forms 1553, 1554, 1556, 1557, 1558.

Type of Request: New information collection.

Type of Review Requested: Regular.

Length of Approval Requested: Three years from the date of approval.

Summary of the Collection of Information: NHTSA has proposed to perform research involving the collection of information from the public as part of a multi-year effort to learn about drivers' use of passive camera-based rear visibility systems intended to perform the same function as traditional vehicle outside mirrors: Displaying areas surrounding the vehicle. Performing detection of objects within the system's field of view and providing visual or other alerts to the driver is not a technology function being examined in this research.

The research will involve human subjects testing in which instrumented vehicles are stationary or driven on a test track and public roads. Study participants will be members of the general public and participation will be voluntary. The goal is to characterize drivers' eye glance behavior and other driving behaviors while operating a vehicle equipped with traditional outside mirrors versus while operating a vehicle equipped with a camera-based visibility system in place of vehicle outside mirrors. This research will support NHTSA decisions relating to safe implementation of electronic visibility technologies that may be considered for use as alternatives to meet Federal Motor Vehicle Safety Standard (FMVSS) No. 111 mirror requirements.

This research will involve information collection through participant screening questions and post-drive questionnaires. Questions addressed to individuals will serve to assess individuals' suitability for study participation, to obtain feedback regarding participants' use of the visibility systems involved in the study, and to evaluate individuals' level of comfort with use of the technology.

Since qualitative feedback or self-reported data is not sufficiently robust for the purpose of investigating driver performance and interaction issues with advanced vehicle technologies, the primary type of information to be collected in this research is objective data consisting of video and engineering data recorded as participants experience a camera-based rear visibility system in an instrumented study vehicle. Recorded objective data will include driver eye glance behavior, lane change performance, and other driving performance metrics. Eye glance behavior will reveal how drivers' visual behavior in a vehicle equipped with a camera-based rear visibility system differs from drivers' visual behavior in a vehicle equipped with traditional outside mirrors. Lane change performance will be characterized based on vehicle speed, inter-vehicle distances during lane changes, and time to complete lane changes. Driving performance and eye glance behavior in a vehicle equipped with a camera-based rear visibility system will be compared to lane change performance observed in

a vehicle equipped with traditional outside mirrors.

Description of the Need for the Information and Proposed Use of the Information: The National Highway Traffic Safety Administration's mission is to save lives, prevent injuries, and reduce economic costs associated with motor vehicle crashes. As new vehicle technologies are developed, it is prudent to ensure they do not create any unintended decrease in safety. The safety of passive visibility-related technologies depends on both the performance of the systems and on drivers' ability to effectively and comfortably use the systems. This work seeks to examine and compare drivers' eye glance behavior and aspects of driving behavior and lane change maneuver execution for traditional mirrors and camera-based systems intended to replace outside rearview mirrors.

The collection of information will consist of: (1) Question Set 1, Driving Research Study Interest Response Form, (2) Question Set 2, Candidate Screening, (3) passive observation of driving behavior, (4) Question Set 3, Post-Drive Questionnaire: Drive with Camera-Monitoring System, (5) Question Set 4, Post-Drive Questionnaire: Drive with Traditional Mirrors, (6) Question Set 5, Post-Drive Questionnaire Final Opinions.

Affected Public (Respondents): Research participants will be licensed drivers aged 25 to 65 years of age who drive at least an average number of 11,000 miles annually, are in good health, and do not require assistive devices to safely operate a vehicle and drive continuously for a period of 3 hours.

Frequency of Collection: The data collections described will be performed once to obtain the target number of 128 valid test participants. Assuming typical data loss rates for instrumented vehicle testing with human subjects, it is anticipated that 200 participants will need to be run in order to obtain 128 valid participant datasets.

Estimated Number of Respondents: The data collection will have two parts: one involving light vehicles that will begin immediately upon receipt of PRA clearance and a second, subsequent part will involve heavy trucks. The second part of the data collection will have the same general approach involving assessment of eye glance behavior and lane change performance as a function of visibility technology (*i.e.,* camera-based system or traditional outside mirrors).

Information for both parts of the data collection will be obtained in an incremental fashion to determine which individuals have the necessary characteristics for study participation. All interested candidates will complete Question Set 1, Driving Research Study Interest Response Form. A subset of individuals meeting the criteria for Question Set 1 will be asked to complete Question Set 2, Candidate Screening Questions. From the individuals found to meet the criteria for both Questions Sets 1 and 2, a subset will be chosen with the goal of achieving a balance of age and sex to be scheduled for study participation. Both data collection parts together will involve approximately 750 respondents for Question Set 1 and 375 for Question Set 2. Question Sets 3, 4, and 5 will each have 200 respondents of which 150 will be assigned to the light vehicle category and 50 to the heavy vehicle category. A summary of the estimated numbers of individuals that will complete the noted question sets across both the first and second data collection parts is provided in the following table.

ESTIMATED NUMBERS OF RESPONDENTS

Question Set No.	NHTSA Form No.	Questions	Participants (*i.e.*, respondents)
1	1553	Interest Response Form	750
2	1554	Candidate Screening Questions	375
3	1556	Post-drive Questionnaire: Drive with Camera-Monitoring System	200
4	1557	Post-drive Questionnaire: Drive with Traditional Mirrors	200
5	1558	Post-Drive Questionnaire Final Opinions	200

Estimated Total Annual Burden Hours: For both parts of the data collection, completion of Question Set 1, Driving Research Study Interest Response Form, is estimated to take approximately 5 minutes and completion is estimated to take approximately 7 minutes for Question Set 2, Candidate Screening Questions. Completion of Question Sets 3 and 4, Post-Drive Questionnaire: Drive with Camera Monitoring System and Post-Drive Questionnaire: Drive with Traditional Mirrors for light or heavy vehicles, is estimated to take 10 minutes for each survey for a combined total of 20 minutes, and 5 minutes is estimated for completion of the final opinions questions for both parts of data collection.

The estimated annual time and opportunity cost burdens across both the first and second data collection parts are summarized in the table below. The number of respondents and time to complete each question set are estimated as shown in the table. The time per question set is calculated by multiplying the number of respondents by the time per respondent and then converting from minutes to hours. The hour value for each question set is multiplied by the average hour earning estimate from the Bureau of Labor Statistics [1] to obtain an estimated burden cost per question set.

ESTIMATED HOUR BURDEN AND OPPORTUNITY COST

Question Set No.	NHTSA Form No.	Question set titles	Participants (*i.e.*, respondents)	Time per response (minutes)	Total time (minutes)	Total burden time (hours)	Total opportunity cost	Opportunity cost per participant
1	1553	Interest Response Form	750	5	3,750	63	$1,784.16	$2.38
2	1554	Candidate Screening Questions.	375	7	2,625	44	1,246.08	3.32

[1] *Cost per hour based on Bureau of Labor Statistics Dec. 2019 Average Hourly Earnings data for ''Total Private,'' $28.32 (Accessed Jan. 28, 2020 at *https://www.bls.gov/news.release/empsit.t19.htm*)

ESTIMATED HOUR BURDEN AND OPPORTUNITY COST—Continued

Question Set No.	NHTSA Form No.	Question set titles	Participants (*i.e.*, respondents)	Time per response (minutes)	Total time (minutes)	Total burden time (hours)	Total opportunity cost	Opportunity cost per participant
3	1556	Post-Drive Questionnaire: Drive with Camera Monitoring System.	200	10	2,000	33	934.56	4.67
4	1557	Post-Drive Questionnaire: Drive with Traditional Mirrors.	200	10	2,000	33	934.56	4.67
5	1558	Post-Drive Questionnaire Final Opinions.	200	5	1,000	17	481.44	2.41
		Total Estimated Burden:	.....	.....	11,375	190	5,380.80 ≈ $5,381	$17.45

Estimated Total Annual Burden Cost: The only cost burdens respondents will incur are costs related to travel to and from the study location for those that participate in the research study. The costs are minimal and are expected to be offset by the monetary compensation that will be provided to all research participants.

60-Day Notices: On August 28, 2019, NHTSA published a 60-day notice requesting public comment on the proposed collection of information.[2] We received comments from 23 entities, including 8 organizations and 15 individuals. Organizations submitting comments included American Bus Association (ABA), Automotive Safety Council, Commercial Vehicle Safety Alliance (CVSA), Lotus Cars Ltd., Greyhound Lines, Inc., Stoneridge Inc., Volvo Group, and ZF North America, Inc. Of the 23 commenters, 17 were supportive of the research. No comments addressed the specific questions to be asked of participants. On May 24, 2021, NHTSA published a second 60-day.[3] A summary of the comments received on the first 60-day notice and NHTSA's responses to those comments was provided in the second 60-day notice NHTSA published on May 24, 2021. NHTSA received comments from 1,891 entities, including 2 organizations on the second 60-day notice. 1887 individuals, and input from social media-based Tesla owners enthusiast community group. Organizations submitting comments included the Automotive Safety Council and Alliance for Automotive Innovation. There were 35 duplicate entries.

Comments from the Automotive Safety Council (ASC) did not address the topic of PRA clearance, but did include some recommendations related to the proposed research. The comments included acknowledgement of NHTSA's evaluation of the previous comments made by ASC to the original 60-Day Notice, NHTSA- 2019–0082–0001, and expressed support for conducting additional research subsequent to the proposed work that would address previous ASC suggestions. A new comment from ASC requested that study participants be provided an opportunity to familiarize themselves with conventional mirror technology in the test track environment in the same vehicle type as the test vehicle. This may help to reduce variability from ''normal'' mirror usage and driving behaviors due to the unfamiliar test environment and vehicle type and help isolate the participant response to just the camera technology in the test of the camera equipped system vehicle. ASC also commented that the research should ensure sufficient time for the drivers to get acquainted with the system. NHTSA notes that familiarization time with the new technology is part of the research design.

Two comments from the Alliance of Automotive Innovators did not address the topic of PRA clearance, but offered support for the Agency's research. The comments noted that some of the organization's members ''currently have CMS already deployed in other markets that comply with established international standards, namely ECE R46 and ISO 16505.'' Auto Innovators' comments expressed strong supports for harmonization with existing international standards and ''that NHTSA prioritize its CMS research and rulemaking processes . . . .''

Of the individuals who submitted comments, 30 indicated support for PRA clearance being given for this work. Another 81 commenters voiced support for the research. The remaining commenters' input contained opinions regarding whether CMS should be permitted under FMVSS No. 111 and did not address the specific points on which comments were actually requested.

In summary, the proposed research is intended to gather information to address the question of whether camera-based rear visibility system use is as safe as that of traditional mirrors through examination of drivers' eye glance behavior and driving performance. NHTSA appreciates the feedback and many relevant suggestions offered regarding additional experimental conditions to consider. NHTSA will consider the provided suggestions as input for follow-on research programs.

Public Comments Invited

You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways for the department to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses without reducing the quality of the collected information.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Issued in Washington, DC.

Cem Hatipoglu,

Associate Administrator, Office of Vehicle Safety Research.

[FR Doc. 2022–05237 Filed 3–11–22; 8:45 am]

BILLING CODE P

[2] 84 FR 45209 (August 28, 2019).

[3] 86 FR 27952 (May 24, 2021).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0092; Notice 1]

Volkswagen Group of America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Volkswagen Group of America, Inc., (Volkswagen), has determined that certain model year (MY) 2021–2022 Volkswagen and Audi motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection.* Volkswagen filed an original noncompliance report dated November 19, 2021, and later amended the report on November 22, 2021, and December 1, 2021. Volkswagen petitioned NHTSA on December 13, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Volkswagen's petition.

DATES: Send comments on or before April 13, 2022.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Syed Rahaman, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–1704.

SUPPLEMENTARY INFORMATION:

I. Overview

Volkswagen has determined that certain MY 2021–2022 Volkswagen and Audi motor vehicles do not fully comply with paragraphs S4.5.1(f)(1), S4.5.1(f)(2)(ii), and S4.5.1(f)(2)(vii) of FMVSS No. 208, *Occupant Crash Protection* (49 CFR 571.208).

Volkswagen filed an original noncompliance report dated November 19, 2021, and later amended the report on November 22, 2021, and December 1, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Volkswagen petitioned NHTSA on December 13, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Volkswagen's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

II. Vehicles Involved

Approximately 48,948 of the following vehicles, manufactured between July 30, 2020, and November 18, 2021, are potentially involved:

- MY 2022 Volkswagen Taos
- MY 2021 Volkswagen ID.4
- MY 2022 Volkswagen Golf R A8
- MY 2022 Volkswagen Golf GTI
- MY 2022 Audi S3 Sedan
- MY 2022 Audi A3 Sedan

III. Noncompliance

Volkswagen explains that the owner's manual for the subject vehicles incorrectly states the length of time the ''Passenger Airbag On'' light is illuminated while the airbag is active and therefore, does not meet the requirements of paragraphs S4.5.1(f)(1), S4.5.1(f)(2)(ii), and S4.5.1(f)(2)(vii) of FMVSS No. 208. Specifically, when the airbag is activated, the ''Passenger Airbag On'' light will blink for 5 seconds, remain illuminated for 60 seconds, and then go out. The owner's manual incorrectly states that the light will remain illuminated permanently when the airbag is on.

IV. Rule Requirements

Paragraphs S4.5.1(f)(1), S4.5.1(f)(2)(ii), and S4.5.1(f)(2)(vii) of FMVSS No. 208 include the requirements relevant to this petition. The owner's manual for any vehicle equipped with an inflatable restraint system shall include an accurate description of the vehicle's air bag system in an easily understandable format. The manufacturer is required to include in the vehicle owner's manual a discussion of the advanced passenger air bag system installed in the vehicle. The discussion must explain the proper functioning of the advanced air bag system and provide a summary of the actions that may affect the proper functioning of the system. The discussion shall include accurate information on (1) an explanation of how the components function together as part of the advanced passenger air bag system and (2) a discussion of the telltale light, specifying its location in the vehicle and explaining when the light is illuminated.

V. Summary of Volkswagen's Petition

The following views and arguments presented in this section, ''V. Summary of Volkswagen's Petition,'' are the views and arguments provided by Volkswagen. They have not been evaluated by the Agency and do not reflect the views of the Agency. Volkswagen describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Volkswagen says that although the owner's manual does not accurately state the duration of time that the ''Passenger Airbag On'' light is illuminated, Volkswagen claims that the light ''is neither required nor regulated'' by FMVSS No. 208. Volkswagen contends that although the light does not remain illuminated, the ''system itself is switched on, is ready to function, and is otherwise accurately described within the owner's manual.''

Volkswagen explains that the owner's manual for the subject vehicles ''provides an explanation of how the system's components function together, as well as how the ''Passenger Airbag Off'' light functions,'' as required by FMVSS No. 208. Volkswagen further explains that the owner's manual also provides ''a presentation and explanation of the main components of the advanced passenger air bag system, an explanation of how the components function, and the basic requirements for proper operations, among other important relevant safety information.''

Volkswagen notes that it has corrected the noncompliance for vehicles still in its control by adding a supplemental page with the accurate information into the owner's manual.

Volkswagen states that it is aware of one customer inquiry related to the subject noncompliance which has been resolved but is not aware of any accidents or injuries that have occurred as a result of the subject noncompliance.

Volkswagen concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Volkswagen no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Volkswagen notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–05306 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2020–0083; Notice 1]

Cooper Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Receipt of petition.

SUMMARY: Cooper Tire & Rubber Company (Cooper Tire) has determined that certain Cooper Discoverer AT3 tubeless radial light truck tires do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Cooper Tire filed a noncompliance report dated July 6, 2020. Cooper subsequently petitioned NHTSA on July 31, 2020, and supplemented its petition on May 28, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Cooper Tire's petition.

DATES: Send comments on or before April 13, 2022.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.
- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Follow the online instructions for submitting comments.
- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at *https://www.regulations.gov* by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

SUPPLEMENTARY INFORMATION:

I. Overview

Cooper Tire has determined that certain Cooper Discoverer AT3 tubeless radial light truck tires do not fully comply with the requirements of paragraph S.5.5.1 of FMVSS No. 139, *New Pneumatic Radial Tires for Light Vehicles* (49 CFR 571.139). Cooper Tire filed a noncompliance report dated July 6, 2020, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Cooper Tire subsequently petitioned NHTSA on July 31, 2020, and supplemented its petition on May 28, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

This notice of receipt of Cooper Tire's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

II. Tires Involved

Approximately 271 Cooper Discoverer AT3 tubeless radial light truck tires, size LT 245/75R16, manufactured between May 3, 2020, and May 31, 2020, are potentially involved.

III. Noncompliance

Cooper Tire explains that the noncompliance is that the subject tires were manufactured having additional characters representing the press location inserted into the tire identification number (TIN) and therefore, do not meet the requirements of paragraph S5.5.1 of FMVSS No. 139. Specifically, the additional grouping of characters representing the press location are insterted before the date code. The subject tires were manufactured with ''UT 11 1M1 V02R 1820,'' when they should have been manufactured with ''UT 11 1M1 1820,'' followed by V02R.

IV. Rule Requirements

Paragraph S5.5.1(b) of FMVSS No. 139 includes the requirements relevant to this petition for tires having an intended outboard sidewall. Each tire must be labeled with the tire identification number required by 49 CFR part 574 on the intended outboard sidewall of the tire. Either the tire identification number or a partial tire identification number, containing all characters in the tire identification number, except for the date code and, at the discretion of the manufacturer, any optional code, must be labeled on the other sidewall of the tire.

V. Summary of Cooper Tire's Petition

The following views and arguments presented in this section, ''V. Summary of Cooper Tire's Petition,'' are the views and arguments provided by Cooper Tire. They have not been evaluated by the Agency and do not reflect the views of the Agency. Cooper Tire described the subject noncompliance and stated their belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Cooper Tire submitted the following reasoning:

1. Cooper Tire says that while the 271 tires in the subject population contain an additional grouping of letters/numbers before the required date code on the intended outboard sidewall, these tires are in all other respects properly labeled and meet all performance requirements under the FMVSSs. The additional press location grouping has no bearing on the performance or operation of the tires and does not create a safety concern to either the operator of the vehicle on which the tires are mounted, or the safety of personnel in the tire repair, retread, and recycling industry.

2. Tires produced by manufacturers that continue to use two-digit plant codes (available through 2025) can have TINs that vary in length depending on the use of the optional brand name owner code. The addition of the press location (V02R), while incorrectly placed on the tire, will not cause confusion for the consumer or dealer that is selecting and mounting the tire. Consumers/dealers will continue to see the date code appear at the end of the series of letters and numbers that begin with ''DOT.'' NHTSA's guidance states that ''the last four digits of the TIN show the week and year of manufacture.'' [1] That guidance is still accurate here. Consumers and dealers will be able to easily identify the date of manufacture (week/year).

3. Tire registration and traceability will not be interrupted. Cooper Tire's internally controlled online registration system has been modified to be able to accept the TINs with the additional press location grouping. Any tires registered with that TIN will be identified and recorded properly. This will ensure that Cooper Tire is able to identify these tires in the event they must be recalled.

4. Cooper states that NHTSA has granted a number of previous inconsequentiality petitions relating to out-of-order or mislabeled TINs, provided that the mislabeling does not affect the manufacturer's ability to identify the tires. ''The purpose of the date code is to identify a tire so that, if necessary, the appropriate action can be taken in the interest of public safety-such as, a safety recall notice.'' [2] Accordingly, Cooper states that NHTSA has explained in multiple instances that ''[t]he Agency believes that the true measure of inconsequentiality to motor vehicle safety in this case is the effect of the noncompliance on the ability of the tire manufacturer to identify the tires in the event of recall.'' [3]

5. As a result, Cooper states that NHTSA has granted petitions and found that TIN noncompliance is inconsequential to safety in cases where the TIN is out of sequence or mislabeled. Cooper cited the following examples:

a. Bridgestone Firestone North America Tire, LLC, Grant of Petition, 71 FR 4396, January 26, 2006, (granting petition where date code was missing because manufacturer could still identify and recall the tires).

b. Cooper Tire & Rubber Company, Grant of Application, 68 FR 16115, April 2, 2003, (granting petition where tires were labeled with wrong plant code, because ''the tires have a unique DOT identification'').

c. Bridgestone/Firestone, Inc., Grant of Application for Decision That Noncompliance Is Inconsequential to Motor Vehicle Safety, 66 FR 45076, August 27, 2001, (granting petition where the date code was labeled incorrectly, because ''the information included on the tire identification label and the manufacturer's tire production records is sufficient to ensure that these tires can be identified in the event of a recall'').

d. Bridgestone/Firestone, Inc.; Grant of Application for Decision of Inconsequntial Noncompliance, 64 FR 29080, May 28, 1999, (granting petition where the wrong year was marked in date code on the tires).

e. Cooper Tire & Rubber Company; Grant of Application for Decision of Inconsequential Noncompliance, 63 FR 29059, May 27, 1998, (granting petition where date code was missing where tires had a unique TIN for recall purposes).

f. Bridgestone/Firestone, Inc.; Grant of Application for Decision of Inconsequential Noncompliance, 60 FR 57617, Nov. 16, 1995, (granting petition where date code was out of sequence).

g. Uniroyal Goodrich Tire Company; Grant of Petition for Determination of Inconsequential Noncompliance, 59 FR 64232, December 13, 1994, (granting petition where week and year were mislabeled on tires).

6. Cooper will be able identify the tires that are the subject of this petition in the event of recall. As described above, these tires will have a unique DOT identifier that will allow for Cooper to identify and recall them in the event that any issues arise in the future.

7. Cooper Tire states that it has taken steps over the last few years to add additional checks in its processes to prevent TIN errors. Cooper tire is undertaking additional process

[1] *See* NHSTA's ''Safety in Numbers,'' June 2013, Volume 1, Issue 3, available at *https://www.nhtsa.gov/nhtsa/Safety1nNum3ers/june2013/9719_images/9719_S1N_Tires_Nwsltr_June13_062713_v4_tag.pdf.*

[2] *See* Bridgestone/Firestone, Inc.; Grant of Application for Decision of Inconsequential Noncompliance, 64 FR 29080 (May 28, 1999); *see also* Cooper Tire & Rubber Company, Grant of Application for Decision of Inconsequential Noncompliance, 68 FR 16115 (April 2, 2003) (same).

[3] *See* Bridgestone/Firestone, Inc., Grant of Application, 66 FR 45076 (Aug. 27, 2001).

reviews at this time including measures such as color coding portions of the mold, makding software changes to remove manual data entry, and adding additional visual quality checks of the molds when information is changed. Cooper Tire is also reviewing its inspection processes to ensure that any errors are identified earlier and/or prevented before they occur.

Cooper Tire concluded by expressing the belief that the subject noncompliances are inconsequential as they relate to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject tires that Cooper Tire no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant buses under their control after Cooper Tire notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–05305 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0008; Notice 2]

Daimler Trucks North America, Grant of Petition for Decision of Inconsequential Noncompliance

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

ACTION: Grant of petition.

SUMMARY: Daimler Trucks North America (DTNA) has determined that certain model year (MY) 2017–2019 Freightliner Cascadia motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment.* DTNA filed a noncompliance report dated January 16, 2019. DTNA subsequently petitioned NHTSA on February 8, 2019, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the grant of DTNA's petition.

FOR FURTHER INFORMATION CONTACT: Leroy Angeles, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5304, *leroy.angles@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Overview

DTNA has determined that certain MY 2017–2019 Freightliner Cascadia motor vehicles do not fully comply with paragraph S6.2.1 of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108). DTNA filed a noncompliance report dated January 16, 2019, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* DTNA subsequently petitioned NHTSA on February 8, 2019, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of DTNA's petition was published with a 30-day public comment period, on February 27, 2020, in the **Federal Register** (85 FR 11450). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2019–0008.''

II. Trucks Involved

Approximately 74,675 MY 2017–2019 Freightliner Cascadia motor vehicles, manufactured between May 3, 2016, and December 17, 2018, are potentially involved.

III. Noncompliance

DTNA described the noncompliance as automatic illumination of the stop lamps when the low air pressure warning indicator light illuminates. Since low air pressure does not necessarily activate the brakes or result in braking without driver intervention, this activation of the stop lamps does not meet the requirements of S6.2.1 of FMVSS No. 108.

IV. Rule Requirements

Paragraph S6.2.1 of FMVSS No. 108 includes the requirements relevant to this petition. No additional lamp, reflective device, or other motor vehicle equipment is permitted to be installed that impairs the effectiveness of lighting equipment required by FMVSS No. 108.

V. Summary of DTNA's Petition

The following views and arguments presented in this section, ''V. Summary of DTNA's Petition,'' are the views and arguments provided by DTNA.

DTNA described the subject noncompliance and stated its belief that the noncompliance is inconsequential as it relates to motor vehicle safety.

DTNA submitted the following background information on how their air brake system affects the stop lamps:

DTNA's air brake system is comprised of two brake systems, primary and secondary. The primary system controls the service brakes on the drive axles, and the secondary system controls the service brakes on the steer axle, in which the higher pressure of these two controls the trailer service brakes. These two systems are isolated from each other so that if there is an air loss in one system, the other system will still be functional to control the vehicle service brakes. When either one of the systems drops below 70 psi, the low air warning indicator light on the dash turns ON and the stop lamps illuminate. However, if this occurs, it does not mean that the drive axle parking brakes being applied, since the other brake system may still be functional and keeping the brake from applying. In such a situation, the air that holds off the drive axle parking brakes would be the higher pressure of either primary or secondary air brake. In other words, if the primary air brake pressure falls below 70 psi, the indicator light and stop lamps illuminate, but the parking brakes do not start to drag since the secondary air (presumably unaffected) remains high and holds off the parking springs. In the same manner, the trailer parking brakes are held off by the higher of either primary or secondary air brake system. Only when both air systems drop below about 70 psi will the trailer parking brakes begin to apply.

DTNA submitted the following views and arguments in support of the petition:

1. The normal operating air pressure of the vehicle is between 110 and 130

psi. There is a regulator that turns on the air compressor if the air pressure is below 110 psi and turns off the air compressor when the system pressure is above 130 psi. If the air pressure begins to drop and reaches approximately 70 psi, the air system pressure is not adequate to maintain optimum operation, so a warning indicator light illuminates on the dash and a buzzer activates to alert the driver to this condition. On these vehicles, the stop lamps illuminate when the warning indiactor light illuminates on the dash. The events induced by a low air condition after initial vehicle startup are rare and are not expected in normal operation. If the condition were to occur during operation, the driver would be alerted to the circumstances with audible and visual low air warning signals and would be expected to apply the service brakes and pull over in a safe manner. Additionally, if the pressure in both air systems drops below 70 psi, the parking brakes will slowly begin to apply.

2. The Freightliner Cascadia Driver's Manual states ''If the low air pressure warning is activated, check the air pressure gauges to determine which system has low air pressure. Although the vehicle's speed can be reduced using the foot brake control pedal, either the front or rear service brakes will not be operating at full capacity, causing a longer stopping distance. Bring the vehicle to a safe stop and have the air system repaired before continuing.''

3. Brakes are commonly applied causing the stop lamps to illuminate when a driver sees a vehicle display warning or senses that the vehicle is experiencing a problem. Reducing vehicle speed in relation to a vehicle operational problem increases safety, providing following drivers the opportunity to increase the following distance. A low air warning indicator light would likely cause the vehicle driver to immediately engage the brake system and bring the vehicle to a safe stop. Stop lamp illumination for a brake system low air event would help provide early warning to following drivers to slow down.

4. DTNA stated, in ''Motorcoach Brake Systems and Safety Technologies,'' the Federal Motor Carrier Safety Administration issued guidance, while directed toward motorcoach drivers, that supports the expectation that a driver, upon receipt of a low-pressure warning, would apply brakes and pull off the roadway. FMCSA stated: ''Low Pressure Warning—In most cases, you should notice an air leak or malfunction before getting a low-pressure warning; however, when a low-pressure warning occurs, immediately bring the motorcoach to a safe stop, off of the roadway. Continuing to operate the motorcoach could result in an automatic application of the park brakes, possibly leading to a loss of control or a stop in an unsafe position.''

5. DTNA is not aware of any accidents, injuries, owner complaints, or field reports related to this condition on the subject vehicles.

6. DTNA also stated that NHTSA has previously granted petitions for decisions of inconsequential noncompliance for lighting requirements where technical noncompliance exists, but does not create a negative impact on safety:

- In General Motors Corporation; Grant of Application for Decision of Inconsequential Noncompliance. 66 FR 32871 (June 18, 2001) a petition for inconsequentiality by General Motors Corporation was granted by NHTSA. In this instance, certain models could have unintended CHMSL illumination briefly if the hazard warning lamp switch is depressed to its limit of travel.
- In General Motors, LLC, Grant of Petition for Decision of Inconsequential Noncompliance, a petition for inconsequentiality by General Motors, LLC (GM) was granted by NHTSA. *See* 83 FR 7847 (February 22, 2018). In this instance, under certain conditions, the parking lamps on the subject vehicles fail to meet the requirement that parking lamps must be activated when headlamps are activated in a steady burning state.
- In Grant of Application for Determination of Inconsequential Noncompliance with FMVSS No. 108, a petition for inconsequentiality by General Motors Corporation was granted by NHTSA. *See* 64 FR 48231 (September 2, 1999). In this instance, a certain model equipped with an electronic turn signal was affected by random inputs that cause the internal timing of the electronic circuit to become unsynchronized causing the left front turn signal lamp to flash at a rapid rate while the left rear turn signal lamp illuminates but does not flash. These conditions can continue after the turn signal lever automatically returns to the off position.

7. DTNA believes that a technical noncompliance exists but does not create a negative impact on safety when the brake lamps illuminate during a brake system low air warning event. The stop lamp illumination serves to emphasize the message to following drivers that the vehicle is experiencing trouble and they should pay close attention. The Brake Air warning indicator light, on the driver's display panel, shows the driver that there is an issue with the air brake system. This would result in the driver bringing the vehicle to a safe stop and having the air system repaired before continuing.

DTNA concluded by expressing its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety, and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

VI. NHTSA's Analysis

The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement with no performance implications*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.[1] Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely deemed inconsequential.

An important issue to consider in determining inconsequentiality is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[2] In general, NHTSA does not consider the absence of complaints or injuries to show that the issue is inconsequential to safety. ''Most importantly, the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [3] ''[T]he fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [4]

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[1] *Cf. Gen. Motors Corporation; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19899 (Apr. 14, 2004) (citing prior cases where noncompliance was expected to be imperceptible, or nearly so, to vehicle occupants or approaching drivers).

[2] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[3] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[4] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as

NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider is the consequence to an occupant who is exposed to the consequence of that noncompliance.[5] These considerations are also relevant when considering whether a defect is inconsequential to motor vehicle safety.

NHTSA notes that DTNA misquoted the decision language pertaining to a prior inconsequential noncompliance petition (83 FR 7847) by adding ''The Agency agrees with GM that in this case'' prior to the original statement. NHTSA does not consider this addition accurate.

The noncompliance, in the DTNA case currently being considered, is that the stop lamp illuminates when a braking system low air pressure warning indicator light is illuminated, regardless of whether the service brakes are applied.[6] As the subject trucks have two air brake systems, which split the trailer brakes from the steer axle brakes, low air pressure will cause a brake application only if air pressure is lost in both systems. Should only one of the two air brake systems report low air pressure, the parking brakes would not engage but the stop lamps would illuminate in addition to the low air warning indicator light, which includes an audible alarm. The Agency believes that an alert would prompt the operator to safely pull over and/or attempt to slow/stop the truck soon after the warnings appear. In that case, the noncompliance would only result in a momentary illumination of the stop lamps without the brakes being applied.

If the driver of a subject vehicle did not apply the brakes immediately after receiving a low air pressure warning, following drivers would be presented with a false indication that the subject truck was braking. Further, should there be an air leak, application of the service brakes will cause the air pressure to further drop, braking performance may be impacted, and it is also possible that the system will no longer be able to achieve proper pressure, which subsequently may cause the parking brakes to engage. As the function of a stop lamp is to notify other road users that a vehicle is stopping and/or slowing down, a vehicle equipped with an air braking system where the low air pressure warning on the instrument cluster along with an audible warning has been activated will likely prompt the driver to immediately pull over and/or attempt to slow/stop the vehicle.

A previous NHTSA interpretation concerning trailer stop lamp illumination, requested by Wabash National Corporation, explained that the stop lamps were permitted to be illuminated in the event that the emergency braking system was activated when significant deceleration could occur.[7] NHTSA does not agree with DTNA's argument that the activation of the stop lamps when the low air pressure warning occurs would be helpful for a warning other drivers of the brake malfunction. Nonetheless, NHTSA still believes this noncompliance would be inconsequential to safety. This is because when a vehicle with air brakes experiences a low-air event and notifies the driver of a brake system malfunction, NHTSA believes that the driver would likely respond by pulling over to the side of the road and taking the vehicle out of service until the brake system can be repaired. Because the act of pulling over to the side of the road would result in the intentional activation of the stop lamps and this sequence of events would likely occur only once before the vehicle is repaired, NHTSA believes that the activation of the brake lamps due to the low air pressure event would be inconsequential to safety.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA finds that DTNA has met its burden of persuasion that the subject FMVSS No. 108 noncompliance in the affected trucks is inconsequential to motor vehicle safety. Accordingly, DTNA's petition is hereby granted and DTNA is consequently exempted from the obligation of providing notification of, and a free remedy for, that noncompliance under 49 U.S.C. 30118 and 30120.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, this decision only applies to the subject trucks that DTNA no longer controlled at the time it determined that the noncompliance existed. However, the granting of this petition does not relieve truck distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant trucks under their control after DTNA notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Otto G. Matheke III,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2022–05304 Filed 3–11–22; 8:45 am]

BILLING CODE 4910–59–P

potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

[5] *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco Inc.; Denial of Application for Decision of Inconsequential Noncompliance,* 64 FR 29408, 29409 (June 1, 1999).

[6] Per FMVSS No. 108, stop lamps should only be activated upon activation of the service brakes, or a device intended to retard the movement of the vehicle. See FMVSS No. 108, Table I–a.

[7] *https://isearch.nhtsa.gov/files/22036.ztv.html.*

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is updating the identifying information on its Specially Designated Nationals and Blocked Persons List (''SDN List'') for a person whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism,'' as amended by Executive Order 13886 of September 9, 2019, ''Modernizing Sanctions to Combat Terrorism''.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: *OFAC:* Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 8, 2022, OFAC published the following revised information for the following person on OFAC's SDN List whose property and interests in property are blocked pursuant to Executive Order 13224, as amended.

Individual

1. SAADE, Ali (a.k.a. SAADE, Ali Moussa; a.k.a. SAADI, Ali), Beirut, Lebanon; DOB 18 May 1942; POB Conakry, Guinea; nationality Lebanon; Gender Male; Secondary sanctions risk: section 1(b) of Executive Order 13224, as amended by Executive Order 13886; Passport RL0420013 (Lebanon) expires 01 Mar 2015; alt. Passport 14205180170519 (Guinea) expires 29 May 2024; alt. Passport 18FV09784 (France) expires 06 Feb 2029 (individual) [SDGT] (Linked To: HIZBALLAH).

Dated: March 8, 2022.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–05342 Filed 3–11–22; 8:45 am]

BILLING CODE 4810–AL–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: March 17, 2022, 12:00 p.m. to 2:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll) or (ii) 1–877–853–5247 (US Toll Free) or 1–888–788–0099 (US Toll Free), Meeting ID: 914 1782 1095, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJUpdu6grDoqE9E2KHr1we1yWNOp_ECKltmD*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Education and Training Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—Subcommittee Chair

The Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—Subcommittee Chair

For Discussion and Possible Subcommittee Action

The Agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

➢Subcommittee action only to be taken in designated areas on agenda.

IV. Review and Approval of Subcommittee Minutes from the January 20, 2022 Meeting—Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the January 20, 2022 Subcommittee meeting via teleconference will be reviewed. The Subcommittee will consider actions to approve the minutes of the meeting.

V. Audit Module 2 Development Discussion—UCR Operations Manager

The UCR Operations Manager will discuss and provide updates on development of the Audit Module 2.

VI. Roadside Enforcement Module Video Update—Subcommittee Chair

The Subcommittee chair will provide an update on the Roadside Enforcement Module that describes the steps a roadside law enforcement officer would use to enforce UCR.

VII. UCR Education and E-Certificate Strategy—Subcommittee Chair

The Subcommittee Chair will discuss the UCR E-Certificate.

VIII. Other Business—Subcommittee Chair

The Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

IX. Adjournment—Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, March 10, 2022 at: *https://plan.ucr.gov.*

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305–3783, *eleaman@board.ucr.gov.*

Alex B. Leath,

Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2022–05432 Filed 3–10–22; 4:15 pm]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of the Department of Veterans Affairs: Recommendations for Modernization or Realignment of Veterans Health Administration (VHA) Facilities

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) is required to develop recommendations regarding the modernization or realignment of Veterans Health Administration (VHA) facilities. This notice serves as documentation for the public record that the Secretary's recommendations to the Asset and Infrastructure Review (AIR) Commission have been submitted and are available to the public at *https://www.va.gov/aircommissionreport.*

FOR FURTHER INFORMATION CONTACT: Valerie Mattison Brown, Chief Strategy Officer, Veterans Health Administration, U.S. Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461–7100.

SUPPLEMENTARY INFORMATION: Subtitle A of Title II of the Maintaining Internal Systems and Strengthening Integrated Outside Networks (MISSION) Act of 2018 (Public Law 115–182), requires the Secretary to submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives and to the AIR Commission a report detailing recommendations for the modernization or realignment of VHA facilities developed utilizing the final criteria published in the **Federal Register** on May 28, 2021.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on March 8, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Michael P. Shores,

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

[FR Doc. 2022–05256 Filed 3–11–22; 8:45 am]

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FEDERAL REGISTER

Vol. 87 Monday,

No. 49 March 14, 2022

Part II

Environmental Protection Agency

California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0257; FRL–9325–01–OAR]

California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice of decision.

SUMMARY: The Environmental Protection Agency (EPA) has completed the reconsideration of its 2019 action withdrawing a 2013 Clean Air Act (CAA) waiver of preemption for California's greenhouse gas (GHG) emission standards and zero emission vehicle (ZEV) sale mandate, which are part of California's Advanced Clean Car (ACC) program. This decision rescinds EPA's 2019 waiver withdrawal, thus bringing back into force the 2013 ACC program waiver, including a waiver of preemption for California's ZEV sales mandate and GHG emissions standards. In addition, EPA is withdrawing the interpretive view of CAA section 177 included in its 2019 action, that States may not adopt California's GHG standards pursuant to section 177 even if EPA has granted California a waiver for such standards. Accordingly, other States may continue to adopt and enforce California's GHG standards under section 177 so long as they meet the requirements of that section.

DATES: Petitions for review must be filed by May 13, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2021–0257. All documents relied upon in making this decision, including those submitted to EPA by CARB, are contained in the public docket. Publicly available docket materials are available electronically through *www.regulations.gov.* After opening the *www.regulations.gov* website, enter EPA–HQ–OAR–2021–0257 in the ''Enter Keyword or ID'' fill-in box to view documents in the record. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. EPA's Office of Transportation and Air Quality (OTAQ) maintains a web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in this notice; the page can be accessed at *https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations.*

FOR FURTHER INFORMATION CONTACT: David Dickinson, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW. Telephone: (202) 343–9256. Email: *Dickinson.David@epa.gov* or Kayla Steinberg, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW. Telephone: (202) 564–7658. Email: *Steinberg.Kayla@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Executive Summary

CAA section 209(a) generally preempts states from adopting emission control standards for new motor vehicles. But Congress created an important exception from preemption. Under CAA section 209(b), the State of California [1] may seek a waiver of preemption, and EPA must grant it unless the Agency makes one of three statutory findings. California's waiver of preemption for its motor vehicle emissions standards allows other States to adopt and enforce identical standards pursuant to CAA section 177. Since the CAA was enacted, EPA has granted California dozens of waivers of preemption, permitting California to enforce its own motor vehicle emission standards.

Of particular relevance to this action, in 2013, EPA granted California's waiver request for the state's Advanced Clean Car (ACC) program (ACC program waiver).[2] California's ACC program includes both a Low Emission Vehicle (LEV) program, which regulates criteria pollutants and greenhouse gas (GHG) emissions, as well as a Zero Emission Vehicle (ZEV) sales mandate. These two requirements are designed to control smog- and soot-causing pollutants and GHG emissions in a single coordinated package of requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles (as well as

[1] The CAA section 209(b) waiver is limited ''to any State which has adopted standards . . . for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966,'' and California is the only State that had standards in place before that date. ''California'' and ''California Air Resources Board'' (CARB) are used interchangeably in certain instances in this notice when referring to the waiver process under section 209(b).

[2] 78 FR 2111 (January 9, 2013).

limited requirements related to heavy-duty vehicles). Between 2013 and 2019, twelve other States adopted one or both of California's standards as their own. But in 2019, EPA partially withdrew this waiver as part of a final action entitled ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program'' (SAFE 1), marking the first time the agency withdrew a previously granted waiver.[3] In addition, in the context of SAFE 1, EPA provided an interpretive view of CAA section 177 asserting that other states were precluded from adopting California's GHG standards.

As Administrator of the Environmental Protection Agency (EPA), I am now rescinding EPA's 2019 actions in SAFE 1 that partially withdrew the ACC program waiver for California's ACC program. I am rescinding these actions because (1) EPA's reconsideration of the waiver under the particular facts and circumstances of this case was improper; (2) EPA's reconsideration was based on a flawed interpretation of CAA section 209(b); (3) even under that flawed interpretation, EPA misapplied the facts and inappropriately withdrew the waiver; (4) EPA erred in looking beyond the statutory factors in CAA 209(b) to action taken by another agency under another statute to justify withdrawing the waiver; (5) that agency has also since withdrawn the action EPA relied on in any event; and (6) EPA inappropriately provided an interpretive view of section 177.

As a result of this action, EPA's 2013 waiver for the ACC program, specifically the waiver for California's GHG emission standards and ZEV sales mandate requirements for model years (MYs) 2017 through 2025, comes back into force.[4] I am also rescinding the interpretive view set forth in SAFE 1 that States may not adopt California's GHG standards pursuant to CAA section 177 even if EPA has granted California a section 209 waiver for such standards. Accordingly, States may now adopt and enforce California's GHG standards so long as they meet the requirements of Section 177, and EPA will evaluate any State's request to include those provisions in a SIP through a separate notice and comment process.

Section II of this action contains a detailed history of EPA's waiver adjudications leading up to this action. In summary, in 2012, CARB submitted the ACC waiver request to EPA, which included ample evidence of the criteria pollution benefits of the GHG standards and the ZEV sales mandate. As it had in all prior waiver decisions with two exceptions (including SAFE 1), in considering the request EPA relied on its ''traditional'' interpretation of section 209(b)(1)(B), which examines whether California needs a separate motor vehicle program as a whole—not specific standards—to address the state's compelling and extraordinary conditions. In 2013, EPA granted California's waiver request for its ACC program in full. In 2018, however, EPA proposed to withdraw portions of its waiver granted in 2013 based on a new interpretation of section 209(b)(1)(B) that looked at whether the specific standards (the GHG standards and ZEV sales mandate), as opposed to the program as a whole, continued to meet the second and third waiver prongs (found in sections 209(b)(1)(B) and (C)).[5] In addition, EPA proposed to look beyond the section 209(b) criteria to consider the promulgation of a NHTSA regulation and pronouncements in SAFE 1 that declared state GHG emission standards and ZEV sales mandates preempted under EPCA. In 2019, after granting CARB a waiver for its ACC program in 2013 and after 12 states had adopted all or part of the California standards under section 177, EPA withdrew portions of the waiver for CARB's GHG emission standards and ZEV sales mandates. In SAFE 1, EPA cited changed circumstances and was based on a new interpretation of the CAA and the agency's reliance on an action by NHTSA that has now been repealed.[6]

On January 20, 2021, President Biden issued Executive Order 13990, directing the Federal Agencies to ''immediately review'' SAFE 1 and to consider action ''suspending, revising, or rescinding'' that action by April 2021. On April 28, 2021, EPA announced its Notice of Reconsideration, including a public hearing and an opportunity for public comment.[7] The Agency stated its belief that there were significant issues regarding whether SAFE 1 was a valid and appropriate exercise of Agency authority, including the amount of time that had passed since EPA's ACC program waiver decision, the approach and legal interpretations used in SAFE 1, whether EPA took proper account of the environmental conditions (*e.g.,* local climate and topography, number of motor vehicles, and local and regional air quality) in California, and the environmental consequences from the waiver withdrawal in SAFE 1. Further, EPA stated it would be addressing issues raised in the related petitions for reconsideration of EPA's SAFE 1 action. In the meantime, having reconsidered its own action, and also in response to Executive Order 13990, NHTSA repealed its conclusion that state and local laws related to fuel economy standards, including GHG standards and ZEV sales mandates, were preempted under EPCA,[8] and EPA revised and made more stringent the Federal GHG emission standards for light-duty vehicles for 2023 and later model years, under section 202(a).[9]

Section III of this action outlines the principles that govern waiver reconsiderations. It sets forth the statutory background and context for the CAA preemption of new motor vehicle emission standards, the criteria for granting a waiver of preemption, and the ability of other States to adopt and enforce California's new motor vehicle emission standards where a waiver has been issued if certain CAA criteria are met. In brief, CAA section 209(a) generally preempts all States or political subdivisions from adopting and enforcing any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines. But section 209(b) contains an important exception that allows only

[3] 84 FR 51310 (September 27, 2019).

[4] In SAFE 1, EPA did not withdraw the entire 2013 waiver, but instead only withdrew the waiver as it related to California's GHG emission standards and the ZEV sales mandate. The waiver for the low-emission vehicle (LEV III) criteria pollutant standards in the ACC program remained in place. EPA's reconsideration of SAFE 1 and the impact on the ACC waiver therefore relates only to the GHG emission standards and the ZEV sales mandate, although ''ACC program waiver'' is used in this document. This action rescinds the waiver withdrawal in SAFE 1. In this decision, the Agency takes no position on any impacts this decision may have on state law matters regarding implementation.

[5] EPA's 2018 proposal was jointly issued with the National Highway Traffic Safety Administration (NHTSA). 83 FR 42986 (August 24, 2018) (the ''SAFE proposal''). In addition to partially withdrawing the waiver, that proposal proposed to set less stringent greenhouse gas and CAFE standards for model years 2021–2026. NHTSA also proposed to make findings related to preemption under the Energy Policy and Conservation Act (EPCA) and its relationship to state and local GHG emission standards and ZEV sales mandates.

[6] 84 FR 51310. In SAFE 1, NHTSA also finalized its action related to preemption under EPCA. NHTSA's action included both regulatory text and well as pronouncements within the preamble of SAFE 1. In 2020, EPA finalized its amended and less stringent carbon dioxide standards for the 2021–2026 model years in an action titled ''The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks'' (SAFE 2). 85 FR 24174 (April 30, 2020).

[7] ''California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Opportunity for Public Hearing and Public Comment.'' 86 FR 22421 (April 28, 2021).

[8] 86 FR 74236 (December 29, 2021).

[9] 86 FR 74434 (December 30, 2021).

California to submit a request to waive preemption for its standards. Importantly, EPA must grant the waiver unless the Administrator makes at least one of three findings: (1) That California's determination that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards, is arbitrary and capricious (the ''first waiver prong,'' under section 209(b)(1)(A)); (2) that California does not need such State standards to meet compelling and extraordinary conditions (the ''second waiver prong,'' under section 209(b)(1)(B)); or (3) that California standards are not consistent with section 202(a), which contains EPA's authority to regulate motor vehicles (the ''third waiver prong,'' under section 209(b)(1)(C)). In the 1977 amendments to the CAA, section 177 was added to allow other States that may be facing their own air quality concerns to adopt and enforce the California new motor vehicle emission standards for which California has been granted a waiver under section 209(b) if certain criteria are met.

Section III also provides more context to indicate that Congress intended that, when reviewing a request for a waiver, EPA treat with deference the policy judgments on which California's vehicle emission standards are based. It discusses the history of Congress allowing states to adopt more stringent standards. Ultimately, Congress built a structure in section 209(b) that grants California authority to address its air quality problems, and also acknowledges the needs of other states to address their air quality problems through section 177. Lastly, Section III describes the burden and standard of proof for waiver decisions.

Section IV of this action then discusses EPA's first basis for rescinding the SAFE 1 waiver withdrawal: That EPA did not appropriately exercise its limited authority to withdraw a waiver once granted. Section 209 does not provide EPA with express authority to reconsider and withdraw a waiver previously granted to California. EPA's authority thus stems from its inherent reconsideration authority. In the context of reconsidering a waiver grant, that authority may only be exercised sparingly. EPA believes its inherent authority to reconsider a waiver decision is constrained by the three waiver criteria that must be considered before granting or denying a waiver request under section 209(b). EPA's reconsideration may not be broader than the limits Congress placed on its ability to deny a waiver in the first place. EPA notes further support for limiting its exercise of reconsideration authority, relevant in the context of a waiver withdrawal, is evidenced by Congress's creation of a state and federal regulatory framework to drive motor vehicle emissions reduction and technology innovation that depends for its success on the stable market signal of the waiver grant—automobile manufacturers must be able to depend reliably on the continuing validity of the waiver grant in order to justify the necessary investments in cleaner vehicle technology. Accordingly, EPA now believes it may only reconsider a previously granted waiver to address a clerical or factual error or mistake, or where information shows that factual circumstances or conditions related to the waiver criteria evaluated when the waiver was granted have changed so significantly that the propriety of the waiver grant is called into doubt. Even then, as with other adjudicatory actions, when choosing to undertake such a reconsideration EPA believes it should exercise its limited authority within a reasonable timeframe and be mindful of reliance interests. EPA expects such occurrences will be rare. The Agency's waiver withdrawal in SAFE 1 was not an appropriate exercise of EPA's limited authority; there was no clerical error or factual error in the ACC program waiver, and SAFE 1 did not point to any factual circumstances or conditions related to the three waiver prongs that have changed so significantly that the propriety of the waiver grant is called into doubt. Rather, the 2019 waiver withdrawal was based on a change in EPA's statutory interpretation, an incomplete assessment of the record, and another agency's action beyond the confines of section 209(b). EPA erred in reconsidering a previously granted waiver on these bases. Accordingly, EPA is rescinding its 2019 withdrawal of its 2013 ACC program waiver.

Sections V and VI further explain why, even if SAFE 1 were an appropriate exercise of EPA's limited authority to reconsider its previously-granted waiver, the Agency would still now rescind its waiver withdrawal.

As discussed in Section V, the Agency's reinterpretation of the second waiver prong in SAFE 1 was flawed. While EPA has traditionally interpreted the second waiver prong, section 209(b)(1)(B), to require a waiver unless the Agency demonstrates that California does not need its own motor vehicle emissions program, to meet compelling and extraordinary conditions, the SAFE 1 waiver withdrawal decision was based on a statutory interpretation that calls for an examination of the need for the specific standard at issue. Section V explains why EPA believes that its traditional interpretation is, at least, the better interpretation of the second waiver prong because it is most consistent with the statutory language and supported by the legislative history. Accordingly, we reaffirm the traditional interpretation—in which EPA reviews the need for California's motor vehicle program—in this action.

Additionally, Section V explains why even if the focus is on the specific standards, when looking at the record before it, EPA erred in SAFE 1 in concluding that California does not have a compelling need for the specific standards at issue—the GHG emission standards and ZEV sales mandate. In particular, in SAFE 1, the Agency failed to take proper account of the nature and magnitude of California's serious air quality problems, including the interrelationship between criteria and GHG pollution.[10] Section V further discusses EPA's improper substitution in SAFE 1 of its own policy preferences for California's, and discusses the importance of deferring to California's judgment on ''ambiguous and controversial matters of public policy'' that relate to the health and welfare of its citizens.[11] Based on a complete review of the record in this action, EPA now believes that, even under the SAFE 1 interpretation, California needs the ZEV sales mandate and GHG standards at issue to address compelling and extraordinary air quality conditions in the state. EPA's findings in SAFE 1, which were based on the Agency's inaccurate belief that these standards were either not intended to or did not result in criteria emission reductions to address California's National Ambient Air Quality Standard (NAAQS) obligations, are withdrawn.

Section VI discusses SAFE 1's other basis for withdrawing the ACC program waiver, EPCA. In SAFE 1, EPA reached beyond the waiver criteria in section 209(b)(1) and considered NHTSA's regulations in SAFE 1 that state or local regulation of carbon dioxide emission from new motor vehicles (including

[10] As explained herein, the requirements in the ACC program were designed to work together in terms of the technologies that would be used to both lower criteria emissions and GHG emissions. The standards, including the ZEV sales mandate and the GHG emission standards, were designed to address the short- and long-term air quality goals in California in terms of the criteria emission reductions (including upstream reductions) along GHG emission reductions. The air quality issues and pollutants addressed in the ACC program are interconnected in terms of the impacts of climate change on such local air quality concerns such as ozone exacerbation and climate effects on wildfires that affect local air quality.

[11] 40 FR 23102, 23104 (May 28, 1975); 58 FR 4166 (January 13, 1993).

California's ZEV sales mandate and GHG standards) are related to fuel economy and as such are preempted under EPCA. NHTSA has since issued a final rule that repeals all regulatory text and additional pronouncements regarding preemption under EPCA set forth in SAFE 1.[12] This action by NHTSA effectively removes the underpinning and any possible reasoned basis for EPA's withdrawal decision based on preemption under EPCA in SAFE 1. Additionally, the Agency has historically refrained from consideration of factors beyond the scope of the waiver criteria in section 209(b)(1) and the 2013 ACC program waiver decision was undertaken consistent with this practice. EPA believes that the consideration of EPCA preemption in SAFE 1 led the Agency to improperly withdraw the ACC program waiver on this non-CAA basis. EPA's explanation that withdrawal on this basis was justified because SAFE 1 was a joint action, and its announcement that this would be a single occurrence, does not justify the ACC waiver withdrawal. Thus, EPA is rescinding the withdrawal of those aspects of the ACC program waiver that were based on NHTSA's actions in SAFE 1.

Section VII addresses SAFE 1's interpretive view of section 177 that States adopting California's new motor vehicle emission standards could not adopt California's GHG standards.[13] EPA believes it was both unnecessary and inappropriate in a waiver proceeding to provide an interpretive view of the authority of states to adopt California standards when section 177 does not assign EPA any approval role in states' adoption of the standards. Therefore, as more fully explained in Section VII, the Agency is rescinding the interpretive view on section 177 set out in SAFE 1. Section VIII discusses certain other considerations, including the equal sovereignty doctrine and California's deemed-to-comply provision, and concludes that they do not disturb EPA's decision to rescind the 2019 waiver withdrawal action.

Section IX contains the final decision to rescind the withdrawal of the 2013 ACC program waiver. In summary, I find that although EPA has inherent authority to reconsider its prior waiver decisions, that authority to reconsider is limited and may be exercised only when EPA has made a clerical or factual error or mistake, or where information shows that factual circumstances or conditions related to the waiver criteria evaluated when the waiver was granted have changed so significantly that the propriety of the waiver grant is called into doubt. Further, EPA's reconsideration may not be broader than the limits Congress placed on its ability to deny a waiver in the first place. Even where those conditions are met, I believe that any waiver withdrawal decision should consider other factors such as the length of time since the initial decision and California and others' reliance on the initial decision. Because there were no factual or clerical errors or such significantly changed factual circumstances or conditions necessary to trigger EPA's authority to reconsider its previously granted waiver during the SAFE 1 proceeding, I believe SAFE 1 was not an appropriate exercise of EPA's authority to reconsider. In addition, even if it were an appropriate exercise, EPA should not have departed from its traditional interpretation of the second waiver prong (section 209(b)(1)(B)), which is properly focused on California's need for a separate motor vehicle emission program—not specific standards—to meet compelling and extraordinary conditions. And even under EPA's SAFE 1 interpretation of the second waiver prong, a complete review of the factual record demonstrates that California does need the GHG emission standards and ZEV sales mandate to meet compelling and extraordinary conditions in the State. Therefore, EPA should not have withdrawn the ACC program waiver based upon the second waiver prong in SAFE 1 and recission of the withdrawal is warranted. Additionally, I find that EPA inappropriately relied on NHTSA's finding of preemption, now withdrawn, to support its waiver withdrawal, and rescind the waiver withdrawal on that basis as well. Finally, independently in this action, I am rescinding the interpretive views of section 177 that were set forth in SAFE 1, because it was inappropriate to include those views as part of this waiver proceeding.

For these reasons, I am rescinding EPA's part of SAFE 1 related to the CAA preemption of California's standards. This recission has the effect of bringing the ACC program waiver back into force.

II. Background

This section provides background information needed to understand EPA's decision process in SAFE 1, and this decision. This context includes: A summary of California's ACC program including the record on the criteria pollutant benefits of its ZEV sales mandate and GHG emission standards; a review of the prior GHG emission standards waivers in order to explain EPA's historical evaluation of the second waiver prong; an overview of the SAFE 1 decision; a review of the petitions for reconsideration filed subsequent to SAFE 1; and a description of the bases and scope of EPA's reconsideration of SAFE 1. EPA's sole purpose in soliciting public comment on its reconsideration was to determine whether SAFE 1 was a valid and appropriate exercise of the Agency's authority. In the Notice of Reconsideration, EPA therefore noted that reconsideration was limited to SAFE 1 and that the Agency was not reopening the ACC program waiver decision.

A. California's Advanced Clean Car (ACC) Program and EPA's 2013 Waiver

On June 27, 2012, CARB notified EPA of its adoption of the ACC program regulatory package that contained amendments to its LEV III and ZEV sales mandate, and requested a waiver of preemption under section 209(b) to enforce regulations pertaining to this program.[14] The ACC program combined the control of smog- and soot-causing pollutants and GHG emissions into a single coordinated package of requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles (as well as limited requirements related to heavy-duty vehicles for certain model years).[15]

In its 2012 waiver request, CARB noted that the 2012 ZEV amendments would also result in additional criteria pollutant benefits in California in comparison to the earlier ZEV regulations and would likely provide benefits beyond those achieved by

[12] 86 FR 74236.

[13] 84 FR at 51310, 51350.

[14] 2012 Waiver Request, EPA–HQ–OAR–2012–0562–0004 (2012 Waiver Request) at 1, 3–6. CARB's LEV III standards include both its criteria emission standards and its GHG emission standards. SAFE 1 did not address the LEV III criteria emission standards and as such the ACC program waiver remained in place. SAFE 1 did address CARB's GHG emission standards and ZEV sales mandate and this action addresses these two standards as well. As noted in CARB's 2012 Waiver Request, these three standards are interrelated and comprehensive in order to address the State's serious air quality problems including its criteria pollutants and climate change challenges.

[15] As noted in CARB's waiver request, ''[a]t the December 2009 hearing, the Board adopted Resolution 09–66, reaffirming its commitment to meeting California's long term air quality and climate change reduction goals through commercialization of ZEV technologies. The Board further directed staff to consider shifting the *focus of the ZEV regulation to both GHG and criteria pollutant emission reductions,* commercializing ZEVs and PHEVs in order to meet the 2050 goals, and to take into consideration the new LEV fleet standards and propose revisions to the ZEV regulation accordingly.'' 2012 Waiver Request at 2 (emphasis added). EPA stated in SAFE 1 that California's ZEV standard initially targeted only criteria pollutants. 84 FR at 51329. *See also* 78 FR at 2118.

complying with the LEV III criteria pollutant standard for conventional vehicles only. CARB attributed these benefits not to vehicle emissions reductions specifically, but to increased electricity and hydrogen use that would be more than offset by decreased gasoline production and refinery emissions.[16] CARB's waiver request attributed the criteria emissions benefits to its LEV III criteria pollutant fleet standard and did not include similar benefits from its ZEV sales mandate. According to the request, the fleet would become cleaner regardless of the ZEV sales mandate because the ZEV sales mandate is a way to comply with the LEV III standards and, regardless of the ZEV sales mandate, manufacturers might adjust their compliance response to the standard by making less polluting conventional vehicles. CARB further explained that because upstream criteria and PM emissions are not captured in the LEV III criteria pollutant standard, net upstream emissions are reduced through the increased use of electricity and concomitant reductions in fuel production.[17]

On August 31, 2012, EPA issued a notice of opportunity for public hearing and written comment on CARB's request and solicited comment on all aspects of a full waiver analysis for such request under the criteria of section 209(b).[18] Commenters opposing the waiver asked EPA to deny the waiver under the second waiver prong, section 209(b)(1)(B), as it applied to the GHG provisions in the ACC Program, calling on EPA to adopt an alternative interpretation of that provision focusing on California's need for the specific standards. Following public notice and comment and based on its traditional interpretation of section 209(b), on January 9, 2013, EPA granted California's request for a waiver of preemption to enforce the ACC program regulations.[19] The traditional interpretation, which EPA stated is the better interpretation of section 209(b)(1)(B), calls for evaluating California's need for a separate motor vehicle emission program to meet compelling and extraordinary conditions.[20] As explained, EPA must grant a waiver to California unless the Administrator makes at least one of the three statutorily-prescribed findings in section 209(b)(1). Concluding that opponents of the waiver did not meet their burden of proof to demonstrate that California does not have such need, EPA found that it could not deny the waiver under the second waiver prong.[21]

Without adopting the alternative interpretation, EPA noted that, to the extent that it was appropriate to examine the need for CARB's specific GHG standards to meet compelling and extraordinary conditions, EPA had explained at length in its earlier 2009 GHG waiver decision that California does have compelling and extraordinary conditions directly related to regulation of GHGs. This conclusion was supported by additional evidence submitted by CARB in the ACC program waiver proceeding, including reports that demonstrate record-setting wildfires, deadly heat waves, destructive storm surges, and loss of winter snowpack. Many of these extreme weather events and other conditions have the potential to dramatically affect human health and well-being.[22] Similarly, to the extent that it was appropriate to examine the need for CARB's ZEV sales mandate, EPA noted that the ZEV sales mandate in the ACC program enables California to meet both its air quality and climate goals into the future. EPA recognized that CARB's coordinated strategies reflected in the ACC program for addressing both criteria pollutants and GHGs and the magnitude of the technology and energy transformation needed to meet such goals.[23] Therefore, EPA determined that, to the extent the second waiver prong should be interpreted to mean a need for the specific standards at issue, CARB's GHG emission standards and ZEV sales mandate satisfy such a finding.

In the context of assessing the need for the specific ZEV sales mandate in the ACC program waiver, EPA noted CARB's intent in the redesign of the ZEV regulation of addressing both criteria pollutants and GHG emissions, and CARB's demonstration of ''the magnitude of the technology and energy transformation needed from the transportation sector and associated energy production to meet . . . the goals set forth by California's climate change requirements'' and found that the ZEV standards would help California achieve those ''long term emission benefits as well as . . . some [short-term] reduction in criteria pollutant emissions.'' [24]

B. Prior Waivers for GHG Standards

For over fifty years, EPA has evaluated California's requests for waivers of preemption under section 209(b), primarily considering CARB's motor vehicle emission program for criteria pollutants.[25] More recently, the Agency has worked to determine how

[16] 2012 Waiver Request at 6.

[17] *Id.* at 15–16.

[18] 77 FR 53119 (August 31, 2012).

[19] Set forth in the ACC program waiver decision is a summary discussion of EPA's earlier decision to depart from its traditional interpretation of section 209(b)(1)(B) (the second waiver prong) in the 2008 waiver denial for CARB's initial GHG standards for certain earlier model years along with EPA's return to the traditional interpretation of the second prong in the waiver issued in 2009. 78 FR at 2125–31. These interpretations are discussed more fully in Section III.

[20] *Id.* at 2128 (''The better interpretation of the text and legislative history of this provision is that Congress did not intend this criterion to limit California's discretion to a certain category of air pollution problems, to the exclusion of others. In this context it is important to note that air pollution problems, including local or regional air pollution problems, do not occur in isolation. Ozone and PM air pollution, traditionally seen as local or regional air pollution problems, occur in a context that to some extent can involve long range transport of this air pollution or its precursors. This long range or global aspect of ozone and PM can have an impact on local or regional levels, as part of the background in which the local or regional air pollution problem occurs.'').

[21] Because EPA received comment on this issue during the ACC program waiver proceeding, as it pertained to both CARB's GHG emission standards and ZEV sales mandate, the Agency recounted the interpretive history associated with standards for both GHG emissions and criteria air pollutants to explain EPA's belief that section 209(b)(1)(B) should be interpreted the same way for all air pollutants. *Id.* at 2125–31 (''As discussed above, EPA believes that the better interpretation of the section 209(b)(1)(B) criterion is the traditional approach of evaluating California's need for a separate motor vehicle emission program to meet compelling and extraordinary conditions. Applying this approach with the reasoning noted above, with due deference to California, I cannot deny the waiver.'').

[22] *Id.* at 2126–29. Within the 2009 GHG waiver, and again in the 2013 ACC program waiver, EPA explained that the traditional approach does not make section 209(b)(1)(B) a nullity, as EPA must still determine whether California does not need its motor vehicle program to meet compelling and extraordinary conditions as discussed in the legislative history. Conditions in California may one day improve such that it may no longer have a need for its motor vehicle program.

[23] *Id.* at 2131 (''Whether or not the ZEV standards achieve additional reductions by themselves above and beyond the LEV III GHG and criteria pollutant standards, the LEV III program overall does achieve such reductions, and EPA defers to California's policy choice of the appropriate technology path to pursue to achieve these emissions reductions. The ZEV standards are a reasonable pathway to reach the LEV III goals, in the context of California's longer-term goals.'').

[24] *Id.* at 2130–31. *See also* 2012 Waiver Request at 15–16); CARB Supplemental Comments, EPA–HQ–OAR–2012–0562–0373 at 4 (submitted November 14, 2012).

[25] EPA notes that the 1990 amendments to the CAA added subsection (e) to section 209. Subsection (e) addresses the preemption of State or political subdivision regulation of emissions from nonroad engines or vehicles. Section 209(e)(2)(A) sets forth language similar to section 209(b) in terms of the criteria associated with EPA waiving preemption, in this instance for California nonroad vehicle and engine emission standards. Congress directed EPA to implement subsection (e). See 40 CFR part 1074. EPA review of CARB requests submitted under section 209(e)(2)(A)(ii) includes consideration of whether CARB needs its nonroad vehicle and engine program to meet compelling and extraordinary conditions. *See* 78 FR 58090 (September 20, 2013).

section 209(b)(1)(B) should be interpreted and applied to GHG standards, including consideration of the relationship of GHG standards to California's historical air quality problems, the public health impacts of GHG emissions on NAAQS pollutants, and the direct impacts of GHG emissions and climate change on California and its inhabitants. While the SAFE 1 withdrawal and revocation of the waiver for CARB's ACC program represents a singular snapshot of this task, it is important to examine EPA's long-standing and consistent waiver practice in general, including EPA's interpretations in prior waiver decisions pertaining to CARB's GHG emission standards, in order to determine whether EPA properly applied the waiver criterion in section 209(b)(1)(B) in SAFE 1.[26]

Historically, EPA has consistently interpreted and applied the second waiver prong by considering whether California needed a separate motor vehicle emission program as compared to the specific standards at issue to meet compelling and extraordinary conditions.[27] At the same time, in response to commenters that have argued that EPA is required to examine the specific standards at issue in the waiver request, EPA's practice has been to nevertheless review the specific standards to determine whether California needs those individual standards to meet compelling and extraordinary conditions.[28] This does not mean that EPA has adopted an ''alternative approach'' and required a demonstration for the need for specific standards; rather, this additional Agency review has been afforded to address commenters' concerns and this secondary analysis has been done to support the Agency's primary assessment. For example, EPA granted an authorization for CARB's In-use Off-road Diesel Standards (Fleet Requirements) that included an analysis under both approaches.[29] The only two departures from this traditional approach occurred first in 2008 when EPA adopted an ''alternative approach'' to the second waiver prong and second in 2019 when EPA adopted the ''SAFE 1 interpretation'' of the second waiver criterion.

EPA's task of interpreting and applying section 209(b)(1)(B) to California's GHG standards and consideration of the State's historical air quality problems that now include the public health and welfare challenge of climate change began in 2005, with CARB's waiver request for 2009 and subsequent model years' GHG emission standards. On March 6, 2008, EPA denied the waiver request based on a new interpretive finding that section 209(b) was intended for California to enforce new motor vehicle emission standards that address local or regional air pollution problems, and an Agency belief that California could not demonstrate a ''need'' under section 209(b)(1)(B) for standards intended to address global climate change problems. EPA also employed this new alternative interpretation to state a belief that the effects of climate change in California are not compelling and extraordinary in comparison with the rest of the country. Therefore, in the 2008 waiver denial, EPA did not evaluate whether California had a need for its motor vehicle emission program to meet compelling and extraordinary conditions (the traditional interpretation) but rather focused on the specific GHG emission standard in isolation and not in conjunction with the other motor vehicle emission standards for criteria pollutants.

In 2009, EPA initiated a reconsideration of the 2008 waiver denial. The reconsideration resulted in granting CARB a waiver for its GHG emission standards commencing in the 2009 model year.[30] In granting the waiver, EPA rejected the Agency's alternative interpretation of the second waiver prong announced in the 2008 waiver denial. Instead, EPA returned to its traditional approach of evaluating California's need for a separate motor vehicle emission program to meet compelling and extraordinary conditions because the Agency viewed it as the better interpretation of the second waiver prong. Under the traditional interpretation, EPA found that the opponents of the waiver had not met their burden of proof to demonstrate that California did not need its motor vehicle emission program to meet compelling and extraordinary conditions. In responding to comments on this issue, EPA also determined that, even if the alternative interpretation were to be applied, the opponents of the waiver had not demonstrated that California did not need its GHG emissions standards to meet compelling and extraordinary conditions.[31]

Since EPA's 2009 GHG waiver decision and before SAFE 1 the Agency applied the traditional interpretation of the second waiver prong in its GHG-related waiver proceedings, including the on-going review of California's GHG emission standards for vehicles. In the first instance, in 2009, CARB adopted amendments to its certification requirements that would accept demonstration to the Federal GHG standards as compliance with CARB's GHG program. This provision is known as a ''deemed-to-comply'' provision.[32] In 2011, EPA determined that this deemed-to-comply provision was within-the-scope of the waiver issued in July 2009, relying on the traditional interpretation of the second waiver prong.[33] As such, in the June 14, 2011

[26] EPA notes that, in the history of EPA waiver decisions, it has only denied a waiver once (in 2008) and withdrawn a waiver once (in 2019). Each instance was under this second waiver prong in section 209(b)(1)(B).

[27] 49 FR 18887, 18890 (May 3, 1984).

[28] For example, in EPA's 2009 GHG waiver that reconsidered the 2008 GHG waiver denial, the Agency noted that ''Given the comments submitted, however, EPA has also considered an alternative interpretation, which would evaluate whether the program or standards has a rational relationship to contributing to amelioration of the air pollution problems in California. Even under this approach, EPA's inquiry would end there. California's policy judgment that an incremental, directional improvement will occur and is worth pursuing is entitled, in EPA's judgment, to great deference. EPA's consistent view is that it should give deference to California's policy judgments, as it has in past waiver decisions, on California's choice of mechanism used to address air pollution problems. EPA does not second-guess the wisdom or efficacy of California's standards. EPA has also considered this approach with respect to the specific GHG standards themselves, as well as California's motor vehicle emissions program.'' 74 FR at 32766 (citing to *Motor & Equip. Mfrs. Ass'n, Inc.* v. *EPA,* 627 F.2d 1095, 1110–11 (D.C. Cir. 1979)).

[29] 78 FR at 58090. The United States Court of Appeals for the Ninth Circuit reviewed EPA's grant of a waiver of preemption under the traditional approach, and because of comments seeking an alternative interpretation, an assessment of the need for the standards contained in California's request. *Dalton Trucking* v. *EPA,* No. 13–74019 (9th Cir. 2021) (finding that EPA was not arbitrary in granting the waiver of preemption under either approach). The court opinion noted that ''[t]his disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36–3.''

[30] 74 FR 32743, 32745 (July 8, 2009).

[31] 74 FR at 32759–67. For example, EPA noted that the analysis of the need for CARB's GHG standards in the 2008 waiver denial failed to consider that although the factors that cause ozone are primarily local in nature and that ozone is a local or regional air pollution problem, the impacts of global climate change can nevertheless exacerbate this local air pollution problem. EPA noted that California had made a case that its greenhouse gas standards are linked to amelioration of its smog problems. *See also* 76 FR 34693 (June 14, 2011).

[32] California Code of Regulations, Title 13 1961(a)(1)(B). Under this provision, automakers could comply with the California GHG standards for model years 2017–2025 by meeting Federal GHG standards for the same model years.

[33] 76 FR 34693. EPA's ''within-the-scope'' decisions are generally performed when CARB has amended its regulations that were previously waived by EPA under section 209(b)(1) and include an analysis of whether EPA's prior evaluation of the waiver criteria has been undermined by CARB's amendments. EPA received comment during the

Continued

within-the-scope decision EPA determined that CARB's 2009 amendments did not affect or undermine the Agency's prior determination made in the 2009 GHG waiver decision, including the technological feasibility findings in section 209(b)(1)(C).[34] EPA also acted on two requests for waivers of preemption for CARB's heavy-duty (HD) tractor-trailer GHG emission standards.[35] Once again, EPA relied upon its traditional approach of evaluating California's need for a separate motor vehicle emission program to meet compelling and extraordinary conditions and found that no evidence had been submitted to demonstrate that California no longer needed its motor vehicle emission program to meet compelling and extraordinary conditions.[36] EPA's second waiver for the HD GHG emission standards made a similar finding that California's compelling and extraordinary conditions continue to exist under the traditional approach for the interpretation of the second waiver criterion.[37]

C. SAFE 1 Decision

In 2018, NHTSA issued a proposal for new Corporate Average Fuel Economy (CAFE) standards that must be achieved by each manufacturer for its car and light-duty truck fleet while EPA revisited its light-duty vehicle GHG emissions standards for certain model years in the SAFE Proposal.[38] EPA also proposed to withdraw the waiver for the ACC program GHG emission standards and ZEV sales mandate, referencing both sections 209(b)(1)(B) and (C). EPA posited that since the grant of the initial waiver a reassessment of California's need for its GHG standards and ZEV sales mandate under the second waiver prong, section 209(b)(1)(B), was appropriate. EPA further posited that its own Federal GHG rulemaking in the SAFE proposal raised questions about the feasibility of CARB's standards under the third waiver prong, section 209(b)(1)(C).[39] In addition, EPA reasoned that the SAFE proposal presented a unique situation that required EPA to consider the implications of NHTSA's proposed conclusion that California's GHG emission standards and ZEV sales mandate were preempted by EPCA.[40] EPA thus also posited that state standards preempted under EPCA cannot be afforded a valid section 209(b) waiver and then proposed that it would be necessary to withdraw the waiver separate and apart from section 209(b)(1)(B) and (C) if NHTSA finalized its interpretation regarding preemption under EPCA.

During the SAFE 1 proceeding, EPA received additional information demonstrating that the ZEV sales mandate plays a role in reducing criteria pollution, including CARB's comments that EPA's prior findings in the ACC program waiver were correct. As noted by a number of States and Cities, ''[f]or example, CARB modeled the consequences of the actions proposed in SAFE, which included withdrawing California's waiver for its GHG and ZEV standards and freezing the federal GHG standards at MY 2020 levels. CARB concluded these actions, which would eliminate California's ZEV and GHG standards and leave in place only federal GHG standards at MY 2020 levels, would increase NOx emissions in the South Coast air basin alone by 1.24 tons per day.'' [41] The SAFE 1 record also includes information that demonstrates that California is ''one of the most climate challenged'' regions of North America, and that it is home to some of the country's hottest and driest areas, which are particularly threatened by record-breaking heatwaves, sustained droughts, and wildfire, as a result of GHG emissions.[42] This record also includes information from the United States *Fourth National Climate Assessment* that documents the impact of climate change in exacerbating California's record-breaking fires seasons, multi-year drought, heat waves, and flood risk, and notes that California faces a particular threat from sea-level rise and ocean acidification and that the State has ''the most valuable ocean-based economy in the country.'' [43] EPA

reconsideration of SAFE 1 that questioned whether CARB needed its GHG standards if it was otherwise accepting compliance with the Federal GHG standards. EPA addressed the issue in its final decision (76 FR at 34696–98) and continues to believe EPA's analysis applies. The existence of federal emission standards that CARB may choose to harmonize with or deem as compliance with its own State standards (or that CARB may choose to set more stringent standards) does not on its own render California's as not needed. CARB continues to administer an integrated and comprehensive motor vehicle emission program (including its ZEV sales mandate and GHG emission standards and other applicable emission standards for light-duty vehicles) and this program continues to evolve to address California's serious air quality issues. CARB's decision to select some federal emission standards as sufficient to comply with its own State emission standards does not negate the overall design and purpose of section 209 of the CAA. In the within-the-scope decision issued in 2011, EPA agreed with Global Automakers comment that the deemed-to-comply provision renders emission benefits equally protective as between California and Federal programs. *Id.* at 34696.

[34] *Id.* at 34696–97.

[35] The first HD GHG emissions standard waiver related to certain new 2011 and subsequent model year tractor-trailers. 79 FR 46256 (August 7, 2014). In this waiver decision EPA responded to comments regarding whether CARB had quantified how the GHG regulations would contribute to attainment of ozone or particulate matter standards by noting that nothing in section 209(b)(1)(B) calls for California to quantify specifically how its regulations would affect attainment of the NAAQS in the State. Rather, EPA noted, the relevant question is whether California needs its own motor vehicle emission program and not whether there is a need for specific standards. The second HD GHG emissions standard waiver related to CARB's ''Phase I'' regulation for 2014 and subsequent model year tractor-trailers. 81 FR 95982 (December 29, 2016).

[36] Relatedly, California explained the need for these standards based on projected ''reductions in NO_X emissions of 3.1 tons per day in 2014 and one ton per day in 2020 due to the HD GHG Regulations. California state[d] that these emissions reductions will help California in its efforts to attain applicable air quality standards. California further projects that the HD GHG Regulations will reduce GHG emissions in California by approximately 0.7 million metric tons (MMT) of carbon dioxide equivalent emissions (CO_2e) by 2020.'' 79 FR at 46261. *See also* 81 FR at 95982.

[37] 81 FR at 95987. At the time of CARB's Board adoption of the HD Phase I GHG regulation, CARB determined in Resolution 13–50 that California continues to need its own motor vehicle program to meet serious ongoing air pollution problems. CARB asserted that ''[t]he geographical and climatic conditions and the tremendous growth in vehicle population and use that moved Congress to authorize California to establish vehicle standards in 1967 still exist today. EPA has long confirmed CARB's judgment, on behalf of the State of California, on this matter.'' See EPA Air Docket at *regulations.gov* at EPA–HQ–OAR–2016–0179–0012. In enacting the California Global Warming Solutions Act of 2006, the Legislature found and declared that ''Global warming poses a serious threat to the economic well-being, public health, natural resources, and the environment of California. The potential adverse impacts of global warming include the exacerbation of air quality problems, a reduction in the quality and supply of water to the state from the Sierra snowpack, a rise in sea levels resulting in the displacement of thousands of coastal businesses and residences, damage to the marine ecosystems and the natural environment, and an increase in the incidences of infectious diseases, asthma, and other health-related problems.''

[38] The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 83 FR at 42986.

[39] As explained below, EPA did not make a determination regarding section 209(b)(1)(C) in SAFE 1.

[40] ''To the extent that NHTSA has determined that these standards are void *ab initio* because EPCA preempts standards that relate to fuel economy, that determination presents an independent basis for EPA to consider the validity of the initial grant of a waiver for these standards, separate and apart from EPA's analysis under the criteria that invalidate a waiver request.'' 84 FR at 51338.

[41] States and Cities in Support of EPA Reversing Its SAFE 1 Actions (States and Cities), Docket No. EPA–HQ–OAR–2021–0257–0132 at 10 (citing CARB, Docket No. NHTSA–2018–0067–11873 at 287–88, 290–91 (upstream emission impacts), 308).

[42] States and Cities at 43–47 (citing EPA–HQ–OAR–2018–0283–5481, EPA–HQ–OAR–2018–0283–5683, and EPA–HQ–OAR–2018–0283–5054).

[43] *Id.* at 45 (EPA–HQ–OAR–2018–0283–7447—U.S. Global Research Program, *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II,* Chapter *25.,* 2018). (*E.g.,* ''The California coast extends 3,400 miles (5,500 km), 8 with 200,000 people living 3 feet (0.9 m) or less above sea level.9 The seaports of Long

received information during the SAFE 1 public comment period regarding the criteria emission benefits of CARB's ZEV sales mandate and GHG emission standards.[44]

On September 27, 2019, EPA and NHTSA published the final SAFE 1 action that promulgated preemption regulations which supported NHTSA's conclusion that EPCA preempted California's GHG standards and ZEV sales mandate. In the same action, EPA withdrew the waiver of preemption for California to enforce the ACC program GHG and ZEV sales mandate on two grounds.[45]

First, in SAFE 1 the Agency posited that standards preempted under EPCA could not be afforded a valid waiver of preemption under section 209(b). EPA explained that Agency pronouncements in the ACC program waiver decision on the historical practice of disregarding the preemptive effect of EPCA in the context of evaluating California's waiver applications were ''inappropriately broad, to the extent it suggested that EPA is categorically forbidden from ever determining that a waiver is inappropriate due to consideration of anything other than the 'criteria' or 'prongs' at section 209(b)(1)(B)(A)–(C).'' [46] EPA further explained that those pronouncements were made in waiver proceedings where the Agency was acting solely on its own in contrast to a joint action with NHTSA such as SAFE 1. Additionally, EPA expressed its intention not to consider factors other than statutory criteria set out in section 209(b)(1)(A)–(C) in future waiver proceedings, explaining that addressing the preemptive effect of EPCA and its implications for EPA's waiver for California's GHG standards and ZEV sales mandate was uniquely called for in SAFE 1 because EPA and NHTSA were coordinating regulatory actions in a single notice.[47]

Second, EPA withdrew the waiver for the GHG standards and ZEV sales mandate under the second waiver prong, section 209(b)(1)(B), on two alternative grounds. Specifically, EPA determined first that California does not need the GHG standards ''to meet compelling and extraordinary conditions,'' under section 209(b)(1)(B), and second, even if California does have compelling and extraordinary conditions in the context of global climate change, California does not ''need'' the specific GHG standards under section 209(b)(1)(B) because they will not meaningfully address global air pollution problems of the type associated with GHG emissions.[48] EPA also reasoned that because CARB had characterized the ZEV sales mandate as a compliance mechanism for GHG standards, both were ''closely interrelated'' given the overlapping compliance regimes for the ACC program, and as a result the ZEV sales mandate was inextricably interconnected with CARB's GHG standards.[49] In support of its overall determination that the ZEV sales mandate was not needed to meet compelling and extraordinary conditions, EPA relied on a single statement in the ACC program waiver support document where CARB did not attribute criteria emission reductions to the ZEV sales mandate, but rather noted its LEV III criteria pollutant fleet standard was responsible for those emission reductions.[50] Relying on this reasoning, EPA also withdrew the waiver for the ZEV sales mandate under the second waiver prong finding that California had no ''need'' for its own ZEV sales mandate.

In withdrawing the waiver, EPA relied on an alternative view of the scope of the Agency's analysis of California waiver requests and posited that reading ''such State standards'' as requiring EPA to only and always consider California's entire motor vehicle program would limit the application of this waiver prong in a way that EPA did not believe Congress intended.[51] EPA further noted that the Supreme Court had found that CAA provisions may apply differently to GHGs than they do to traditional pollutants in *UARG* v. *EPA,* 134 S. Ct. 2427 (2014) (partially reversing the GHG ''Tailoring'' Rule on grounds that the CAA section 202(a) endangerment finding for GHG emissions from motor vehicles did not compel regulation of all sources of GHG emissions under the Prevention of Significant Deterioration and Title V permit programs). EPA then interpreted section 209(b)(1)(B) as requiring a particularized, local nexus between (1) pollutant emissions from sources, (2) air pollution, and (3) resulting impact on health and welfare.[52] Interpreting section 209(b)(1)(C) to be limited to the specific standards under the waiver, EPA stated that ''such State standards'' in sections 209(b)(1)(B) and (C) should be read consistently with each other, which EPA asserted was a departure from the traditional approach where this phrase in section 209(b)(1)(B) is read as referring back to ''in the aggregate'' in section 209(b)(1).[53]

In the SAFE proposal, as an additional basis for the waiver withdrawal, EPA proposed to find that CARB's ZEV sales mandate and GHG

Beach and Oakland, several international airports, many homes, and high-value infrastructure lie along the coast. In addition, much of the Sacramento–San Joaquin River Delta is near sea level. California has the most valuable ocean-based economy in the country, employing over half a million people and generating $20 billion in wages and $42 billion in economic production in 2014.10 Coastal wetlands buffer against storms, protect water quality, provide habitat for plants and wildlife, and supply nutrients to fisheries. Sea level rise, storm surges, ocean warming, and ocean acidification are altering the coastal shoreline and ecosystems.''

[44] During the current reconsideration proceeding, EPA received additional comment regarding the criteria pollution benefits of California's GHG and ZEV standards. The States and Cities at 10–11. Likewise, CARB notes this connection in comments on the SAFE proposal. Multi-State SAFE Comments, EPA–HQ–OAR–2018–0283–5481 at 24. The States and Cities provided supplemental information in response to the Notice of Reconsideration by submitting California's latest analyses of the criteria pollutant benefits of its GHG standards. For example, CARB estimated those benefits for calendar years by which the South Coast air basin must meet increasingly stringent NAAQS for ozone: 2023, 2031, and 2037. States and Cities app. A at 2–4, app. C at 8–9.

[45] 84 FR at 51328–29. Parties subsequently brought litigation against EPA on its SAFE 1 decision. *See generally Union of Concerned Scientists, et al.* v. *NHTSA, et al.,* No. 19–1230 (D.C. Cir. filed Oct. 28, 2019) (on February 8, 2021, the D.C. Circuit granted the Agencies' motion to hold the case in abeyance in light of the reconsideration of the SAFE 1 action). EPA also received three petitions for reconsideration of this waiver withdrawal.

[46] 84 FR at 51338.

[47] *Id.*

[48] *Id.* at 51341–42.

[49] *Id.* at 51337.

[50] *Id.* at 51330.

[51] In other words, EPA asserted that once it determines that California needed its very first set of submitted standards to meet extraordinary and compelling conditions, EPA would never have the discretion to determine that California did not need any subsequent standards for which it sought a successive waiver. EPA based its reading also on an assertion of ambiguity in the meaning of ''such State standards'' in section 209(b)(1)(B).

[52] *Id.* at 51339–40.

[53] *Id.* at 51344–45.EPA notes that this SAFE 1 position was taken despite the Agency previously stating in the ACC program waiver that ''Similarly, although the Dealers might suggest that EPA only be obligated to determine whether each of CARB's ACC regulatory components, in isolation, is consistent with section 202(a) we believe the better approach is to determine the technological feasibility of each standard in the context of the entire regulatory program for the particular industry category. In this case, we believe CARB has in fact recognized the interrelated, integrated approach the industry must take in order to address the regulatory components of the ACC program. As noted above, the House Committee Report explained as part of the 1977 amendments to the Clean Air Act that California was to be afforded flexibility to adopt a complete program of motor vehicle emission controls (emphasis added). As such, EPA believes that Congress intended EPA to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.32 EPA believes this intent extends to CARB's flexibility in designing its motor vehicle emission program and evaluating the aggregate effect of regulations within the program.'' 78 FR at 2217.

standards are not consistent with section 202(a) of the CAA under the third waiver prong, section 209(b)(1)(C).[54] However, in the final SAFE 1 action, EPA and NHTSA explained they were not finalizing the proposed assessment regarding the technological feasibility of the Federal GHG and CAFE standards for MY 2021 through 2025 in SAFE 1, and thus EPA did not finalize any determination with respect to section 209(b)(1)(C).[55]

In justifying the withdrawal action in SAFE 1, EPA opined that the text, structure, and context of section 209(b) supported EPA's authority to reconsider prior waiver grants. Specifically, EPA asserted that the Agency's authority to reconsider the grant of ACC program waiver was implicit in section 209(b) given that revocation of a waiver is implied in the authority to grant a waiver. The Agency noted that further support for the authority to reconsider could be found in a single sentence in the 1967 legislative history of provisions now codified in sections 209(a) and (b) and the judicial principle that agencies possess inherent authority to reconsider their decisions. According to the Senate report from the 1967 CAA amendments, the Administrator has ''the right . . . to withdraw the waiver at any time [if] after notice and an opportunity for public hearing he finds that the State of California no longer complies with the conditions of the waiver.'' [56] EPA also noted that, subject to certain limitations, administrative agencies possess inherent authority to reconsider their decisions in response to changed circumstances: ''It is well settled that EPA has inherent authority to reconsider, revise, or repeal past decisions to the extent permitted by law so long as the Agency provides a reasoned explanation.'' [57] This authority exists in part because EPA's interpretations of the statutes it administers ''are not carved in stone.'' [58]

Finally, in SAFE 1, EPA provided an interpretive view of section 177 as not authorizing other states to adopt California's GHG standards for which EPA had granted a waiver of preemption under section 209(b). Although section 177 does not require states that adopt California's emission standards to submit such regulations for EPA review and provides no statutory role for EPA in states' decision to adopt California's standards, EPA chose to nevertheless provide an interpretation that this provision is available only to states with approved nonattainment plans. EPA stated that nonattainment designations exist only as to criteria pollutants and GHGs are not criteria pollutants; therefore, states could not adopt GHG standards under section 177. Notably, California in previous waiver requests addressed the criteria pollutant benefits of GHG emissions reductions, specifically related to ground level ozone.

D. Petitions for Reconsideration

After issuing SAFE 1, EPA received three petitions for reconsideration urging the Agency to reconsider the waiver withdrawal of the ACC program's GHG standards and ZEV sales mandate and to rescind part or all of the SAFE 1 action.[59] The first Petition for Clarification/Reconsideration was submitted by the State of California and a number of States and Cities on October 9, 2019 (California Petition for Clarification).[60] These Petitioners sought both clarification and reconsideration of the scope of SAFE 1. Citing somewhat contradictory statements in the action, they claimed that SAFE 1 created confusion regarding which model years of the ACC program were affected by the waiver withdrawal.[61] They based their request for reconsideration of the withdrawal on the grounds that the SAFE 1 action relied on analyses and justifications not presented at proposal and, thus, was beyond the scope of the proposal.

A second Petition for Reconsideration was submitted by several non-governmental organizations on November 25, 2019 (NGOs' Petition).[62] These Petitioners claimed that EPA's reconsideration of the ACC program waiver was not a proper exercise of agency authority because the Agency failed to consider comments submitted after the formal comment period—which they charged as inadequate—and because the EPA's rationale was a pretextual cover for the Administration's political animosity towards California and the oil industry's influence. The late comments summarized in the Petition address SAFE 1's EPCA preemption and second waiver prong arguments. On EPCA preemption, the summarized comments asserted that EPCA does not preempt GHG standards because GHG emission standards are not the ''functional equivalent'' of fuel economy standards, as SAFE 1 claimed. On the second waiver prong, the summarized comments asserted both that GHG and ZEV standards do have criteria pollutant benefits, and that the threat of climate change is compelling and extraordinary and will have California-specific impacts. In addition to objections to SAFE 1's EPCA preemption and second waiver prong arguments, the summarized comments asserted that ZEV standards play a key role in SIPs, which were disrupted by SAFE 1. This disruption, Petitioners claimed, violated ''conformity'' rules prohibiting federal actions from undermining state's air quality plans.[63]

A third Petition for Reconsideration was submitted by several states and cities on November 26, 2019 (States and Cities' Petition).[64] These Petitioners sought reconsideration of the withdrawal on the grounds that EPA failed to provide an opportunity to comment on various rationales and determinations, in particular on its authority to revoke argument, flawed re-interpretation and application of the second waiver prong, its flawed new

[54] 83 FR at 43240.

[55] 84 FR at 51350. EPA explained that it may make a determination in connection with a future final action with regard to Federal standards. EPA's subsequent regulation to issue Federal standards did not address this issue. 85 FR 24174.

[56] 84 FR at 51332 (citing S. Rep. No. 90–403, at 34 (1967)).

[57] *Id.* at 51333.

[58] *Chevron U.S.A. Inc.* v. *NRDC, Inc.,* 467 U.S. 837, 863 (1984).

[59] The California Petition for Clarification only sought reconsideration of SAFE 1 to the extent it withdrew the ACC program waiver for model years outside those proposed. The other two petitions sought reconsideration of the full SAFE 1 action.

[60] EPA–OAR–2021–0257–0015.

[61] The California Petition for Clarification notes that, ''[i]n the Final Actions, EPA makes statements that are creating confusion, and, indeed, appear contradictory, concerning the temporal scope of its action(s)—specifically, which model years are covered by the purported withdrawal of California's waiver for its GHG and ZEV standards. In some places, EPA's statements indicate that it has limited its action(s) to the model years for which it proposed to withdraw and for which it now claims to have authority to withdraw—namely model years 2021 through 2025. In other places, however, EPA's statements suggest action(s) with a broader scope—one that would include earlier model years.'' *Id.* at 2. In SAFE 1, EPA withdrew the waiver for California's GHG and ZEV standards for model years 2017–2025 on the basis of EPCA preemption and for model years 2021–2025 on the basis of the second waiver prong.

[62] EPA–HQ–OAR–2021–0257–0014. This Petition was joined by The Center for Biological Diversity, Chesapeake Bay Foundation, Environment America, Environmental Defense Fund, Environmental Law & Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and the Union of Concerned Scientists.

[63] These ''late comments'' can be found in the ''Appendix of Exhibits'' attached to the Petition for Reconsideration. These comments are considered part of EPA's record for purposes of the reconsideration of SAFE 1.

[64] See EPA–HQ–OAR–2021–0257–0029. This Petition was joined by the States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, Wisconsin, Michigan, the Commonwealths of Massachusetts, Pennsylvania, and Virginia, the District of Columbia, and the Cities of Los Angeles, New York, San Francisco, and San Jose.

rationale for considering factors outside section 209(b) (namely, EPCA preemption), and its determination that states cannot adopt California's GHG standards under section 177. For example, these Petitioners claimed they did not have an adequate opportunity to comment on EPA's use of equal sovereignty or the endangerment finding as rationales for its new ''particularized nexus'' interpretation of the second waiver prong. These Petitioners also claimed that EPA's statements concerning the burden of proof applicable to a waiver revocation were either unclear or inaccurate, particularly whether the Agency bears the burden of proof in withdrawing a previously granted waiver and, if not, how and why this burden of proof is different from the burden of proof for denying a waiver request.[65] Finally, these Petitioners asserted that the Agency failed to consider comments, submitted after the formal comment period, that challenged EPA's interpretation of the second waiver prong, including new evidence of California's need for its GHG emission standards and ZEV sales mandate, and alleged that EPA's rationale was pretextual and based on the Administration's political animosity towards California and on the oil industry's influence.

EPA notified the petitioners in the above-noted Petitions for Reconsideration that the Agency would be considering issues raised in their petitions as part of the proceeding to reconsider SAFE 1. This action addresses these petitions in the broader context of EPA's adjudicatory reconsideration of SAFE 1 commenced in response to a number of significant issues with SAFE 1.

III. Principles Governing This Review

The CAA has been a paradigmatic example of cooperative federalism, under which ''States and the Federal Government [are] partners in the struggle against air pollution.'' [66] In Title II, Congress authorized EPA to promulgate emission standards for mobile sources and generally preempted states from adopting their own standards.[67] At the same time, Congress created an important exception for the State of California.

A. Scope of Preemption and Waiver Criteria Under the Clean Air Act

The legal framework for this decision stems from the waiver provision first adopted by Congress in 1967, and subsequent amendments. In Title II of the CAA, Congress established only two programs for control of emissions from new motor vehicles—EPA emission standards adopted under the CAA and California emission standards adopted under its state law. Congress accomplished this by preempting all state and local governments from adopting or enforcing emission standards for new motor vehicles, while at the same time providing that California could receive a waiver of preemption for its emission standards and enforcement procedures in keeping with its prior experience regulating motor vehicles and its serious air quality problems. Accordingly, section 209(a) preempts states or political subdivisions from adopting or attempting to enforce any standard relating to the control of emissions from new motor vehicles.[68] Under the terms of section 209(b)(1), after notice and opportunity for public hearing, EPA must waive the application of section 209(a) to California unless the Administrator finds at least one of three criteria to deny a waiver in section 209(b)(1)(A)–(C) has been met.[69] EPA may thus deny a waiver only if it makes at least one of these three findings based on evidence in the record, including arguments that opponents of the waiver have provided. This framework struck an important balance that protected manufacturers from multiple and different state emission standards and preserved a pivotal role for California in the control of emissions from new motor vehicles. Congress intentionally structured this waiver provision to restrict and limit EPA's ability to deny a waiver and did this to ensure that California had broad discretion in selecting the means it determined best to protect the health and welfare of its citizens in recognition of both the harsh reality of California's air pollution and to allow California to serve as a pioneer and a laboratory for the nation in setting new motor vehicle emission standards and developing control technology.[70] Accordingly, section 209(b) specifies that EPA must grant California a waiver if California determines that its standards are, in the aggregate, at least as protective of the public health and welfare as applicable Federal standards.

EPA has consistently interpreted the waiver provision as placing the burden on the opponents of a waiver and EPA to demonstrate that one of the criteria for a denial has been met. In this context, since 1970, EPA has recognized its limited discretion in reviewing California waiver requests. For over fifty years, therefore, EPA's role upon receiving a request for waiver of preemption from California has been limited and remains only to determine whether it is appropriate to make any of the three findings specified by the CAA. If the Agency cannot make at least one of the three findings, then the waiver must be granted. The three waiver criteria are also properly seen as criteria for a denial. This reversal of the normal statutory structure embodies and is consistent with the congressional intent of providing deference to California to maintain its own new motor vehicle emission program.

The 1970 CAA Amendments strengthened EPA's authority to regulate vehicular ''emission[s] of any air pollutant,'' while reaffirming the corresponding breadth of California's entitlement to regulate those emissions (amending CAA section 202 and recodifying the waiver provision as section 209(b), respectively). Congress also established the NAAQS program,

[65] The applicable burden of proof for a waiver withdrawal is discussed in Section III of this decision.

[66] *General Motors Corp.* v. *United States,* 496 U.S. 530, 532 (1990).

[67] ''The regulatory difference [between Titles I and II] is explained in part by the difficulty of subjecting motor vehicles, which readily move across state boundaries, to control by individual states.'' *Engine Mfrs. Ass'n* v. *EPA,* 88 F.3d 1075, 1079 (D.C. Cir. 1996). Congress also asserted federal control in this area to avoid ''the specter of an anarchic patchwork of federal and state regulatory programs'' nationwide. *See Motor & Equip. Mfrs. Ass'n, Inc.* v. *EPA,* 627 F.2d 1095, 1109 (D.C. Cir. 1979) (*MEMA I*).

[68] 42 U.S.C. 7543(a)–(a) Prohibition No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

[69] 42 U.S.C. 7543(b)(1):

(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.

[70] *See, e.g.,* S. Rep. No. 403, 90th Cong., 1st Sess. 33 (1967) (The waiver of preemption is for California's ''unique problems and pioneering efforts.''); 113 Cong. Rec. 30950, 32478 (''[T]he State will act as a testing agent for various types of controls and the country as a whole will be the beneficiary of this research.'') (Statement of Sen. Murphy); *MEMA I,* 627 F.2d 1095, 1111 (D.C. Cir. 1979).

under which EPA issues air quality criteria and sets standards for so-called ''criteria'' pollutants, and states with regions that have not ''attained'' those federal standards must submit SIPs indicating how they plan to attain the NAAQS (which is often a multi-year, comprehensive plan). With the CAA Amendments of 1977, Congress allowed California to consider the protectiveness of its standards ''in the aggregate,'' rather than requiring that each standard proposed by the State be as or more stringent than its federal counterpart.[71] Congress also approved EPA's interpretation of the waiver provision as providing appropriate deference to California's policy goals and consistent with Congress's intent ''to permit California to proceed with its own regulatory program'' for new motor vehicle emissions.[72]

In previous waiver decisions, EPA has noted that the statute specifies particular and limited grounds for rejecting a waiver and has therefore limited its review to those grounds. EPA has also noted that the structure Congress established for reviewing California's decision-making is deliberately narrow, which further supports this approach. This has led EPA to reject arguments that are not specified in the statute as grounds for denying a waiver:

> The law makes it clear that the waiver requests cannot be denied unless the specific findings designated in the statute can properly be made. The issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209, so long as the California requirement is consistent with section 202(a) and is more stringent than applicable Federal requirements in the sense that it may result in some further reduction in air pollution in California. Thus, my consideration of all the evidence submitted concerning a waiver decision is circumscribed by its relevance to those questions that I may consider under section 209(b).[73]

Given the text, legislative history, and judicial precedent, EPA has consistently interpreted section 209(b) as requiring it to grant a waiver unless opponents of a waiver can demonstrate that one of the criteria for a denial has been met.[74]

The 1977 CAA Amendments additionally demonstrated the significance of California's standards to the Nation as a whole with Congress' adoption of a new section 177. Section 177 permits other states addressing their own air pollution problems to adopt and enforce California new motor vehicle standards ''for which a waiver has been granted if certain criteria are met.'' [75] Also known as the ''opt-in'' provision, section 177 of the Act, 42 U.S.C. 7507, provides:

> Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—
>
> (1) such standards are identical to the California standards for which a waiver has been granted for such model year, and
>
> (2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).
>
> Nothing in this section or in Subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different that a motor vehicle or engine certified in California under California standards (a ''third vehicle'') or otherwise create such a ''third vehicle.''

Any state with qualifying SIP provisions may exercise this option and become a ''Section 177 State,'' without first seeking the approval from EPA.[76] Thus, over time, Congress has recognized the important state role, for example, by making it easier (by allowing California to consider its standards ''in the aggregate'') and by expanding the opportunity (via section 177) for states to adopt standards different from EPA's standards.[77]

B. Deference to California

EPA has consistently noted that the text, structure, and history of the California waiver provision clearly indicate both congressional intent and appropriate EPA practice of leaving the decision on ''ambiguous and controversial matters of public policy'' to California's judgment. In waiver decisions, EPA has thus recognized that congressional intent in creating a limited review of California waiver requests based on the section 209(b)(1) criteria was to ensure that the federal government did not second-guess the wisdom of state policy. In an early waiver decision EPA highlighted this deference:

> It is worth noting * * * I would feel constrained to approve a California approach to the problem which I might also feel unable to adopt at the federal level in my own capacity as a regulator. The whole approach of the Clean Air Act is to force the development of new types of emission

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[71] 42 U.S.C. 7543(b)(1).

[72] H.R. Rep. No. 95–294, at 301 (1977).

[73] 78 FR at 2115 (footnote omitted).

[74] *MEMA I,* 627 F.2d at 1120–21 (''The language of the statute and its legislative history indicate that California's regulations, and California's determination that they comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them.''); *Motor & Equip. Mfrs. Ass'n, Inc.* v. *Nichols,* 142 F.3d 449, 462 (D.C. Cir. 1998) (*MEMA II*) (''[S]ection 209(b) sets forth the only waiver standards with which California must comply. . . . If EPA concludes that California's standards pass this test, it is obligated to approve California's waiver application.'').

[75] This provision was intended to continue the balance, carefully drawn in 1967, between states' need to meet increasingly stringent federal air pollution limits and the burden of compliance on auto-manufacturers. *See, e.g.,* H.R. Rep. No. 294, 95th Cong., 1st Sess. 309–10 (1977) (''[S]ection 221 of the bill broadens State authority, so that a State other than California . . . is authorized to adopt and enforce new motor vehicle emission standards which are identical to California's standards. Here again, however, strict limits are applied . . . . This new State authority should not place an undue burden on vehicle manufacturers . . . .''); *Motor Vehicle Mfrs. Ass'n* v. *NYS Dep't of Env't Conservation,* 17 F.3d 521, 527 (2d Cir. 1994) (''Many states, including New York, are in danger of not meeting increasingly stringent federal air pollution limits . . . . It was in an effort to assist those states struggling to meet federal pollution standards that Congress, as noted earlier, directed in 1977 that other states could promulgate regulations requiring vehicles sold in their state to be in compliance with California's emission standards or to ''piggyback'' onto California's preemption exemption. This opt-in authority, set forth in § 177 of the Act, 42 U.S.C. 7507, is carefully circumscribed to avoid placing an undue burden on the automobile manufacturing industry.'').

[76] In 1990 Congress amended the CAA by adding section 209(e) to section 209. Section 209(e) sets forth the terms of CAA preemption for nonroad engines and vehicles and the ability of States to adopt California emissions standards for such vehicles and engines if certain criteria are met. 42 U.S.C. 7543(e)(2)(B) (''Any State other than California which has plan provisions approved under part D of subchapter I may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines . . . if (i) such standards and implementation and enforcement are identical, for the period concerned, to the California standards . . . .''). Courts have interpreted these amendments as reinforcing the important role Congress assigned to California. *See Engine Mfrs. Ass'n* v. *EPA,* 88 F.3d 1075, 1090 (''Given the indications before Congress that California's regulatory proposals for nonroad sources were ahead of the EPA's development of its own proposals and the Congressional history of permitting California to enjoy coordinated regulatory authority over mobile sources with the EPA, the decision to identify California as the lead state is comprehensible. California has served for almost 30 years as a 'laboratory' for motor vehicle regulation.''); *MEMA I,* 627 F.2d 1095, 1110 (D.C. Cir. 1979) (''Its severe air pollution problems, diverse industrial and agricultural base, and variety of climatic and geographical conditions suit it well for a similar role with respect to nonroad sources.'').

[77] 40 FR at 23104; *see also* LEV I waiver at 58 FR 4166, Decision Document at 64.

control technology where that is needed by compelling the industry to ''catch up'' to some degree with newly promulgated standards. Such an approach * * * may be attended with costs, in the shape of reduced product offering, or price or fuel economy penalties, and by risks that a wider number of vehicle classes may not be able to complete their development work in time. Since a balancing of these risks and costs against the potential benefits from reduced emissions is a central policy decision for any regulatory agency under the statutory scheme outlined above, I believe I am required to give very substantial deference to California's judgments on this score.[78]

As noted above, Congress amended the CAA in 1977. Within these amendments, Congress had the opportunity to reexamine the waiver provision and elected to expand California's flexibility to adopt a complete program of motor vehicle emission controls. The House Committee Report explained that ''[t]he amendment is intended to ratify and strengthen the California waiver provision and to affirm the underlying intent of that provision, *i.e.,* to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.'' [79]

SAFE 1 was a departure from congressional intent and EPA's typical practice of deference to California on matters of state public policy regarding how best to address its serious air quality problems. In SAFE 1, EPA adopted a new interpretation of section 209(b)(1)(B) more than five years after the initial grant of the ACC program waiver and applied it to CARB's GHG standards and ZEV sales mandate. Specifically, EPA premised its finding on a consideration of California's ''need'' for the specific standards, instead of the ''need'' for a separate motor vehicle emission program to meet compelling and extraordinary conditions, stating that ''such State standards'' in section 209(b)(1)(B) was ambiguous with respect to the scope of the Agency's analysis. EPA further determined that California did not need the ZEV sales mandate to meet compelling and extraordinary conditions by relying on a single statement in the ACC program waiver support document taken out of context, where it noted that the ZEV sales mandate had no criteria emissions benefits in terms of vehicle emissions and its LEV III criteria pollutant fleet standard was responsible for those emission reductions. In response to the SAFE 1 proposal, California had provided further context and additional data on net upstream emissions benefits of the ZEV sales mandate, but EPA did not consider them in arriving at the findings and conclusions in SAFE 1. The final decision in SAFE 1 was not based on the third waiver prong.[80] EPA also explained in SAFE 1 that the task of interpreting section 209(b)(1)(B) required no deference to California.[81]

C. Standard and Burden of Proof

In *Motor and Equipment Manufacturers' Association* v. *EPA,* 627 F.2d 1095 (D.C. Cir. 1979) (*MEMA I*), the U.S. Court of Appeals for the District of Columbia stated, with regard to the standard and burden of proof, that the Administrator's role in a section 209 proceeding is to ''consider all evidence that passes the threshold test of materiality and . . . thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.'' [82] The court in *MEMA I* considered the standards of proof under section 209 for the two findings necessary to grant a waiver for an ''accompanying enforcement procedure'' (as opposed to the standards themselves): (1) Protectiveness in the aggregate and (2) consistency with CAA section 202(a) findings. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.'' [83] The court upheld the Administrator's position that to deny a waiver, there must be clear and compelling evidence to show that the proposed procedures undermine the protectiveness of California's standards. The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[84] With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence.

Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' as compared to accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of compelling and extraordinary conditions and whether the standards are technologically feasible—Congress intended that the standard of EPA review of the State decision to be a narrow one.'' [85] Although EPA evaluates whether there are compelling and extraordinary conditions in California, the Agency nevertheless accords deference to California on its choices for how best to address such conditions in light of the legislative history of section 209(b).

As noted earlier, the burden of proof in a waiver proceeding is on EPA and the opponents of the waiver. This is clear from the statutory language stating that EPA ''shall . . . waive'' preemption unless one of three statutory factors is met. This reading was upheld by the D.C. Circuit in *MEMA I,* which concluded that this obligation rests firmly with opponents of the waiver in a section 209 proceeding, holding that: ''[t]he language of the statute and its legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at

[78] 40 FR at 23104.

[79] *MEMA I,* 627 F.2d at 1110 (citing H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–02 (1977)). Congress amended section 209(b)(1)(A) regarding California's determination that its standards are as at least as protective as applicable Federal standards so that such determination may be done ''in the aggregate'' looking at the summation of the standards within the vehicle program.

[80] 84 FR at 51322–33. EPA notes that when reviewing California's standards under the third waiver prong, the Agency may grant a waiver to California for standards that EPA may choose not to adopt at the federal level due to different considerations. *See* 78 FR at 2133.

[81] 84 FR at 51339–40.

[82] *MEMA I,* 627 F.2d at 1122.

[83] *Id.*

[84] *Id.*

[85] *See, e.g.,* 40 FR at 23102–03. *See also MEMA I,* 627 F.2d at 1109 (''Congress had an opportunity to restrict the waiver provision in making the 1977 amendments, and it instead elected to expand California's flexibility to adopt a complete program of motor vehicle emissions control. Under the 1977 amendments, California need only determine that its standards will be 'in the aggregate, at least as protective of public health and welfare than applicable Federal standards,' rather than the ''more stringent'' standard contained in the 1967 Act.'') (citing H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–02 (1977), U.S. Code Cong. & Admin. News 1977, p. 1380).

the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.'' [86]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated, ''Here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' '' [87] Therefore, the Administrator's burden is to act ''reasonably.'' [88]

In this instance, EPA has withdrawn a previously granted waiver and is now reconsidering whether that withdrawal was an appropriate exercise of authority, whether the reinterpretation of the second waiver prong was appropriate, and whether EPA's evaluation and findings of fact under the second waiver prong meet the applicable burden of proof in the context of deference to California's policy choices. EPA believes that the same burden that is applicable to those opposed to an initial waiver request from CARB (this applies to any party including the Administrator as explained in *MEMA I*) is also applicable to EPA's actions in SAFE 1 (*e.g.,* the burden of proof of whether California does not need its standards to meet compelling and extraordinary conditions rests on those opposing a waiver for California).[89]

[86] *MEMA I,* 627 F.2d at 1121.

[87] *Id.* at 1126.

[88] *Id.*

[89] In EPA's 2009 evaluation of the 2008 GHG waiver denial the Agency applied a similar test. *See* 74 FR at 32745 (''After a thorough evaluation of the record, I am withdrawing EPA's March 6, 2008 Denial and have determined that the most appropriate action in response to California's greenhouse gas waiver request is to grant that request. I have determined that the waiver opponents have not met their burden of proof in order for me to deny the waiver under any of the three criteria in section 209(b)(1).''). In the context of 2009 GHG waiver that reconsidered the Agency's 2008 GHG waiver denial, EPA determined it was appropriate to apply the same burden of proof during the reconsideration as would apply at the time of the initial waiver evaluation. EPA received comment suggesting that the entire burden of proof shifts to California in order for the prior 2008 denial to be reversed. EPA, in response, stated that ''. . . regardless of the previous waiver denial, once California makes its protectiveness determination the burden of proof falls on the opponents of the waiver . . . . This is consistent with the legislative history, which indicates that Congress intended a narrow review by EPA and to preserve the broadest possible discretion for California.'' *Id.* at 32749. EPA acknowledges that in SAFE 1 the Agency not only adopted an interpretation of the second waiver prong which was similar to the previously rejected interpretation, but that in doing so also questioned its previous position that the burden of proof in evaluating the need for standards at issue resides with those that oppose the waiver, including EPA. *See* 84 FR at 51344 n.268. In this action, however, EPA now finds that the historical deference provided to California regarding its policy choices on how best to address its serious air quality conditions also requires that the burden of proof should reside in those seeking to demonstrate that standards are not needed under the second waiver prong regardless of whether the rationale is characterized as a new interpretation or not. The language of section 209(b)(1) requires California to make a protectiveness finding under the first waiver prong. Moreover, nothing in section 209(b) could be read as support for drawing a distinction between the burden of proof when the Agency considers an initial waiver request and one where the Agency reconsiders a waiver decision based on a new interpretation of the statutory criteria. That burden properly resides with opponents of the waiver.

IV. EPA Did Not Appropriately Exercise Its Limited Authority To Reconsider the ACC Program Waiver in SAFE 1

The first question this final action tackles is whether the agency properly exercised its reconsideration authority to withdraw its previously-granted waiver in SAFE 1. EPA concludes that it did not, and on that independent basis rescinds SAFE 1's waiver withdrawal.

Section 209 does not provide EPA with express authority to reconsider and withdraw a waiver previously granted to California. EPA's authority thus stems from its inherent reconsideration authority. For several reasons, in the context of reconsidering a waiver grant, that authority may only be exercised sparingly. First, EPA believes its inherent authority to reconsider a waiver decision is constrained by the three waiver criteria that must be considered before granting or denying a waiver request under section 209(b). A contrary approach, which treats reconsiderations as more broadly appropriate, would undermine Congress' intent that California be able to exercise its policy judgments and develop motor vehicle controls programs to address California's air pollution problems, and make advances which could be built on by EPA or adopted by other states. Second, EPA believes it may only reconsider a previously granted waiver to address a clerical or factual error or mistake, or where information shows that factual circumstances or conditions related to the waiver criteria evaluated when the waiver was granted have changed so significantly that the propriety of the waiver grant is called into doubt. Even when EPA is acting within the appropriate bounds of its authority to reconsider, during that reconsideration EPA should exercise its limited authority within a reasonable timeframe and be mindful of reliance interests.

The Agency's reconsideration in SAFE 1 was not an appropriate exercise of authority; there was no clerical error or factual error in the ACC program waiver, and SAFE 1 did not point to any factual circumstances or conditions related to the three waiver prongs that had changed so significantly that the propriety of the waiver grant is called into doubt. Rather, the 2019 waiver withdrawal was based on a change in EPA's statutory interpretation, an incomplete and inaccurate assessment of the record, and another agency's action beyond the confines of section 209(b). EPA erred in reconsidering a previously granted waiver on these bases. Moreover, in considering the passage of time between the initial waiver and the SAFE 1 action, and the development of reliance interests based on the waiver, EPA finds those factors do not support the reconsideration of the ACC program waiver that occurred in SAFE 1. Accordingly, as explained in detail below, EPA is rescinding SAFE 1's withdrawal of its 2013 ACC program waiver because it was an inappropriate exercise of reconsideration authority.

A. Comments Received

EPA received several comments in the reconsideration proceeding on the Agency's authority to reconsider waivers. Comments on explicit authority focused on whether any language in section 209(b)(1), on its face, permits EPA to reconsider a previously granted waiver. Some of these commenters also distinguished between the denial of the 2008 waiver and the reconsideration and grant of the GHG waiver in 2009, and EPA's grant of the ACC program waiver in 2013 and the reconsideration and withdrawal of the ACC program waiver in 2019.

EPA received comments in support of and against the view that EPA has inherent authority to reconsider waivers. As support for EPA's implied authority to reconsider, one commenter cited relevant language from the Senate Committee Report from 1967 that stated, ''implicit in [§ 209] is the right of [EPA] to withdraw the waiver [if] at any time after notice and an opportunity for public hearing he finds that the State of California no longer complies with the conditions of that waiver.'' [90] According to the commenter because ''the waiver authorizes *future* regulation, which always remains open to change,'' EPA must have the authority to reconsider a

[90] Urban Air Initiative (Urban Air), Docket No. EPA–HQ–OAR–2021–0257–0223 at 22 (quoting S. Rep. 90–403, at 34 (1967)).

waiver. Otherwise, EPA would be unable to monitor CARB's continued compliance with the waiver conditions in light of updated information.[91] The same commenter also argued that an agency generally retains the authority to reconsider and correct any earlier decision unless Congress acts to displace the authority with a process to rectify the Agency's mistakes and that explicit statutory authority to withdraw a waiver is therefore not necessary, because ''the power to reconsider is inherent in the power to decide.'' [92] The commenter claimed that, under *Chevron,* ''[a]n agency has a 'continuing' statutory obligation to consider the 'wisdom of its policy.' '' [93]

In contrast, several commenters maintained that section 209(b) strongly indicates that EPA's authority to withdraw a previously issued waiver is, at most, limited. Several commenters argued that, absent language in a statute, administrative agencies lack inherent authority to reconsider adjudicatory decisions.[94] These commenters noted that courts highly scrutinize administrative revocations and are ''unwilling[ ] to wrest a standardless and open-ended revocation authority from a silent statute.'' [95] Instead, these commenters argued, EPA may act only with the authorities conferred upon it by Congress, and thus the Agency may only act if the CAA explicitly or implicitly grants it power to do so.[96] According to these commenters, section 209(b) is silent on waiver withdrawal, its text indicates that EPA may only consider 209(b)'s three factors before either granting or denying a waiver, and its purpose and structure affords broad deference to California's standards. ''Taken together, these factors indicate that EPA may not withdraw a previously-issued waiver based solely upon a reconsideration of its initial judgment.'' [97] Commenters suggested that Congress, by listing the three waiver criteria and directing that EPA evaluate such criteria prior to granting the waiver, only authorized EPA to perform the evaluation once and that it ''cannot later second-guess the wisdom of legal and policy judgments made as part of that evaluation.'' [98] Similarly, commenters noted that section 209 does not textually ''provide'' EPA any authority nor specify any process by which EPA might revoke the rights given by an earlier-granted waiver.[99] In response to SAFE 1's claim of inherent reconsideration authority and the other commenters' reliance on the relevant excerpt from the 1967 Senate Report, these commenters argued that this ''single sentence . . . does not establish any withdrawal authority,'' either generally or for the SAFE 1 withdrawal specifically.[100] That statement, commenters argued, ''predate[s] the creation of the NAAQS program and Congress's invitations to development of numerous state reliance interests.'' [101] Moreover, according to these commenters, the statement only discusses authority in the case that ''California no longer complies with the conditions of the waiver,'' which commenters believe means California's ''compliance with waiver conditions and, specifically, its cooperation with EPA concerning enforcement and certification procedures,'' not ''redefined waiver criteria.'' [102]

In response to the argument made by EPA in SAFE 1 that, given the ''considerable degree of future prediction'' required by the third waiver prong, ''where circumstances arise that suggest that such predictions may have been inaccurate, it necessarily follows that EPA has authority to revisit those predictions,'' [103] some commenters claimed that California's standards do not become inconsistent with federal standards simply because they become more stringent than federal standards (in other words, a weakening of the federal standards does not necessarily create an inconsistency). The commenters noted also that EPA did not in fact revise its section 202(a) standards between issuing and withdrawing the waiver at issue, nor did EPA in fact make any final findings under the third waiver prong.[104]

Many commenters stated that in order to exercise any implied or inherent authority, an agency must provide a ''detailed justification'' when departing from a policy that has ''engendered serious reliance interests'' and should not ''rest on mere 'policy changes' ''

[91] *Id.* at 21 (''A determination that California's state standards are technologically feasible and appropriate requires complex technical projections at the frontiers of science, which must be continually updated 'if the actual future course of technology diverges from expectation.' '' (quoting *NRDC Inc.* v. *EPA,* 655 F.2d 318, 329 (D.C. Cir. 1981))).

[92] Urban Air at 20 (citing *Ivy Sports Med., LLC* v. *Burwell,* 767 F.3d 81, 86, 93 (D.C. Cir. 2014)). This commenter also notes that, in EPA's 2009 action to reconsider its prior denial of a GHG waiver in 2008, CARB submitted a letter to EPA stating that ''California believes EPA has inherent authority to reconsider the denial and should do so in order to restore the interpretations and applications of the Clean Air Act to continue California's longstanding leadership role in setting emission standards.'' *Id.*

[93] *Id.* at 21.

[94] Institute for Policy Integrity Amicus Brief at 4 (''Lacking textual support, EPA invokes so-called 'inherent authority'—'more accurate[ly] label[ed] . . . 'statutorily implicit' authority,' *HTH Corp.* v. *NLRB,* 823 F.3d 668, 679 (D.C. Cir. 2016)—to justify its action. 84 FR at 51,331. But this Court is 'unwilling[ ] to wrest a standardless and open-ended revocation authority from a silent statute,' *Am. Methyl,* 749 F.2d 826, 837 (D.C. Cir. 1984), and EPA fails to justify the implicit authority it claims.''); Twelve Public Interest Organizations app 1 at 32 (citing *Am. Methyl* for ''rejecting 'implied power' as 'contrary to the intention of Congress and the design of' the Act and quoting *HTH Corp.'s* statement that agencies, as creatures of statute, lack inherent authority); States and Cities at 16 (also citing *Am. Methyl*).

[95] Institute for Policy Integrity at 1 (citing *Am. Methyl*).

[96] States and Cities at 15 (citing *HTH Corp.* v. *NLRB,* 823 F.3d 668, 679 (D.C. Cir. 2016)); Twelve Public Interest Organizations, Docket No. EPA–HQ–OAR–2021–0257–0277 app. 1 at 28 (''The Clean Air Act preserves state authority to regulate emissions unless expressly 'provided' otherwise. 42 U.S.C. 7416. In statutes like this where preemption is the exception, only Congress's 'precise terms' can produce preemption. *CTS Corp.* v. *Waldburger,* 573 U.S. 1, 12–13 (2014).''); National Coalition for Advanced Transportation (NCAT), Docket No. EPA–HQ–OAR–2021–0257–0131 at 7–8 ; Institute for Policy Integrity at New York University School of Law (Institute for Policy Integrity), Docket No. EPA–HQ–OAR–2021–0257–0115 at 2, citing its Final Brief of the Institute for Policy Integrity at New York University School of Law as Amicus Curiae in Support of Petitioners (Institute for Policy Integrity Amicus Brief) at 4, *Union of Concerned Scientists, et al.* v. *NHTSA, et al.,* No. 19–1230 (D.C. Cir. filed Oct. 28, 2019), reprinted in the Institute's comments on the 2021 Notice of Reconsideration.

[97] Institute for Policy Integrity at 2, citing its Amicus Brief at 6–11.

[98] *Id.* at 7. *See also* Twelve Public Interest Organizations app. 1 at 28–29 (''Section 209(b)(1)'s precise terms mandate that EPA ''shall'' grant California a waiver unless EPA finds one of the three specified bases for denial. This language charges EPA ''with undertaking a single review in which [the Administrator] applies the deferential standards set forth in Section 209(b) to California and either grants or denies a waiver.'' *Ford Motor Co.* v. *EPA,* 606 F.2d 1293, 1302 (D.C. Cir. 1979). It evinces no intent to provide EPA with the different and greater authority to withdraw a previously granted waiver, thereby arresting the State's ongoing implementation of its own laws.'')

[99] *See* South Coast Air Quality Management District (SCAQMD), Docket No. EPA–HQ–OAR–2021–0257–0228 at 3. This commenter argued that section 116 of the CAA (which explicitly references section 209) provides that there needs to be a textual basis for any exercise of authority to deny California the right (which it achieved via the 2013 waiver) to enforce its emission standards. Thus, the commenter continued, because there is no language in section 209 that gives any authority nor specifies any process for EPA to revoke the rights/waiver previously granted then EPA may not do so by the terms of section 116.

[100] States and Cities at 16. *See also* Twelve Public Interest Organizations app. 1 at 33–34.

[101] States and Cities at 16; *See also* Twelve Public Interest Organizations app. 1 at 33–34.

[102] Twelve Public Interest Organizations app. 1 at 34. *See also* States and Cities at 16 (arguing that, although EPA proposed to withdraw the waiver on multiple grounds, such as the third waiver prong, ''EPA's final action was based entirely on its own changed policy positions, namely its interpretation of Section 209(b)(1) to create a categorical bar against state regulation of vehicular GHG emissions and its decision to rely on another agency's newly articulated views of a different statute [EPCA].'').

[103] 84 FR at 51332.

[104] Institute for Policy Integrity at 2.

alone.[105] Thus, supporters and opponents of SAFE 1 also provided comments on whether, assuming EPA did have authority to reconsider the ACC program waiver—either because of language in the CAA or because of its inherent authority to reevaluate decisions because of changed conditions—it was appropriate to exercise that authority in SAFE 1. Some commenters summarized precedent as requiring that the Agency consider reliance interests that have attached to its original decision, that reversals of informal adjudications occur within a reasonable time after the original decision, and that the reversal is not for the sole purpose of applying some change in administrative policy.[106] Opponents and supporters of SAFE 1 did, however, disagree on the significance of each of these factors.[107]

Commenters who argued that reliance interests were relevant to EPA's authority to reconsider also offered evidence of reliance interests that had accrued over the five years the ACC program waiver had been in effect, with several commenters providing specific details regarding their reliance on the GHG and ZEV standards. As commenters noted, California's standards are incorporated into plans and regulations aimed at achieving state and federal air pollution goals. These plans can be complex and cannot ''change on a dime.'' [108] According to one commenter ''[w]ithout the full Waiver, past decision-making was blighted and planned-for reductions to meet Air District goals need to be reassessed. The emission reductions are key to combatting climate change, curbing ozone formation, preventing additional wildlife impacts, and attaining California [air quality goals] and [NAAQS].'' [109] Revoking a waiver and disrupting existing air quality plans, they argue, also has ''far-reaching ripple effects'' because ''businesses operating in California base their own long-term plans on the State's policies'' and, if California cannot reduce emissions from the automobile sector, it will have to ''consider requiring further reductions from other sectors of the economy.'' [110] Additionally, they said that by the time of the SAFE proposal, twelve states had already adopted at least one or both of the California standards under section 177.[111] Several of these states submitted comments attesting to their need for these standards to achieve both greenhouse gas and criteria emission reductions.[112] Like the reliance interests of Californian air districts, several of these section 177 states and other opponents of SAFE 1 claim that ''reliance interests in State Implementation Plans are particularly acute'' because ''they set expectations for extended periods of time and for many sectors of the economy, making it challenging (if not impossible) to change them quickly.'' [113] These commenters note that ''planning failures can carry significant consequences, including the imposition of federal plans that limit local flexibility and control, as well as penalties such as loss of highway funds.'' [114] Some automakers and industry groups also discussed their reliance interests.[115] For example, the National Coalition for Advanced

[105] States and Cities at 21–22 (quoting *FCC* v. *Fox,* 556 U.S. 502, 515 (2009)).

[106] *Id.*at 17 (citing *Am. Methyl,* 749 F.2d at 835; *Chapman* v. *El Paso Nat. Gas Co.,* 204 F.2d 46, 53–54 (D.C. Cir. 1953); *DHS* v. *Regents of the Univ. of California,* 140 S. Ct. 1891, 1914 (2020); *United States* v. *Seatrain Lines Inc.,* 329 U.S. 424, 429 (1947)).

[107] Urban Air at 21 (arguing that agencies need only provide a ''detailed justification'' to overcome reliance interests); Competitive Enterprise Institute (CEI), Docket No. EPA–HQ–OAR–2021–0257–0398 (correction to an earlier comment by the same commenter, which can be found at Docket No. EPA–HQ–OAR–2021–0257–0140) at 9 (''As for reliance interests, all costly wasteful, or otherwise defective government programs create reliance interests. Usurpations of power do as well. If the creation of reliance interests is enough to legitimize bad or unlawful policies, anything goes.''). *Compare to* States and Cities at 17–18 (citing their comments on SAFE 1 at 130–31 and citing *Ctr. for Sustainable Econ.* v. *Jewell,* 779 F.3d 588, 595 (D.C. Cir. 2015)) (describing reliance interests as ''weighty,'' stating that ''[t]he Clean Air Act and long-standing Executive branch policy both place substantial importance on States' interests in implementing the plans and laws they have determined best meet the needs of their States''—plans and laws such as SIPs, which can and do include California standards).

[108] Twelve Public Interest Organizations app. 1 at 29.

[109] Bay Area Air Quality Management District (BAAQMD), Docket No. EPA–HQ–OAR–2021–0257–0278 at 2.

[110] Twelve Public Interest Organizations app. 1 at 29.

[111] States and Cities at 17. With these state adoptions, auto-manufacturers would then need to meet program requirements in these states.

[112] *See, e.g.,* Delaware Department of Natural Resources and Environmental Control (Delaware), Docket No. EPA–HQ–OAR–2021–0257–0109 at 1 (''The GHG program allowed by the waiver is vitally important, as it enables long-term plans and yields critical emission reductions that will contribute significantly to Delaware's ability to attain and maintain the health-based National Ambient Air Quality Standards (NAAQS) for criteria pollutants.''); Connecticut Department of Transportation and Connecticut Department of Energy and Environmental Protection (Connecticut), Docket No. EPA–HQ–OAR–2021–0257–0104 at 2 (''These programs enable long-term planning and yield critical emission reductions that are critical to meeting Connecticut's climate goals as well as our statutory obligations to reach attainment with the ozone NAAQS.''); Minnesota Pollution Control Agency and Minnesota Department of Transportation (Minnesota), Docket No. EPA–HQ–OAR–2021–0257–0113 at 2 (''The MPCA is in the process of adopting the LEV and ZEV standards in Minnesota as allowed under section 177 of the CAA. These rules are vitally important in helping our state achieve our GHG emission reduction goals and reduce other harmful air pollutants. . . .''); Maine Department of Environmental Protection (Maine), Docket No. EPA–HQ–OAR–2021–0257–0130 at 1, 3 (''While the LEV program was initially created to help attain and maintain the health-based [NAAQS] for criteria pollutants, the California GHG and ZEV standards will contribute significantly to states' abilities to meet their emission reduction goals. . . . [T]he transportation sector is the largest source of ozone forming pollution in Maine . . . and California's ability to set ZEV standards under the [CAA] is an essential tool for addressing both criteria pollutants and GHGs.''); Virginia Department of Environmental Quality (Virginia), Docket No. EPA–HQ–OAR–2021–0257–0112 at 2 (''These standards provide important and necessary reductions in both GHG and criteria pollutant emissions needed to meet state and local air quality goals and address federal CAA requirements.'')

[113] Twelve Public Interest Organizations app. 1 at 30; Delaware at 3 (explaining that, without the California standards, adopted into Delaware's SIP, the State will not be able to meet air quality goals). These reliance interests, one commenter argued, are another reason to doubt the implicit authority of EPA to reconsider an already granted waiver: ''It would be quite surprising, then, for EPA to have implicit authority to upend this multi-actor, multi-step scheme by pulling the rug out from under it after the fact.'' States and Cities at 16 (citing *Am. Methyl,* 749 F.2d at 840).

[114] Twelve Public Interest Organizations app. 1 at 30–31 (citing 42 U.S.C. 7410(c)(1) (establishing triggers for imposition of federal plan), 7509 (outlining sanctions for state planning failures)).

[115] *See* Ford Motor Company (Ford), Docket No. EPA–HQ–OAR–2021–0257–0028 at 1 (''Ford supports EPA's rescission of its SAFE I action, which withdrew California's waiver for zero emission vehicle (ZEV) mandate and greenhouse gas (GHG) emission standards within California's Advanced Clean Car (ACC) program. Ford does not believe this previous action was appropriate. Ford firmly supports recognition of California's authority to implement ZEV and GHG standards in support of its air quality targets pursuant to its 2012 waiver application. We have relied on California's actions pursuant to the waiver and California's related pronouncements in negotiating and agreeing to the California Framework Agreement, and in the development of our own product and compliance plans. Ultimately, Ford considered EPA's and NHTSA's rationales and California's statements regarding SAFE I and took action in the best interests of the company and of the environment.''). *See also* Tesla, Docket No. EPA–HQ–OAR–2021–0257–0136 at 4 (''Because of the sizeable investments required to develop alternative fuel and advanced technology vehicles, regulatory stability is vital for ensuring the level of manufacturer and investor confidence necessary to facilitate innovation.'') and at n.5 (quoting comments from several automakers and auto industry groups about reliance interests on the waiver from the MTE). *See also* Toyota, Docket No. EPA–HQ–OAR–2021–0381 (''Should EPA reinstate California's waiver, we request it be reinstated as it was originally granted, including the ''deemed-to-comply'' provision that was so important in establishing One National Program (ONP) over a decade ago. . . . Reinstatement of California's waiver for model years 2021 and 2022 poses significant lead time challenges considering that 2021 model year is well underway, and 2022 model year vehicles are generally already designed, sourced, certified to various regulatory requirements, and ready to begin production. Some manufacturers may have already begun production of 2022 model year vehicles. As a result, a reinstatement of California's waiver by EPA should apply prospectively to model years 2023 and later.'').

Transportation, an industry coalition group, stated ''NCAT members have invested billions of dollars with the well-founded expectation that increased demand for electric vehicles would be propelled by California and the section 177 States' continued ability to drive technology innovation and emission reductions.'' [116] EPA also received comment from CARB, by and through the comments of the States and Cities, that provided data on manufacturer compliance.[117]

According to commenters, these reliance interests were compounded by the considerable passage of time between the granting of the ACC program waiver in 2013 and SAFE 1's withdrawal in 2019. Commenters also remarked that the more than five years that had passed was too long a delay and well beyond the ''weeks, not years'' sometimes referenced as guidance for reasonableness.[118] SAFE 1, they noted ''comes years after the waiver was granted, years after multiple sovereign States adopted California's standards, and years into long-term plans States developed in reliance on anticipated emission reductions from those standards—including, but not limited to, multiple EPA approved State Implementation Plans.'' [119]

Other commenters argued that SAFE 1 did not upend reliance interests and was not untimely. They agreed with the SAFE 1 decision that the 2018 Mid-Term Evaluation (MTE), which was agreed to in 2013, prevented any reliance interests from accruing.[120] Although this MTE was for the federal GHG standards for MYs 2022–2025, not the California GHG standards approved under the ACC program waiver, these commenters argued that the two were linked through the ''deemed to comply'' provision approved in the ACC program waiver, which allowed manufacturers to comply with the California standards by meeting the federal standards.[121] They also noted that California separately agreed to a 2016 mid-term evaluation of its own state standards for the same model years.[122] Therefore, they argued, because the initial grant of the waiver was contingent on two subsequent mid-term evaluations, no one could have reasonably believed the ACC program waiver was ''set in stone.'' Additionally, at least one commenter argued that California and other states' purported reliance interests were further undermined because they ''have known for years that NHTSA's longstanding position is that state carbon dioxide regulations and zero-emissions vehicle mandates are related to average fuel economy standards and therefore preempted by CAFE'' and ''could not have reasonably believed that EPA would continue to ignore NHTSA's view of the law in perpetuity.[123]

Some commenters also argued that even if reliance interests are relevant, automakers and industry groups have reliance interests of their own affected by CARB's 2018 deemed to comply amendments and the SAFE 1 action itself. One commenter wrote that ''CARB tossed automakers' reliance interests out the window when it refused to be bound by the results of the EPA and NHTSA's Mid-Term Evaluation (MTE) . . . and refused to honor its 'deemed to comply' pledge to automakers unless they complied with the standards set by the EPA in 2012 and 2017.'' [124] Another commenter noted that ''[w]hatever 'reliance interests' are disturbed when EPA reverses a waiver grant are no more real, and no more serious for the parties involved, than the reliance interests upended by reversal of a waiver denial.'' [125]

Some commenters also argued that SAFE 1 was timely, disputing opponents' claims that a ''reasonable'' amount of time is measured in ''weeks, not years.'' Commenters noted that ''courts have not reached consensus on the amount of time that is reasonable.'' [126] Moreover, one commenter argued that ''timeliness depends on reliance interests'' and, because those could not have accrued prior to the MTE, the time period at issue is only four months (between the conclusion of the MTE and the reconsideration of the ACC program waiver, starting in 2018).[127] This ''short time,'' the commenter claimed, ''lies in the acceptable range given the intervening events.'' [128] Another commenter argued that, if ''time elapsed'' is a factor to be considered in the appropriateness of an action, it cuts in favor of SAFE 1, as thirty years passed between EPCA's enactment in 1975 and California's first request for a ''waiver implicitly authorizing the State to regulate fuel economy.'' [129] Even if the time period at issue was nearly six years between the grant of the ACC program and the final SAFE 1 action, that commenter wrote, such a length of time is not unreasonable, since ''[i]f six years locks a policy in place and puts it beyond revision or repeal by the next administration, elections no longer matter.'' [130]

In addition to reliance interests and timeliness, some commenters claimed that EPA's authority to revoke, if it existed, requires the Agency to have a purpose other than ''applying some . . . change in administrative policy.'' [131] SAFE 1, they argued, did not meet this requirement. Instead, in SAFE 1, EPA ''chose to *sua sponte* reconsider its 2013 Waiver Grant for the sole purpose of applying new policy determinations,'' specifically ''NHTSA's views of EPCA preemption'' and ''new interpretations

[116] NCAT at 13; Rivian as a member of NCAT (Rivian), Docket No. EPA–HQ–OAR–2021–0135.

[117] States and Cities at 55–57, including app. D and app. E.

[118] *Id.* at 17 (citing *Mazaleski* v. *Treusdell,* 562 F.2d 701, 720 (D.C. Cir. 1977)). Twelve Public Interest Organizations app. 1 at 73. In addition, this commenter notes that the time period for seeking judicial review of the ACC program waiver had run long ago and that no one had sought that review (citing *Am. Methyl Corp.,* 749 F.2d at 835); NCAT at 14–15.

[119] Twelve Public Interest Organizations app. 1 at 58.

[120] America Fuel & Petrochemical Manufacturers, EPA–HQ–OAR–2021–0257–0139 (AFPM) at 26 (''And no reliance interests derive from this decision because one could not reasonably expect that the standards approved in that waiver would remain untouched. As part of the 2013 waiver decision, EPA and CARB committed to a 2018 mid-term evaluation of the federal standards for MYs 2022–2025.''); Urban Air at 22; NADA at 6 (''as discussed at length repeatedly in EPA's 2013 CAA preemption waiver rule, a coordinated mid-term evaluation (MTE) involving EPA and NHTSA's MY 2022–2025 rules was expected to be conducted.'').

[121] AFPM at 26 (''Because California's deemed-to-comply provision linked those standards to compliance with its own state program, any change in federal standards from the mid-term review would have required an equal overhaul of California's emissions program for those future MYs.''); Urban Air at 22–23 (''The 2018-re-evaluation is relevant because California's deemed-to-comply provision allowed a manufacturer to satisfy state GHG standards simply by complying with federal standards.''); NADA at 6 (''[A]s noted above, CA's GHG mandates included both a ''deem-to-comply'' rule enabling vehicle manufacturers to meet those mandates by complying with applicable federal rules, and a commitment on the part of the state to conduct a mid-term evaluation of its own GHG standards.'').

[122] AFPM at 26–27; Urban Air at 22; NADA at 6.

[123] Urban Air at 23.

[124] CEI at 9.

[125] AFPM at 27. *See also* Urban Air at 20–21 (''And under the presumption that 'an agency retains authority to reconsider and correct an earlier decision,' the grant of a waiver is as liable to change as the denial of a waiver. No greater reliance interests attach to the grant of a waiver authorizing regulation than to the denial of a waiver preventing regulation, so reliance interests provide no support for California's ratchet argument.'').

[126] Urban Air at 23–24.

[127] *Id.* at 24. Another commenter disagreed with this accounting of time, stating that ''timeliness for reconsidering an adjudication is measured from the date of the agency's decision, not from the date of activity resulting from that decision. *E.g., Am. Methyl,* 749 F.2d at 835 (tethering timeliness to period for appeal of agency decision).'' Twelve Public Interest Organizations app. 1 at 38.

[128] Urban Air at 23–24.

[129] CEI at 8 (calling ''time elapsed'' a ''frivolous objection.'').

[130] *Id.*

[131] States and Cities at 17 (quoting *Chapman* v. *El Paso Nat. Gas Co.,* 204 F.2d 46, 53–54 (D.C. Cir. 1953)).

[of section 209(b)(1)(B)] that served only to categorically bar state standards that reduce vehicular GHG emissions.'' [132] Still, another commenter disagreed, arguing that EPA's reconsideration was an appropriate reevaluation of the legal interpretation and facts upon which the initial waiver determination was based because—''reconsideration determinations do not become 'policy' decisions simply because they address substantive errors.'' [133]

EPA also received comment on whether EPA's actions were inappropriate because the Agency failed to satisfy the ''requirements of reasoned decision-making.'' Some commenters noted that EPA had taken the position in SAFE 1 that ''reducing criteria pollution is of overriding importance'' yet failed to ''consider[ ] the criteria-pollution and SIP consequences of its Waiver Withdrawal and Section 177 Determination.'' [134] Similarly, EPA received comments claiming that the decision to apply a new approach to the ACC program waiver section 209(b)(1)(B) was both unnecessary and unjustified because, as EPA acknowledged in SAFE 1, the Agency has consistently posited that section 209(b)(1)(B) calls for determining whether the State needs its own regulatory program, separate from that of the federal government, not whether the State needs each specific standard or package of standards for which it seeks a waiver.[135] One of these commenters pointed out that EPA also acknowledged that the phrase ''such State standards'' could reasonably remain the program-level interpretation (EPA's traditional interpretation) yet the Agency chose to adopt a new interpretation and apply it to the more than five-year old ACC program waiver, impacting expectations and reliance interests.

The Agency also received comments on whether NHTSA's finding of preemption under EPCA in the joint action granted EPA authority to reconsider the ACC program waiver. Commenters argued that NHTSA is charged with interpreting and implementing EPCA and that its finding ''that Congress prohibited California's standards'' in the same action cannot be ignored.[136] Still other commenters pointed to the language of section 209(b)(1) itself, where only three criteria are provided by which EPA can deny a waiver. As such, they argued, EPA cannot have broad, implicit authority to revoke a waiver on entirely different grounds than by which it may deny a waiver.[137] The commenters also argued that the joint context of the action did not grant the Agency special authority to reconsider, explaining that ''[w]hat Congress directed EPA to consider when it wrote Section 209(b)(1) does not change depending on whether EPA acts alone or with another agency.'' [138] Some commenters also pointedly noted that SAFE 1's distinction between single-agency and joint actions is arbitrary and capricious and therefore not a valid basis for reconsideration because EPA stated it ''does not intend in future waiver proceedings concerning submissions of California programs in other subject areas to consider factors outside the statutory criteria in section 209(b)(1)(A)–(C),'' [139] and because NHTSA and EPA now consider SAFE 1 as ''two severable actions.'' [140]

B. Analysis: EPA Inappropriately Exercised Its Limited Authority To Reconsider

EPA finds it does have authority to reconsider waivers, although its reconsideration of previously-granted waivers is limited and circumscribed. In the context of adjudicatory decisions (as contrasted to rulemakings), administrative law principles and case law support limited reconsideration authority for waiver proceedings. For example, in *Ivy Sports Med., LLC* v. *Burwell,* 767 F.3d 81, 86, 93 (D.C. Cir. 2014), the D.C. Circuit noted that where a statute ''does not contain an express provision granting [the agency] authority to reconsider,'' ''administrative agencies are assumed to possess at least some inherent authority to revisit prior decisions, at least if done in a timely fashion,'' noting the baseline limitations of such inherent authority. And in *Chapman* v. *El Paso Nat. Gas Co.,* 204 F.2d 46, 53–54 (D.C. Cir. 1953), the D.C. Circuit made clear that once concluded, an adjudicatory decision granting a right ''may not be repudiated for the sole purpose of applying some quirk or change in administrative policy.'' [141] These precedents suggest that, while agencies do generally possess some inherent authority to reconsider previous adjudicatory decisions, that authority is limited in scope.

Section 209 does not provide EPA with express authority to reconsider and withdraw a waiver previously granted to California. EPA's authority thus stems from its inherent reconsideration authority. The 1967 legislative history provides some indication of congressional intent to preserve some implied authority for EPA to reconsider previous waiver decisions, but also to place limitations on it. This legislative history explains: ''[i]mplicit in this provision is the right of the [Administrator] to withdraw the waiver at any time [if] after notice and an opportunity for public hearing he finds that the State of California no longer complies with the conditions of the waiver.'' [142] Thus, from the earliest days of the program it has been understood that any withdrawal of a waiver should be tied to the statutory criteria and California's compliance with them. This legislative history must be taken into account along with Congress's intent expressed in the 1977 legislative history, which, as discussed previously, sought to ensure deference to California and to strengthen that state's role in driving emissions-reducing technological innovation. Congress was also mindful to ensure the ability of other states to adopt California's standards.[143] Ultimately, EPA concludes it has authority to reconsider previously-granted waivers, but that this authority may only be exercised sparingly. As discussed below, there are several considerations that support narrow authority to reconsider waiver grants.

First and most important, EPA believes its inherent authority to reconsider a waiver decision is

[132] *Id.* at 8, 19 (''No statute compelled EPA to reconsider the 2013 waiver at all, let alone to apply new policies to that long-settled decision rather than to new waiver requests.''); Twelve Public Interest Organizations app. 1 at 35 (''EPA relied exclusively on its purported discretion to reinterpret Section 209(b)(1)(B) of the Clean Air Act . . . and its purported discretion to consider factors not enumerated in Section 209(b)(1).''). *See also* SCAQMD at 3 (''Because the 2013 waiver decision was not pending judicial review in 2019 and was a long-closed matter, the EPA could not rightfully reopen its adjudication.'').

[133] Urban Air at 24 (citing *Civil Aeronautics Bd.* v. *Delta Air Lines,* 367 US 316, 321 (1961)).

[134] States and Cities at 8–9, 12.

[135] *Id.* at 22.

[136] *See, e.g.,* CEI at 11.

[137] States and Cities at 16–17.

[138] *Id.* at 20. *See also* Twelve Public Interest Organizations app. 1 64–65.

[139] Northeast States for Coordinated Air Use Management (NESCAUM), Docket No. EPA–HQ–OAR–2021–0257–0126 at 3; Twelve Public Interest Organizations app. 1 64–65; States and Cities at 20.

[140] SCAQMD at 7 (citing 86 FR at 22439 n.40).

[141] *See also Am. Methyl,* 749 F.2d 826, 835 (D.C. Cir. 1984) (''We have held that agencies have an inherent power to correct their mistakes by reconsidering their decisions within the period available for taking an appeal.''); *Mazaleski* v. *Treusdell,* 562 F.2d 701, 720 (D.C. Cir. 1977) (''We have many times held that an agency has the inherent power to reconsider and change a decision if it does so within a reasonable period of time.'') (quoting *Gratehouse* v. *United States,* 512 F.2d 1104, 1109 (Ct. Cl. 1975)); *Albertson* v. *FCC,* 182 F.2d 397, 399 (D.C. Cir. 1950) (''in the absence of any specific limitation,'' reconsideration available ''within the period for taking an appeal''). *See generally* Daniel Bress, Note, Administrative Reconsideration, 91 VA. L. REV. 1737 (2005).

[142] S. Rep. No. 90–403, at 34 (1967).

[143] *See supra* Section III.B.

constrained by the three waiver criteria that must be considered before granting or denying a waiver request under section 209(b). It would be inappropriate and inconsistent with congressional intent for EPA to reconsider and withdraw a waiver on a ground outside the limited scope of those which Congress specified for EPA to consider when reviewing a waiver in the first place.[144] In the few instances where the Agency reconsidered prior waiver decisions prior to SAFE 1, EPA focused its review on the section 209(b) statutory waiver criteria.[145]

A circumscribed approach to reconsideration of waivers is consistent with the deference to California's policy judgment that Congress built into the waiver process.[146] Congress explicitly required that EPA ''shall'' grant the waiver unless one of three limited criteria are met. The use of the word ''shall'' (versus ''may'') was heavily debated by the enacting Congress, with the successful proponents of ''shall'' explaining that such language would ''guarantee'' that California could regulate with the burden placed on EPA to demonstrate why California should not be allowed to go beyond federal limitations.[147] Congress's legislative enactments since its creation of the waiver program—including adding section 177 to allow other states to adopt California's standards in 1977 and section 209(e)(2)(A) to create parallel deference for nonroad engines and vehicles in 1990—reinforce the important role it envisioned for, and deference it afforded to, California.[148]

In SAFE 1, EPA argued instead that deference to California was not merited where the Agency was interpreting its ''own statute.'' [149] But in Title II of the Clean Air Act, Congress envisioned two standards—California and Federal.[150] Congress recognized California's early attempts to address motor vehicle emissions intended to address its extraordinary environmental conditions as well as being a laboratory for motor vehicle emissions control.[151] Congress called for EPA deference to California in implementing section 209(b) by not only limiting EPA review of California waiver requests to three specific criteria but also instructing that EPA is ''to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.'' [152] Similarly, ''[t]he Administrator, . . . is not to overturn California's judgment lightly. Nor is he to substitute his judgment for that of the State.'' [153] Additionally, the D.C. Circuit has explained that ''Congress consciously chose to permit California to blaze its own trail with a minimum of federal oversight'' and ''[t]he statute does not provide for any probing substantive review of the California standards by federal officials.'' [154] Further, ''[t]here is no indication in either the statute or the legislative history that . . . the Administrator is supposed to determine whether California's standards are in fact sagacious and beneficial.'' [155] Thus, early in the waiver program's history, EPA explained the deference that Congress intended for the Agency's review of waiver requests by noting that it would feel constrained to approve a California approach to a problem that the EPA Administrator might not feel able to adopt at the federal level as a regulator. EPA explained that the balancing of risks and costs against potential benefits from reduced emissions is a central policy decision for any regulatory agency and substantial deference should be provided to California's judgement on such matters.[156]

In addition, limiting reconsideration of waivers undergirds Congress' intent that California would be a laboratory for the country driving emissions-reducing technological innovation when it created the program in the first place. As the D.C. Circuit explained in *MEMA I:* ''The history of congressional consideration of the California waiver provision, from its original enactment up through 1977, indicates that Congress intended the State to continue and expand its pioneering efforts at adopting and enforcing motor vehicle emission standards different from and in large measure more advanced than the corresponding federal program; in short, to act as a kind of laboratory for innovation.'' [157] Indeed, broad authority to reconsider waiver grants could undermine the very structure that Congress built in Title II. Specifically, while EPA does not consider section 177 when reviewing waiver requests under section 209, Congress built a structure wherein EPA must grant California a waiver under section 209 unless one of the three statutory criteria are met, and then other states may adopt California's standards under section 177 as part of their overall air quality programs. Limited inherent authority to reconsider previously-granted waivers as described in this action is important to the success of Congress's structure.

Finally, even the sentence in the legislative history that suggests EPA has inherent reconsideration authority in the first place, and which SAFE 1 relied on for its assertion of inherent reconsideration authority, lends weight to the view that this authority is limited. According to the Senate report from the 1967 CAA amendments, the Administrator has ''the right . . . to withdraw the waiver at any time [if] after notice and an opportunity for public hearing he finds that the State of California no longer complies with the conditions of the waiver.'' [158] That specific circumstance—where California does not comply with the conditions of a waiver—should not be expanded to include a gaping hole for discretionary administrative policy changes.

Given all of the above considerations, several principles emerge. EPA's authority to reconsider a grant of a waiver, which is an adjudicatory action by the Administrator, is not open-ended. Any reconsideration is constrained to the criteria that Congress set out in section 209(b). Even within those statutory criteria, considering all of the factors that weigh in favor of a narrow interpretation of the Agency's authority and the importance of not disrupting Congress's scheme, EPA believes reconsideration is limited to situations where the Agency has made

[144] *See MEMA I,* 627 F.2d at 1115 (noting that section 209(b) creates ''a narrowly circumscribed proceeding requiring no broad policy judgments'').

[145] EPA initiated reconsideration of certain motorcycle standards, under the third waiver prong, section 209(b)(1)(C), in order to ''vacate that portion of the waiver previously granted under section 209(b).'' 47 FR 7306, 7309 (February 18, 1982). EPA affirmed the grant of the waiver in the absence of ''findings necessary to revoke California's waiver of Federal preemption for its motorcycle fill-pipe and fuel tank opening regulations.'' *Id.* at 7310.

[146] *See MEMA I,* 627 F.2d at 1124–25 (describing Congress's intent to defer to California's judgments regarding its motor vehicle program).

[147] H.R. Rep. No 90–728 (''Are we now to tell California that we don't quite trust her to run her own program, that big government should do it instead?'').

[148] 40 FR 23104; 58 FR 4166.

[149] 84 FR at 51344 n.268.

[150] Motor vehicles are ''either 'federal cars' designed to meet the EPA's standards or 'California cars' designed to meet California's standards.'' *Engine Mfrs. Ass'n* v. *EPA,* 88 F.3d 1075, 1079–80, 1088 (D.C. Cir. 1996) (''Rather than being faced with 51 different standards, as they had feared, or with only one, as they had sought, manufacturers must cope with two regulatory standards.'').

[151] *See, e.g.,* S. Rep. No. 403, 90th Cong., 1st Sess. 33 (1967) (The waiver of preemption is for California's ''unique problems and pioneering efforts.''); 113 Cong. Rec. 30950, 32478 (''[T]he State will act as a testing agent for various types of controls and the country as a whole will be the beneficiary of this research.'') (Statement of Sen. Murphy).

[152] H.R. Rep. No. 95–294, at 301–02 (1977).

[153] H.R. Rep. No. 95–294, at 302 (1977), reprinted in 1977 U.S.C.C.A.N. at 1381)).

[154] *Ford Motor Co.* v. *EPA,* 606 F.3d 1293, 1297, 1300 (D.C. Cir. 1979).

[155] *Id.* at 1302.

[156] 40 FR at 23104.

[157] *MEMA I,* 627 F.2d at 110–11.

[158] S. Rep. No. 90–403, at 34 (1967).

a clerical or factual error or mistake, or where information shows that factual circumstances or conditions related to the waiver criteria evaluated when the waiver was granted have changed so significantly that the propriety of the waiver grant is called into doubt.

Even if the bases for EPA's reconsideration did satisfy one of the foregoing conditions such that reconsideration may be appropriate, during that reconsideration EPA believes it should consider the passage of time and reliance interests. In the context of CAA waiver grants in general, and the 2013 ACC program waiver grant in particular, California is relying on its standards to meet short- and long-term emission reduction goals.[159] In addition, by the time the SAFE proposal was published, twelve states had already adopted at least one or both of the GHG and ZEV standards.[160] Several of these states incorporated these adopted standards into their SIPs.[161] Several automakers and industry groups have also indicated reliance on these standards.[162]

Reconsideration thus must carefully consider the factors noted and should not be undertaken where immense degrees of uncertainty are introduced in settled expectations of California, other states, and regulated industry or to allow for the continual questioning of EPA's decisions, thus impairing needed finality. Such reconsideration could frustrate congressional intent in designing the waiver program and ultimately discourage reliance by the recipient of EPA's waiver decision (CARB), states that may have adopted CARB's regulations under the terms of section 177 (and are permitted to enforce the regulations once EPA grants a waiver to California) as well as the regulated industry.

We now turn to whether the reconsideration in SAFE 1 was a proper exercise of EPA's inherent reconsideration authority. As an initial matter, SAFE 1 did not assert that any clerical or factual error or mistake was made in the 2013 ACC program waiver. Nor did SAFE 1 point to any evidence showing that factual circumstances or conditions related to the waiver criteria evaluated when the waiver was granted have changed so significantly that the propriety of the waiver grant is called into doubt. For example, SAFE 1 did not assert that California was not complying with the terms of the waiver. Instead, SAFE 1's reconsideration was premised on retroactive application of discretionary policy changes. Therefore, EPA believes it did not appropriately exercise its inherent authority in SAFE 1 to reconsider the prior ACC program waiver. Upon reconsideration, and as further shown in Sections V and VI, EPA now believes that SAFE 1 amounted to an improper exercise of the Agency's limited inherent authority to reconsider.[163]

SAFE 1 gave two primary reasons for withdrawing the 2013 ACC program waiver. Neither was an appropriate basis for reconsideration. First, SAFE 1 premised the revocation on its interpretation of the second waiver prong, section 209(b)(1)(B), that called for the Agency's scrutiny of specific standards under the waiver rather than California's program as a whole. As explained in detail in Section V of this final action, that statutory interpretation is flawed, and EPA does not believe a new statutory interpretation should be the basis of reconsidering the grant of a waiver.

SAFE 1 premised the withdrawal of the ACC program waiver under section 209(b)(1)(B) on the perceived lack of record support on the causal link between GHG emission standards and air quality conditions in California.[164] Yet, the underlying record from the ACC program waiver, and the record of SAFE 1, have shown that CARB's ZEV sales mandate and GHG emission standards are designed to address California's serious air quality problems, including both its NAAQS pollutants and a variety of climate impacts from GHG emissions. As discussed in greater detail in Section V, EPA has since at least 2009 recognized that greenhouse gas pollution exacerbates criteria pollution, and climate change impacts on California's air quality conditions (*e.g.,* heat exacerbation of ozone).[165] The ACC program was especially designed to

[159] States and Cities at 17–18.

[160] *Id.* at 17.

[161] *Id.* at 10; Wisconsin Department of Natural Resources (Wisconsin), Docket No. EPA–HQ–OAR–2021–0257–0095 at 1 (''These standards provide important and necessary reductions in both GHG and criteria pollutant emissions needed to meet state and local air quality goals and address federal CAA requirements.''); Connecticut at 2 (''These programs enable long-term planning and yield critical emission reductions that are critical to meeting Connecticut's climate goals as well as our statutory obligations to reach attainment with the ozone NAAQs.''); Delaware 2 (''Delaware adopted the California LEV regulation and incorporated the LEV and GHG standards into the State Implementation Plan. . . . Delaware will not meet air quality goals without more protective vehicle emission standards.''); Maine at 1 (''[T]he LEV program was initially created to help attain and maintain the health-based National Ambient Air Quality Standards (NAAQS) . . . The California ZEV and GHG programs enable long-term planning for both the states and the regulated community and have been drivers of technological change across the industry.'').

[162] *E.g.,* Ford at 1; Tesla at n.5, 4; Rivian (as a member of NCAT) at 13–14.

[163] EPA acknowledges that, in the SAFE 1 proceedings, it had noted that at the time of proposal that CARB had given notice that it was considering amending its ''deemed to comply'' provision and that by the time of SAFE 1, California had entered into agreements with several automobile manufacturers to accept less stringent standards than the California program or the Federal standards as promulgated in 2012. As noted in SAFE 1, EPA believed that neither of these matters were necessary for EPA's action in SAFE 1, but that they provided further support for the action. 84 FR at 51334 n.230. By this action, EPA finds that neither of these matters amounted to a change in circumstances or conditions associated with the three waiver criteria and EPA's evaluation of the criteria in the ACC program waiver. EPA did not predicate its ACC program waiver on CARB's deemed-to-comply provision or any changes to the deemed-to-comply provision. (EPA does not take a position as to whether that provision has changed in its purpose as a result of CARB's 2018 amendment). Further, to the extent CARB utilized a deemed-to-comply provision or uses non-regulatory mechanisms to achieve its air quality objectives, this had no bearing on EPA's assessment of whether CARB has a need for its standards under the second waiver prong at the time of SAFE 1 or now.

[164] ''California's *approach* in its ACC program waiver request differed from the state's approach in its waiver request for MY 2011 and subsequent heavy-duty tractor-trailer GHG standards, where California quantified NO_X emissions reductions attributed to GHG standards and explained that they would contribute to PM and ozone NAAQS attainment.'' 84 FR at 51337 n.252 (citing 79 FR at 46256, 46257 n.15, 46261, 46262 n.75).

[165] The first HD GHG emissions standard waiver related to certain new 2011 and subsequent model year tractor-trailers. 79 FR 46256 (August 7, 2014). CARB projected, for example, ''reductions in NO_X emissions of 3.1 tons per day in 2014 and one ton per day in 2020'' in California. *Id.* at 46261. The second HD GHG emissions standard waiver related to CARB's ''Phase I'' regulation for 2014 and subsequent model year tractor-trailers. 81 FR 95982 (December 29, 2016).

CARB also noted the scientific findings since EPA's 2009 GHG waiver including the report titled ''Our Changing Climate 2012 Vulnerability &Adaptation to the Increasing Risks from Climate Change in California.'' The summary report highlights new insights for the energy, water, agriculture, public health, coastal, transportation, and ecological resource sectors that are vital to California residents and businesses. The study also predicts that peak concentrations of dangerous airborne particles will increase in the San Joaquin Valley because of climate change on wind patterns. This study provides further evidence of what is known as the ''climate penalty,'' where rising temperatures increase ground-level ozone and health-damaging particles, despite the reductions achieved by successful programs targeting smog-forming emissions from cars, trucks, and industrial sources. *Id.* at 8–9. *See also* ''The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment'' Chapter 3 Air Quality Impacts—Key Finding (''Climate change will make it harder for any given regulatory approach to reduce ground-level ozone pollution in the future as meteorological conditions become increasingly conducive to forming ozone over most of the United States. Unless offset by additional emissions reductions, these climate-driven increases in ozone will cause premature deaths, hospital visits, lost school days, and acute respiratory symptoms.'') at *https://health2016.globalchange.gov/air-quality-impacts;* Chapter 13: Air Quality, Fourth National Climate Assessment at *https://nca2018.globalchange.gov/chapter/13/.*

address both criteria and GHG pollution, including the effects of GHG pollution on criteria pollution in California.[166] As also further discussed in Section V, in SAFE 1 the Agency dismissed the criteria pollutant benefits of California's ZEV sales mandate requirements based on a snippet from the 2012 waiver request, taken out of context.[167] This was also remarkable considering EPA's prior waivers for ZEV sales mandate requirements that demonstrated criteria pollutant emissions reduction benefits.[168] The record also includes information that demonstrates that a withdrawal of the waiver for the GHG emission standards and ZEV sales mandate (and leaving the Federal GHG standards at the 2020 levels as proposed in SAFE) would increase NOx emissions in the South Coast air basin alone by 1.24 tons per day.[169] In sum, EPA opted to elide the available ample technical support from the ACC program waiver proceedings. EPA's factual predicates in SAFE 1—that there was no criteria pollutant benefit of the GHG standards and ZEV sales mandate—for reconsideration based on the second waiver prong were simply inaccurate and inappropriate. Reconsideration was thus improper on this basis because there were no factual errors in the ACC program waiver and EPA should not be exercising authority to reconsider prior valid waivers that present no factual errors based on different statutory interpretations.

Second, SAFE 1 premised its revocation on NHTSA's finding of preemption under EPCA. This, too, was an inappropriate ground for reconsideration. As earlier noted, EPA believes its inherent authority to reconsider a waiver decision is constrained by the three waiver criteria that must be considered before granting or denying a waiver request under section 209(b). Preemption under EPCA is not one of these criteria and was not considered in CARB's ACC program waiver request or in EPA's granting of that waiver. In fact, in its waiver grant, the Agency expressly found that consideration of preemption under EPCA would be inappropriate and unnecessary. In SAFE 1, the Agency did not premise its consideration of preemption under EPCA on any of the three statutory criteria. Therefore, EPA believes that SAFE 1 was not a proper exercise of the authority to reconsider on this basis, and any subsequent action in SAFE 1 to withdraw the ACC program waiver was inappropriate.

Although SAFE 1 was an inappropriate exercise of inherent authority given that the Agency did not correct a factual error and there was no change in factual circumstances so significant that the propriety of the waiver would be called into doubt, it is nevertheless relevant to note that SAFE 1 did not give appropriate consideration to the passage of time and the reliance interests that had developed between the granting and the revocation of the ACC program waiver. Several automakers and industry groups have also indicated reliance on these standards, as previously discussed.[170] California and section 177 states were, by the time of the reconsideration, into the long-term plans they had developed relying on the ACC program waiver standards.[171] California and other states rely on waivers that EPA has approved to meet short- and long-term emission reduction goals.[172] In addition, by the time the SAFE proposal was published, twelve states had already adopted at least one or both of the GHG and ZEV standards.[173] Several of these states incorporated these adopted standards into their SIPs.[174]

SAFE 1 barely mentioned these reliance interests, explaining only that the Agency ''will consider whether and how to address SIP implications of this action, to the extent that they exist, in separate actions; EPA believes that it is not necessary to resolve those implications in the course of this action.'' [175] EPA now believes that,

[166] 2012 Waiver Request at 1, 9–11, 15–17 (''[A]s detailed below, the ACC program will result in reductions of both criteria pollutants and GHG emissions that, in the aggregate, are more protective than the federal standards that exist.''). 78 FR at 2122 ([T]he ACC program will result in reductions of both criteria pollutants and GHG emissions.'').

[167] 84 FR at 51337 (quoting CARB's statement that ''[t]here is no criteria emissions benefit from including the ZEV proposal in terms of vehicle (tank-to-wheel or TTW) emissions.''). As explained in more detail below, this statement merely reflected how CARB attributed pollution reductions between its different standards and compliance mandates, not the reality of how those standards and mandates actually drive pollution reductions.

[168] 58 FR 4156. 71 FR 78190 (December 28, 2006); 75 FR 11878 (March 12, 2010) and 76 FR 61095 (October 3, 2011).

[169] States and Cities at 10.

[170] *E.g.,* Ford at 1; Tesla at n.5, 4; Rivian (as a member of NCAT) at 13–14. EPA notes that it received limited comment on whether reliance interests had formed since the issuance of SAFE 1 but nothing to demonstrate error in the findings regarding section 209(b)(1)(C) made within the ACC program waiver. *See* Toyota, Docket No. EPA–HQ–OAR–2021–0381 (''Reinstatement of California's waiver for model years 2021 and 2022 poses significant lead time challenges considering that 2021 model year is well underway, and 2022 model year vehicles are generally already designed, sourced, certified to various regulatory requirements, and ready to begin production.''). Further, as discussed elsewhere, the short passage of time since the promulgation of SAFE 1 and ongoing litigation over that action has, as automakers have noted in that briefing, prevented automakers from relying on the waiver revocation. *See also* Twelve Public Interest Organizations at 11 (noting filings by automakers suggesting lack of reliance on the waiver withdrawal).

[171] *E.g.,* States and Cities at 17 (the length between the waiver grant and reconsideration was too long ''by any measure.''); Twelve Public Interest Organizations at app. 36. EPA acknowledges the commenter who argued that ''timeliness depends on reliance interests'' and, because the standards were not final before the MTE, the time period at issue is the four months between the MTE and the SAFE 1 proposal. Urban Air at 24. EPA also received comment that disagreed with this accounting of time stating that timeliness for reconsidering an adjudication is measured from the date of the agency's decision, not from the date of activity resulting from that decision. *E.g., Am. Methyl,* 749 F.2d at 835 (tethering timeliness to period for appeal of agency decision).'' Twelve Public Interest Organizations app. 1 at 38. EPA believes it is not necessary to resolve the permissible amount of time, or the existence or lack of a bright line, that may pass before reconsideration of its prior adjudication is no longer appropriate. However, EPA did not ''condition'' its ACC program waiver on any subsequent actions, including the MTE, which explicitly applied to the federal standards. *See* 78 FR at 2137. EPA expects its waiver adjudications to be final and that appropriate reliance may flow to affected parties. Moreover, in this instance EPA did not make any final determination regarding the third waiver prong at section 209(b)(1)(C). EPA notes that it has administered the California waiver program for a number of decades and acknowledges that emission standards continue to evolve at the California and the federal levels. This evolution in the standards has rested on regulatory certainty and the enforceability of CARB's emission standards once a waiver has been issued by EPA under section 209(b) of the CAA. As for the inclusion of the deemed-to-comply provision in the California standards, California provided documentation demonstrating that the deemed-to-comply provision was reliant upon the federal standards having a certain level of stringency, a fact that EPA had recognized. *See* States and Cities at 18–19 n. 14, 57–60. EPA found that the California standards were feasible even without the deemed-to-comply provision, 78 FR at 2138, making it irrelevant to the waiver grant. California's own actions with respect to its standards, such as its independent review of the ACC program, cannot disturb California's or other state's reliance on the federal waiver.

[172] States and Cities at 17–18.

[173] *Id.* at 17.

[174] *Id.* at 10; Wisconsin Department of Natural Resources (Wisconsin), Docket No. EPA–HQ–OAR–2021–0257–0095 at 1 (''These standards provide important and necessary reductions in both GHG and criteria pollutant emissions needed to meet state and local air quality goals and address federal CAA requirements.''); Connecticut at 2 (''These programs enable long-term planning and yield critical emission reductions that are critical to meeting Connecticut's climate goals as well as our statutory obligations to reach attainment with the ozone NAAQs.''); Delaware 2 (''Delaware adopted the California LEV regulation and incorporated the LEV and GHG standards into the State Implementation Plan. . . . Delaware will not meet air quality goals without more protective vehicle emission standards.''); Maine at 1 (''[T]he LEV program was initially created to help attain and maintain the health-based National Ambient Air Quality Standards (NAAQS) . . . The California ZEV and GHG programs enable long-term planning for both the states and the regulated community and have been drivers of technological change across the industry.'').

[175] *Id.* at 51324 n.167.

when exercising its inherent authority to reconsider the 2013 waiver decision, it was inappropriate to ignore these possible reliance interests and to ''resolve'' any potential implications at a later time. In the SAFE 1 context, while it was not necessary to resolve the status of every SIP, it was inappropriate to not even consider the reliance interests raised by the adoption of California standards by section 177 states (including, but not limited to, their adoption into SIPs). EPA has consistently recognized the importance of long-term planning in the attainment and maintenance of NAAQS.[176] Given the long-term nature of these plans, it is ''challenging (if not impossible) to change them quickly,'' and any changes in one part of a SIP can affect multiple sectors of the economy.[177]

As noted above, EPA also received other comments regarding reliance interests, including those noting that the midterm evaluation (MTE) was an indication that the technological feasibility of the GHG emission standards was not a settled matter and hence no certainty or reliance could accrue. EPA, however, did not ''condition'' its ACC program waiver on any subsequent actions, including the MTE.[178] EPA expects its waiver adjudications to be final and that appropriate reliance may flow to affected parties. Moreover, in this instance EPA did not make any final determination regarding the third waiver prong at section 209(b)(1)(C). EPA notes that it has administered the California waiver program for a number of decades and acknowledges that emission standards continue to evolve at the California and the federal levels. This evolution in the standards has rested on regulatory certainty and the enforceability of CARB's emission standards once a waiver has been issued by EPA under section 209(b) of the CAA.

EPA's historic practice of properly affording broad discretion to California has meant that in almost fifty years of administering the California waiver program the Agency had never withdrawn any waiver prior to SAFE 1. And while SAFE 1 cited prior reconsideration actions as support for the Agency's authority to reconsider prior waiver decisions, as previously noted, EPA has historically limited reconsideration of prior waived standards to statutory criteria and most important, none of these prior reconsideration actions resulted in a revocation.[179] As further shown in Sections V and VI, SAFE 1 was the result of a ''probing substantive review of the California standards,'' with the Agency substituting its own judgment for California's contrary to both congressional exhortation of deference to California and the Agency's review practice.

This present reconsideration is an appropriate exercise of the Agency's reconsideration authority. It is not at all clear that the reasons for limiting reconsideration of waiver grants apply to the same degree to reconsideration of waiver denials and withdrawals. However, EPA need not resolve the question in this action, because this action falls well within the bounds of even the limited authority this action concludes the Agency possesses for reconsideration of waiver grants. First, this action corrects factual errors made in the SAFE 1 waiver withdrawal. Specifically, even under SAFE 1's flawed interpretation of section 209(b)(1)(B), SAFE 1 ignored facts demonstrating that California does need the specific standards at issue to meet compelling and extraordinary conditions. Second, in this reconsideration EPA properly constrains its analysis to whether SAFE 1 made one of the three statutory findings necessary to deny a waiver. Third, this reconsideration is timely with respect to the finalization of SAFE 1 and limited, if any, reliance interests have developed as a result of SAFE 1 (which has been subject to judicial review since its promulgation).

C. Conclusion

In SAFE 1, EPA inappropriately exercised its limited inherent authority to reconsider the ACC program waiver for several reasons. EPA believes its exercise of reconsideration authority to reinterpret the language of section 209(b)(1)(B) was not taken to correct any factual or clerical error or based upon factual circumstances or conditions related to the waiver criteria evaluated when the waiver was granted that have changed so significantly that the propriety of the waiver grant is called into doubt. Rather, as discussed in detail in Section V, it was based upon a flawed statutory interpretation and a misapplication of the facts under that interpretation. Likewise, EPA's decision to reconsider the ACC program waiver based on NHTSA's rulemaking within SAFE 1, which raised issues beyond the statutory waiver criteria, was inappropriate. For these reasons EPA now believes it is appropriate to rescind its actions within SAFE 1.

V. The SAFE 1 Interpretation of Section 209(b)(1)(B) was Inappropriate and, in any Event, California met its Requirements

Even if SAFE 1's reconsideration of the 2013 program waiver grant was appropriate, EPA concludes for two independent reasons that its waiver withdrawal in SAFE 1 based upon its new statutory interpretation was flawed. First, EPA concludes that the SAFE 1 interpretation of the second waiver prong was not an appropriate reading of that second waiver prong, section 209(b)(1)(B). It bears noting that the traditional interpretation is, at least, the better interpretation. Informed by but separate from the factual analysis discussed next, the Agency finds that the new interpretation set out in SAFE 1 was inconsistent with congressional intent and contrary to the purpose of section 209(b). Under the traditional interpretation of the second waiver prong, California's need for its own motor vehicle program, including its GHG emission standards and ZEV sales mandate, to meet compelling and extraordinary conditions is clear and the

[176] EPA is responsible for approving SIPs and SIP amendments, which span years. *See, e.g.,* 82 FR 42233 (September 7, 2017) (approval of Maine's SIP revision including updates to be consistent with California's updated LEV program); 80 FR 13768 (March 17, 2015) (approval of Connecticut's SIP revision, including the adoption of elements of California's LEV program). For example, states with areas that achieve attainment for any air pollutant must submit for EPA approval a revised SIP that sets out the State's plan for maintaining attainment for at least ten years after the redesignation. At the end of that ten-year period, the State must submit another ten-year maintenance plan to EPA for approval. 42 U.S.C. 7505a.

[177] Twelve Public Interest Organizations app. 1 at 29, 30. Several states also commented, during this reconsideration, that they rely on the California GHG standards and ZEV sales mandate to reach their own state emission reduction goals. *E.g.,* Connecticut at 2 (''Reducing GHG emissions from the transportation sector is required to achieve Connecticut's economy-wide targets of at least 45 percent below 2001 levels by 2030 and 80 percent below 2001 levels by 2050, as required by the 2008 Global Warming Solutions Act (GWSA) and the 2018 Act Concerning Climate Change Planning and Resiliency.''); Minnesota at 2 (''[California's standards] are vitally important in helping our state achieve our GHG emission reduction goals and reduce other harmful air pollutants, especially in communities of color and lower-income communities, which are disproportionately impacted by vehicle pollution. The MPCA found that these rules are needed to address GHG emissions in our state and take steps towards achieving Minnesota's statutory Next Generation Energy Act GHG reduction goals. On May 7, 2021, an independent Administrative Law Judge affirmed the MPCA findings.''); Maine at 1 n.3 (''Maine statute at 38 M.R.S 576–A establishes tiered GHG emission reduction requirements culminating in gross annual reductions of at least 80% from 1990 baseline levels.'').

[178] *See* 78 FR at 2137.

[179] *See, e.g.,* 43 FR at 7310 (affirming the grant of the waiver in the absence of ''findings necessary to revoke California's waiver of Federal preemption for its motorcycle fill-pipe and fuel tank opening regulations.'').

waiver should not have been withdrawn.

Second, even if the interpretation in SAFE 1 were appropriate, EPA concludes that SAFE 1 incorrectly found that California did not have a need for its specific standards. EPA has evaluated California's need for both requirements by applying both the traditional and the SAFE 1 interpretations of section 209(b)(1)(B). In doing so, EPA reviewed the record from the ACC program waiver proceedings, including CARB's ACC program waiver request and supporting documents, as well as the comments received as part of the SAFE 1 proceeding and the comments received under the present reconsideration of SAFE 1.[180] The record review focused on salient pronouncements and findings in the ACC program waiver decision, such as the relationship of both criteria and GHG pollutants and the impacts of climate change on California's serious air quality conditions. For example, the effects of climate change and the heat exacerbation of tropospheric ozone is well established. California's ACC program is established, in part, to address this. California's program, including its GHG emission standards, is also designed to address upstream criteria emission pollutants. The review did so primarily because SAFE 1 premised the withdrawal of the GHG standards at issue on the lack of a causal link between GHG standards and air quality conditions in California. The review included EPA's prior findings regarding heat exacerbation of ozone, a serious air quality issue recognized by EPA as presenting compelling and extraordinary conditions under the second waiver prong.

On completion of this review, EPA finds no basis for discounting the ample record support on California's need for both the GHG standards and the ZEV sales mandate to address compelling and extraordinary conditions in California when using both the traditional and SAFE 1 interpretation to the second waiver prong. Additionally, because of the way CARB's motor vehicle emission standards operate in tandem and are designed to reduce both criteria and GHG pollution and the ways in which GHG pollution exacerbates California's serious air quality problems, including the heat exacerbation of ozone, the Agency in SAFE 1 should not have evaluated California's specific ''need'' for GHG standards. In sum, in reconsidering SAFE 1, and after having now reviewed and evaluated the complete factual record, EPA reaffirms that California needs the GHG standards and ZEV sales mandate at issue to ''meet compelling and extraordinary conditions.''

A. Historical Practice

Under section 209(b)(1)(B), EPA shall not grant a waiver if California ''does not need such State standards to meet compelling and extraordinary conditions.'' For nearly the entire history of the waiver program, EPA has read the phrase ''such State standards'' in section 209(b)(1)(B) as referring back to standards ''in the aggregate,'' in the root paragraph of section 209(b)(1), which calls for California to make a protectiveness finding for its standards. EPA has interpreted the phrase ''in the aggregate'' as referring to California's program as a whole, rather than each State standard, and as such not calling for the Agency's standard-by-standard analysis of California's waiver request.[181] EPA has thus reasoned that both statutory provisions must be read together so that the Agency reviews the same standards that California considers in making its protectiveness determination and to afford California discretion.[182] The D.C. Circuit has also stated that ''[t]he expansive statutory language gives California (and in turn EPA) a good deal of flexibility in assessing California's regulatory needs. We therefore find no basis to disturb EPA's reasonable interpretation of the second criterion.'' [183]

In addressing the Agency's reading of section 209(b)(1)(B), for example, in the 1983 LEV waiver request EPA explained that:

> This approach to the ''need'' criterion is also consistent with the fact that because California standards must be as protective as Federal standards in the aggregate, it is permissible for a particular California standard or standards to be less protective than the corresponding Federal standard. For example, for many years, California chose to allow a carbon monoxide standard for passenger cars that was less stringent than the corresponding Federal standard as a ''trade-off'' for California's stringent nitrogen oxide standard. Under a standard of review like that proposed by MVMA/AIAM, EPA could not approve a waiver request for only a less stringent California standard because such a standard, in isolation, necessarily could be found to be contributing to rather than helping, California's air pollution problems.[184]

In 1994, EPA again had cause to explain the Agency's reading of section 209(b)(1)(B) in the context of California's particulate matter standards waiver request:

> [T]o find that the 'compelling and extraordinary conditions' test should apply to each pollutant would conflict with the amendment to section 209 in 1977 allowing California to select standards 'in the aggregate' at least as protective as federal standards. In enacting that change, Congress explicitly recognized that California's mix of standards could 'include some less stringent than the corresponding federal standards.' See H.R. Rep. No. 294, 95th Cong., 1st Sess. 302 (1977). Congress could not have given this flexibility to California and simultaneously assigned to the state the

[180] EPA notes that it reviewed the factual record within the ACC program waiver proceeding and finds there was no factual error in its evaluation of whether CARB's standards satisfied the second waiver prong. EPA also notes, merely as confirming the finding it made at the time of the ACC program waiver but not for purposes of making a new factual finding from that made at the time of the ACC program waiver decision, that the record and information contained in the SAFE 1 proceeding as well as the record and information contained in the Agency's reconsideration of SAFE 1 (including late comments submitted during the SAFE 1 proceeding and, in some cases, resubmitted during the Agency's reconsideration of SAFE 1) at each point in time clearly demonstrates the need of California's standards (whether evaluated as a program or as specific standards) to meet compelling and extraordinary conditions within California.

[181] ''The interpretation that my inquiry under (b)(1)(B) goes to California's need for its own mobile source program is borne out not only by the legislative history, but by the plain meaning of the statue as well.'' 49 FR at 18890.

[182] 74 FR at 32751 n. 44;.32761 n.104. EPA cited *Entergy Corp.* v. *Riverkeeper, Inc.,* 129 S. Ct. 1498 (2009) (''That view governs if it is a reasonable interpretation of the statute—not necessarily the only possible interpretation, nor even the interpretation deemed most reasonable by the courts''), and *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843–844 (1984).) (''It seems to us, therefore, that the phrase ''best available,'' even with the added specification ''for minimizing adverse environmental impact,'' does not unambiguously preclude cost-benefit analysis.''). *See also* 78 FR at 2126–2127 n. 78.

[183] *Am. Trucking Ass'n* v. *EPA,* 600 F.3d 624, 627 (D.C. Cir. 2010) *(ATA* v. *EPA). See also Dalton Trucking* v. *EPA,* No. 13–74019 (9th Cir. 2021) (''The EPA was not arbitrary and capricious in declining to find that 'California does not need such California standards to meet compelling and extraordinary conditions,' § 7543(e)(2)(A)(ii), under the alternative version of the needs test, which requires 'a review of whether the Fleet Requirements are per se needed to meet compelling and extraordinary conditions,' 78 FR at 58,103. The EPA considered 'the relevant factors,' *Motor Vehicle Mfrs. Ass'n of U.S.* v. *State Farm Mut. Auto. Ins. Co., Inc.,* 463 U.S. 29, 42–43 (1983), including statewide air quality, 78 FR 58,104, the state's compliance with federal National Ambient Air Quality standards for ozone and $PM_{2.5}$ on a statewide basis, *id.* at 58,103–04, the statewide public health benefits, *id.* at 58,104, and the utility of the Fleet Requirements in assisting California to meet its goals, *id.* at 58,110. Contrary to Dalton's argument, the EPA did not limit its review to two of California's fourteen air quality regions. The EPA examined the relevant data provided by CARB, and it articulated a 'satisfactory explanation for its action including a rational connection between the facts found and the choice made.' *See Motor Vehicle Mfrs. Ass'n of U.S., Inc.,* 463 U.S. at 43, 103 S.Ct. 2856 (cleaned up).'').

[184] 58 FR 4166, LEV Waiver Decision Document at 50–51.

seemingly impossible task of establishing that 'extraordinary and compelling conditions' exist for each standard.[185]

Congress has also not disturbed this reading of section 209(b)(1)(B) as calling for EPA review of California's whole program. With two noted exceptions described below, EPA has consistently interpreted this provision as requiring the Agency to consider whether California needs a separate motor vehicle emission program as compared to the specific standards in the waiver request at issue to meet compelling and extraordinary conditions.

Congress intended to allow California to address its extraordinary environmental conditions and foster its role as a laboratory for motor vehicle emissions control. The Agency's long-standing practice therefore has been to evaluate CARB's waiver requests with the broadest possible discretion to allow California to select the means it determines best to protect the health and welfare of its citizens in recognition of both the harsh reality of California's air pollution and to serve as a pioneer and a laboratory for the nation in setting new motor vehicle emission standards and developing control technology.[186] EPA notes that ''the statute does not provide for any probing substantive review of the California standards by federal officials.'' [187]

As a general matter, EPA has applied the traditional interpretation in the same way for all air pollutants, criteria and GHG pollutants alike.[188] As discussed in Section II, there have only been two exceptions to this practice: one in 2008 and one in 2019. In 2008, EPA for the first time analyzed California's waiver request under an alternative approach and denied CARB's waiver request. EPA concluded that section 209(b) was intended to allow California to promulgate state standards applicable to emissions from new motor vehicles to address air pollution problems that are local or regional, but that section 209(b)(1)(B) was not intended to allow California to promulgate state standards for emissions from new motor vehicles designed to address global climate change problems. Or, in the alternative, EPA concluded that effects of climate change in California were not compelling and extraordinary compared to the effects in the rest of the country.[189] EPA rejected this view a little over a year later in 2009 by applying the traditional interpretation in granting California's waiver request for the same GHG standard, finding no support in the statute or congressional intent for the alternative application of the statute.[190]

In evaluating the ACC program waiver in 2013, EPA applied the traditional interpretation to the ACC program waiver request and found that the Agency could not deny the waiver request under the second waiver prong.[191] Further, without adopting the alternative interpretation that had been applied in the 2008 GHG waiver denial, EPA assessed California's need for the GHG standards at issue and found that the Agency could not deny the ACC program waiver request, even applying the alternative interpretation. EPA noted that to the extent that it was appropriate to examine the CARB's need for the GHG standards at issue to meet compelling and extraordinary conditions, the Agency had discussed at length in the 2009 GHG waiver decision that California has compelling and extraordinary conditions directly related to regulations of GHGs.[192] Similarly, EPA explained that to the extent it was appropriate to examine California's need for the ZEV sales mandate, these requirements would enable California to meet both air quality and climate goals into the future.[193] Additionally, EPA recognized CARB's coordinated strategies reflected in the technologies envisioned to meet the ACC program requirements and in turn addressing both criteria pollutants and GHGs and the magnitude of the technology and energy transformation needed to meet such goals.[194]

[185] 49 FR at 18887, 18890.

[186] *See, e.g.,* S. Rep. No. 403, 90th Cong., 1st Sess. 33 (1967) (The waiver of preemption is for California's ''unique problems and pioneering efforts.''); 113 Cong. Rec. 30950, 32478 (''[T]he State will act as a testing agent for various types of controls and the country as a whole will be the beneficiary of this research.'') (Statement of Sen. Murphy).

[187] *Ford Motor Co.,* v. *EPA,* 606 F.2d 1293, 1300 (D.C. Cir. 1979).

[188] 74 FR at 32763–65; 76 FR 34693; 79 FR 46256; 81 FR 95982.

[189] 73 FR at 12160–64.

[190] 74 FR at 32744, 32746, 32763 (''The text of section 209(b) and the legislative history, when viewed together, lead me to reject the interpretation adopted in the March 6, 2008 Denial, and to apply the traditional interpretation to the evaluation of California's greenhouse gas standards for motor vehicles. If California needs a separate motor vehicle program to address the kinds of compelling and extraordinary conditions discussed in the traditional interpretation, then Congress intended that California could have such a program. Congress also intentionally provided California the broadest possible discretion in adopting the kind of standards in its motor vehicle program that California determines are appropriate to address air pollution problems and protect the health and welfare of its citizens. The better interpretation of the text and legislative history of this provision is that Congress did not use this criterion to limit California's discretion to a certain category of air pollution problems, to the exclusion of others. EPA concluded that even under this alternative approach California GHG standards were intended at least in part to address a local or regional problem because of the 'logical link between the local air pollution problem of ozone and GHG.'').

[191] 78 FR at 2129 (''CARB has repeatedly demonstrated the need for its motor vehicle program to address compelling and extraordinary conditions in California. As discussed above, the term compelling and extraordinary conditions 'does not refer to the levels of pollution directly.' Instead, the term refers primarily to the factors that tend to produce higher levels of pollution—geographical and climatic conditions (like thermal inversions) that, when combined with large numbers and high concentrations of automobiles, create serious air pollution problems. California still faces such conditions.'').

[192] *Id.* at 2129–30.

[193] *Id.* at 2129 (''[A]s EPA discussed at length in its 2009 GHG waiver decision, California does have compelling and extraordinary conditions directly related to regulations of GHG. EPA's prior GHG waiver contained extensive discussion regarding the impacts of climate change in California. In addition, CARB has submitted additional evidence in comment on the ACC waiver request that evidences sufficiently different circumstances in California. CARB notes that ''Record-setting fires, deadly heat waves, destructive storm surges, loss of winter snowpack—California has experienced all of these in the past decade and will experience more in the coming decades. California's climate—much of what makes the state so unique and prosperous—is already changing, and those changes will only accelerate and intensify in the future. Extreme weather will be increasingly common as a result of climate change. In California, extreme events such as floods, heat waves, droughts and severe storms will increase in frequency and intensity. Many of these extreme events have the potential to dramatically affect human health and well-being, critical infrastructure and natural systems.'' (footnotes omitted)).

[194] *Id.* at 2130–31 (''As CARB notes in its waiver request, the goal of the CARB Board in directing CARB staff to redesign the ZEV regulation was to focus primarily on zero emission drive—that is BEV, FCV, and PHEVs in order to move advanced, low GHG vehicles from demonstration phase to commercialization. CARB also analyzed pathways to meeting California's long term 2050 GHG reduction targets in the light-duty vehicle sector and determined that ZEVs would need to reach nearly 100 percent of new vehicle sales between 2040 and 2050. CARB also notes that the ''critical nature of the LEV III regulation is also highlighted in the recent effort to take a coordinated look at strategies to meet California's multiple air quality and climate goals well into the future. This coordinated planning effort, Vision for Clean Air: A Framework for Air Quality and Climate Planning (Vision for Clean Air) demonstrates the magnitude of the technology and energy transformation needed from the transportation sector and associated energy production to meet federal standards and the goals set forth by California's climate change requirements. . . . The Vision for Clean Air effort illustrates that in addition to the cleanup of passenger vehicles (at issue here) as soon as possible as required in the LEV III regulation, transition to zero- and near-zero emission technologies in all on- and off-road engine categories is necessary to achieve the coordinated goals. Therefore, EPA believes that CARB's 2018 and later MY ZEV standards represent a reasonable pathway to reach these longer term goals. Under EPA's traditional practice of affording CARB the broadest discretion possible, and deferring to CARB on its policy choices, we believe there is a rational connection between California ZEV standards and its attainment of long term air quality goals. Whether or not the ZEV standards achieve additional reductions by themselves above and beyond the LEV III GHG and criteria pollutant standards, the LEV III program overall does achieve

The only other exception to the application of the traditional interpretation was in SAFE 1, when EPA again used a standard-specific level of review and focused on California's need for GHG standards at issue under the waiver. There, EPA posited that section 209(b)(1)(B) called for a ''particularized nexus'' for California's motor vehicle standards: ''Congress enacted the waiver authority for California under section 209(b) against the backdrop of traditional, criteria pollutant environmental problems, under which all three links in this chain bear a particularized nexus to specific local California features: (1) Criteria pollutants are emitted from the tailpipes of the California motor vehicle fleet; (2) those emissions of criteria pollutants contribute to air pollution by concentrating locally in elevated ambient levels, which concentration, in turn; (3) results in health and welfare effects (*e.g.,* from ozone) that are extraordinarily aggravated in California as compared to other parts of the country, with this extraordinary situation being attributable to a confluence of California's peculiar characteristics, *e.g.,* population density, transportation patterns, wind and ocean currents, temperature inversions, and topography.'' [195] As support for the nexus test, EPA, for the first time in waiver decisions, relied on section 202(a) and its own terms of authority to inform interpretation of the second waiver prong.[196] In addition, EPA relied on legislative history to interpret ''compelling and extraordinary'' conditions as a reference to ''peculiar local conditions'' and ''unique problems'' in California.[197]

such reductions, and EPA defers to California's policy choice of the appropriate technology path to pursue to achieve these emissions reductions.'' (footnote omitted)).

[195] 84 FR at 51339.

[196] *Id.* at 51339–40.

[197] *Id.* at 51342 (quoting S. Rep. No. 403, 90th Cong. 1st Sess., at 32 (1967)) (''Congress discussed 'the unique problems faced in California as a result of its climate and topography.' H.R. Rep. No. 728, 90th Cong. 1st Sess., at 21 (1967). *See also* Statement of Cong. Holifield (CA), 113 Cong. Rec. 30942–43 (1967). Congress also noted the large effect of local vehicle pollution on such local problems. *See, e.g.,* Statement of Cong. Bell (CA) 113 Cong. Rec. 30946. As explained at proposal, Congress focus was on California's ozone problem, which is especially affected by local conditions and local pollution. *See* Statement of Cong. Smith (CA) 113 Cong. Rec. 30940–41 (1967); Statement of Cong. Holifield (CA), *id.,* at 30942. *See also, MEMA I,* 627 F.2d 1095, 1109 (D.C. Cir. 1979) (noting the discussion of California's 'peculiar local conditions' in the legislative history). In sum and as explained at proposal, conditions that are similar on a global scale are not 'extraordinary,' especially where 'extraordinary' conditions are a predicate for a local deviation from national standards, under section 209(b). 83 FR 43247.'').

Accordingly, EPA reasoned that California must demonstrate ''compelling and extraordinary circumstances sufficiently different from the nation as a whole to justify standards on automobile emissions which may, from time to time, need to be more stringent than national standards.'' [198]

In SAFE 1, EPA then posited that the nexus test should be applied to California's GHG standards specifically, rather than California's program ''as a whole'' under the traditional ''aggregate'' approach, ''to ensure that such standard is linked to local conditions that giv[e] rise to the air pollution problem, that the air pollution problem is serious and of a local nature, and that the State standards at issue will meaningfully redress that local problem.'' [199] As support for the GHG-specific scrutiny, EPA reasoned that ''[t]he Supreme Court's opinion in *UARG* v. *EPA,* 134 S. Ct. 2427 (2014), instructs that Clean Air Act provisions cannot necessarily rationally be applied identically to GHG as they are to traditional pollutants.'' [200]

Applying the nexus test, EPA concluded that California did not need its GHG standards to meet ''compelling and extraordinary conditions'' because they were missing a particularized nexus to specific local features. EPA in the alternative posited that ''even if California does have compelling and extraordinary conditions in the context of global climate change, California does not 'need' these standards under section 209(b)(1)(B) because they will not meaningfully address global air pollution problem of the sort associated with GHG emissions.'' [201] EPA also dismissed the 2009 GHG waiver conclusion on deleterious effects of GHG emissions on ozone (*e.g.,* how increases in ambient temperature are conducive to ground-level ozone formation), stating that such a relationship ''does not satisfy this requirement for a particularized nexus, because to allow such attenuated effects to fill in the gaps would eliminate the function of requiring such a nexus in the first place.'' [202]

B. Notice of Reconsideration of SAFE 1 and Request for Comment

In the Notice of Reconsideration of SAFE 1, EPA noted its interest in any new or additional information or comments regarding whether it appropriately interpreted and applied section 209(b)(1)(B) in SAFE 1. The Agency noted that EPA's finding in SAFE 1, that such standards were only designed to address climate change and a global air pollution problem, led EPA to a new interpretation of section 209(b)(1)(B). EPA solicited views on whether it was permissible to construe section 209(b)(1)(B) as calling for a consideration of California's need for a separate motor vehicle program where criteria pollutants are at issue as well as California's specific standards where GHG standards are at issue.

The Notice of Reconsideration also set forth that EPA's decision to withdraw the ACC program waiver as it relates to California's ZEV sales mandate was based on the same new interpretation and application of the second waiver prong and rested heavily on the conclusion that California only adopted the ZEV sales mandate requirement for purposes of achieving GHG emission reductions. EPA recognized that this conclusion in turn rested solely on a specific reading of a single sentence in CARB's ACC program waiver request.[203] EPA requested comment on these specific conclusions and readings as well as whether the withdrawal of the ACC program waiver, within the context of California's environmental conditions and as applied to the GHG standards and ZEV sales mandate requirement, was permissible and appropriate.

C. Comments Received

EPA received multiple comments on its decision to evaluate California's need for its GHG standards separate from its need for a separate motor vehicle emission program as a whole. Some commenters agreed that EPA could evaluate waiver requests for the specific GHG standards under the waiver along the lines of the Agency's pronouncements in SAFE 1. Additionally, commenters pointed to the method of EPA's review in SAFE 1—evaluating the standards individually, as they are received, rather than in the aggregate—as evidence of the flaw in the traditional interpretation.[204] Some commenters also echoed SAFE 1's concern that ''once EPA had determined that California needed its very first set of submitted standards to meet extraordinary and compelling conditions, EPA would never have the

[198] *Id.*

[199] *Id.* at 51345.

[200] *Id.* at 51340.

[201] *Id.* at 51349.

[202] *Id.*

[203] *Id.* at 51330 (''Regarding the ACC program ZEV mandate requirements, CARB's waiver request noted that there was no criteria emissions benefit in terms of vehicle (tank-to-wheel—TTW) emissions because its LEV III criteria pollutant fleet standard was responsible for those emission reductions.'').

[204] CEI at 13–14.

discretion to determine that California did not need any subsequent standards.'' [205]

Under this analysis of the specific standards at issue under the waiver, these commenters continued, California could not demonstrate that its GHG and ZEV standards were, on their own, compelling and extraordinary. These commenters agreed with SAFE 1's ''particularized nexus'' interpretation of ''compelling and extraordinary,'' arguing that the words required unique consequences in order to give adequate meaning to the words themselves and in order to overcome equal sovereignty implications.[206] Using this interpretation, these commenters concluded that, because ''GHG concentrations are essentially uniform throughout the globe, and are not affected by California's topography and meteorology,'' and because the entire nation would be affected by climate change, neither the effects of the regulations on climate change, nor the impacts of climate change on California could be considered ''compelling and extraordinary.'' [207] Some commenters also argued that these standards were unnecessary given California's ''deemed to comply'' provision, which would theoretically allow all automobile manufacturers to comply with California's standards by meeting the less stringent Federal GHG standards.[208]

In contrast, other commenters asked that EPA reverse its SAFE 1 section 209(b)(1)(B) determination by reverting to EPA's long-standing ''program-level'' approach to the ''need'' inquiry, where ''EPA considers California's need for its own mobile-source-emissions program as a whole, not whether California needs a particular standard for which it has requested a waiver.'' [209] These commenters noted the long tradition of interpreting California's need in the aggregate, an interpretation that SAFE 1 acknowledged was reasonable.[210] This interpretation, they argued, best aligned with the text, legislative history, and purpose of the waiver program.[211] For example, some commenters argued that, because feasibility was evaluated under an aggregate approach, it would be unreasonable for California's need for the program to be evaluated under a more restrictive approach.[212] These commenters also argued that Congress had expressed approval of this aggregate approach, citing legislative history from 1977 and 1990.[213] This approach, they continued, aligns with the Waiver Program's broad deference to California to create an entire regulatory program, which is comprised of regulations that interact with and affect each other.[214] One commenter also responded directly to the question EPA posed in its Notice of Reconsideration, whether it was ''permissible for EPA to construe section 209(b)(1)(B) as calling for consideration of California's need for a separate motor vehicle program where criteria pollutants are at issue and consideration of California's individual standards where GHG standards are at issue.'' [215] According to the commenter, ''The Supreme Court has rejected this 'novel interpretive approach' of assigning different meanings to the same statutory text in the same provision, depending on the application, because it 'would render every statute a chameleon.' '' [216]

These commenters also asked EPA to revert to the traditional interpretation of ''compelling and extraordinary'' instead of SAFE 1's ''particularized nexus'' formulation. Commenters noted the SAFE 1 requirement appears nowhere in the text of the statute.[217] Because of this absence, they continued, EPA's references to the legislative history from 1967 have no ''tether'' to the statutory text and cannot justify the nexus requirement.[218] Further, commenters argued that EPA's reliance on the equal sovereignty doctrine improperly informed how EPA should interpret the phrase ''compelling and extraordinary conditions'' in the second waiver prong, and therefore requiring such conditions to be sufficiently different or unique among states, was inappropriate.[219] Commenters argued that the equal sovereignty doctrine was inapplicable to the second waiver prong. They explained that the Supreme Court has only applied the ''rarely invoked'' doctrine of equal sovereignty in the ''rare instance where Congress undertook 'a drastic departure from basic principles of federalism' by authorizing 'federal intrusion into sensitive areas of state and local policymaking.' '' [220] Congress's exercise of its Commerce Clause power in regulating air pollution from new motor vehicles, commenters continued, is not such an ''intrusion.'' Moreover, they wrote, applying the equal sovereignty doctrine in this instance would actually ''diminish most States' sovereignty'' because it would ''reduce the regulatory options available to California and to other [section 177] States.'' This diminished sovereignty, they argued, would not ''enhance[e] the sovereignty of any State'' or ''alleviate'' any unjustified burden because ''Section 209(b)(1) imposes no such burden.'' [221]

[205] 84 FR at 51341. *See, e.g.,* NADA at 5; Urban Air at 25, 29–33; AFPM at 22–23.

[206] AFPM at 12; Urban Air at 4.

[207] CEI at 14–16 (''The resulting ''global pool'' of GHG emissions is not any more concentrated in California than anywhere else . . . [E]ven if one assumes ''compelling and extraordinary conditions'' can refer to climate change impacts, such as heat waves, drought, and coastal flooding, California's vulnerability is not ''sufficiently different'' from the rest of the nation to merit waiving federal preemption of state emission standards. Thus, California is not ''extraordinary'' in regard to either the ''causes'' of the ''effects'' of global climate change.''); NADA at 5 (''while vehicle GHG emissions also were, by definition, local, their impact on serious local air quality concerns could not be shown.''); AFPM at 11–14 (''Neither the causes nor effects of GHG emissions are compelling and extraordinary conditions, as they are global rather than local conditions, and California's GHG standards and ZEV mandate will not meaningfully address the causes or effects of these GHG emissions.'').

[208] NADA at 4–5; Urban Air at 33.

[209] States and Cities at 22 n.16.

[210] Twelve Public Interest Organizations at 7 (''The Trump EPA in turn acknowledged that this longstanding interpretation of Section 209(b)(1)(B) was a reasonable one, 84 FR at 51,341 . . . . '').

[211] States and Cities at 22 (citing 84 FR at 51341); Tesla at 11 (''The plural reference to 'such State standards' requires that the standards be considered in the aggregate as a group. This language stands in stark contrast to alternate phrasing that was available to Congress and that would have permitted a non-aggregate determination, such as: 'such State does not need a State standard to meet compelling and extraordinary conditions.' Indeed, alternative language referencing individual standards is present in subsection (b)(2), which references 'each State standard.' '').

[212] States and Cities at 25–26; Twelve Public Interest Organizations at 8 (''An aggregate approach to the consistency inquiry also makes sense under Section 209(b)(1)(C) because technological feasibility is effectively evaluated on a program basis. The feasibility of a new standard cannot be evaluated on its own if there are interactions with pre-existing standards. Such interactions between standards are what prompted Congress to add the ''in the aggregate'' phrase to section 209 in the first place.'').

[213] States and Cities at 26–27; Ozone Transport Commission (OTC), Docket No. EPA–HQ–OAR–2021–0257–0283 at 4.

[214] States and Cities at 27–28.

[215] 86 FR at 22429.

[216] States and Cities at 24 (quoting *Clark* v. *Martinez,* 543 U.S. 371, 382 (2005) and citing *U.S.* v. *Santos,* 553 U.S. 507, 522 (2008); *U.S. Dep't of the Treasury* v. *FLRA,* 739 F.3d 13,21 (D.C. Cir. 2014)). The commenter notes that in the SAFE 1 brief, EPA claimed that its new approach to section 209(b)(1)(B) would apply ''for all types of air pollutants'' but EPA could point to nowhere in SAFE 1 decision where this was said. *Id.* at 25. And ''only two sentences later,'' EPA acknowledged that its review under this second prong would change ''depending upon which 'air quality concerns' were implicated.'' *Id.*

[217] States and Cities at 34 (noting the lack of the words ''nexus,'' ''particularized,'' ''peculiar,'' and ''local'' anywhere in sections 209(b) or 202(a)(1)).

[218] *Id.* at 35.

[219] *Id.* at 41–43; Twelve Public Interest Organizations at 4–6.

[220] States and Cities at 42 (quoting *Shelby Cnty.* v. *Holder,* 570 U.S. 529, 535, 545 (2013)).

[221] *Id.* at 43; Twelve Public Interest Organizations at 5 (''Clean Air Act Section 209(b) places no extraordinary burden or disadvantage on one or more States. Rather, the statute benefits California by allowing the exercise of its police power authority to address its particular pollution control needs'').

Similarly, commenters rebutted SAFE 1's use of words like ''peculiar'' and ''unique'' to further define ''compelling and extraordinary.'' These words, they noted, appear nowhere in the text of section 209(b)(1)(B) and do not align with the plain meaning of the word ''extraordinary.'' [222] Further, they argued, this narrow interpretation ''would render the waiver provision unworkable'' as, ''for any given air pollutant, it is possible to identify other areas of the country that suffer from a similar pollution problem.'' [223] In fact, they continued, this argument was rejected in the 1967 legislative history and in 1984, ''when EPA thoroughly rebutted the assertion that California could not receive a waiver if individual pollutant levels were 'no worse than some other areas of the country.' '' [224] Moreover, they argued, the existence of section 177 necessarily acknowledges that other states may have the same or similar air pollution problems as California.[225]

Other commenters argued that California needed GHG standards to address ''compelling and extraordinary'' conditions in California even under the SAFE 1 interpretation of the second waiver prong. These commenters argued that GHG and ZEV standards produce both GHG and criteria pollution benefits, pointing to language in the ACC program waiver that acknowledged these dual benefits and to subsequent SIP approvals that incorporated the California standards in order to achieve criteria emission reductions.[226] In particular, commenters explained that the 2012 California waiver request established that the ZEV standard would reduce criteria pollution both ''by reducing emissions associated with the production, transportation, and distribution of gasoline'' and ''by driving the commercialization of zero-emission-vehicle technologies necessary to reduce future emissions and achieve California's long-term air quality goals.'' [227] As for the GHG standards, commenters noted that, as acknowledged in the ACC program waiver, ''global warming exacerbates criteria pollution and makes it harder to meet air pollution standards.'' [228] Thus, they argue, ''EPA expressly and improperly limited its Determination to consideration of the 'application of section 209(b)(1)(B) to California's need *for a GHG climate program.*'' [229] Given EPA's consistent acceptance that ''California's criteria pollution 'conditions' are 'extraordinary and compelling' and that the record demonstrates that California's GHG and ZEV standards reduce criteria emissions in California,'' EPA should ''reverse its SAFE 1 section 209(b)(1)(B) determination and the waiver withdrawal that rested on it—regardless of whether EPA reverts to its traditional, program-level approach.'' [230]

Regardless of the emissions benefits of the standards, some commenters argued that California's plan to address both long-term and short-term climate and criteria pollutant reduction goals is entitled to deference. Thus, even if ''the mandate truly added nothing to the emission benefits of California's standards for vehicular emissions of criteria and greenhouse gas pollutants,'' commenters claimed, ''the mandate would simply constitute the State's choice of means for automakers to comply with its standards.'' [231] These commenters further argued that section 209(b)(1)(B) ''does not authorize EPA to inquire into whether the means to comply with California emission standards, as opposed to the actual standards themselves, are needed to meet compelling and extraordinary conditions.'' [232] Commenters also claimed that EPA's argument, that California cannot need the GHG and ZEV standards because those standards alone would not ''meaningfully address global air pollution problems'' posed by climate change, ''lacks merit'' and ''is illogical.'' [233] Such an approach, they

[222] States and Cities at 38–39 (explaining that the existence of those words in the legislative history ''simply highlight that Congress did *not* codify [them] in Section 209(b)(1)(B)'' and that plain meaning of ''extraordinary'' is ''out of the ordinary''); Twelve Public Interest Organizations app. 1 at 49 (''Congress understood, even in 1967, that '[o]ther regions of the Nation may develop air pollution situations related to automobile emissions which will require standards different from those applicable nationally.' S. Rep. No. 90–403, at 33.'').

[223] Tesla at 9.

[224] *Id.* (quoting 49 FR at 18887, 18891) (stating that EPA explained that ''there is no indication in the language of section 209 or the legislative history that California's pollution problem must be the worst in the country, for a waiver to be granted.'')).

[225] Twelve Public Interest Organizations app. 1 at 49; States and Cities at 38–39.

[226] States and Cities at 9–14, 30–31; Center for Biological Diversity, Docket No. EPA–HQ–OAR–2021–0257–0358 at 2 (''The Trump EPA improperly separated California's need for greenhouse gas regulations from its need for criteria pollutant standards. In reality, these two goals are tightly linked, and both are critical to the Clean Air Act's goals of safeguarding public health and welfare.''); San Joaquin Valley Air Pollution Control District (SJVAPCD), Docket No. EPA–HQ–OAR–2021–0257–0105 at 3 (''The District's *2016 Plan for the 2009 9-Hour Ozone Standard* adopted June 16, 2016, and *2018 Plan for the 1997, 2006, and 2012 PM 2.5 Standards,* adopted November 15, 2018, both rely on emission reductions from California's Advanced Clean Cars regulation and other mobile source measures to support the Valley's attainment of the federal health-based NAAQS.''); NCAT at 11 (''In addition, California's ZEV standards are intended to and do achieve significant incremental reductions of NOx and other non-GHG emissions.''); Tesla at 10–11 (''In comments submitted to the EPA in 2009 regarding a preemption waiver, [California] explained that it 'specifically designed its GHG standards for criteria pollutants.' It also emphasized that it has 'frequently referenced the science to support GHG standards as a necessary method for controlling ozone and particulate matter pollution' and has 'consistently recognized that the State's ability to reduce nonattainment days for ozone and wildfire-caused particulate matter depends on its ability to reduce GHG emissions. . . . EPA also has repeatedly expressed its own understanding that GHG standards should be viewed as a strategy to help control criteria pollutants to address National Ambient Air Quality Standards nonattainment.'''); Twelve Public Interest Organizations at 5 (''For example, atmospheric heating due to global warming can increase the production of ground-level ozone in California, which suffers from extraordinary amounts of locally reacting nitrogen oxides and volatile organic compounds.'').

[227] Center for Biological Diversity at 2–3. In contrast, some commenters, echoing SAFE 1, argued that these upstream emission benefits should not be considered in determining the criteria pollutant benefits of these standards. CEI at 16 (''Although NHTSA and EPA are required to consider all relevant factors when determining CAFE and tailpipe CO2 standards, it is inappropriate to elevate stationary source criteria pollutant emissions into a make-or-break factor in waivers for mobile source programs. The Clean Air Act already provides the EPA with ample authorities to regulate stationary sources, including the NAAQS program, New Source Performance Standards program, Prevention of Significant Deterioration of Air Quality program, Acid Rain program, and Regional Haze program. If Congress wanted NHTSA's CAFE program and EPA's mobile source program to prioritize reductions of indirect stationary source emissions, it could easily have said so. The indirect effects on stationary source emissions are not even mentioned.'').

[228] Center for Biological Diversity at 3.

[229] States and Cities at 28 (citing 84 FR at 51339 (emphasis added)) (limiting section 209(b)(1)(B) consideration to ''the case of GHG emissions.'').

[230] States and Cities at 29. The commenter notes that EPA never considered whether California needed those criteria emission reductions from its ZEV and GHG standards because it refused to consider those criteria reductions at all: ''EPA attempted to justify disregarding record evidence and its own prior findings concerning the criteria emission benefits of these California standards by mischaracterizing CARB's 2012 waiver request. . . . But, having chosen to *sua sponte* reopen the question whether California continues to need standards it has been implementing for six years, . . ., EPA could not limit its consideration to what the standards were intended to achieve when they were originally designed or presented. . . . . CARB (and others) asserted clearly in SAFE 1 comments that both the GHG and ZEV standards produce criteria pollution benefits upon which California and other States rely to improve air quality.'' *Id.* at 29–30.

[231] Twelve Public Interest Organizations at 9–10.

[232] *Id.* (citing *MEMA I,* 627 F.2d 1095, 1111–14 (D.C. Cir. 1979)).

[233] States and Cities at 40, 49–50; NCAT at 11 (''EPA's argument that California does not 'need' vehicle standards that reduce GHG emissions because such standards alone cannot meaningfully reduce the impacts of climate change in California lacks merit. 84 FR at 51,346–47. EPA's approach in SAFE 1 read requirements into the statute that Congress did not choose to impose: That a single standard be sufficient to resolve an environmental problem caused by multiple and diverse sources. Instead, need should be defined by reference to the underlying problem, and California's standards are

Continued

explained ''amounts to a conclusion that California is forbidden from acting precisely because climate change is a global threat—when in fact the global aspect of this problem demonstrates the need for California to take action,'' a conclusion, they noted, that was rejected by the Supreme Court in *Massachusetts* v. *EPA*.[234] Even if there was some merit to the argument, one commenter argued, SAFE 1's assertion that the regulations ''would have only a *de minimis* effect on climate change understates the impact that collective action by California and the Section 177 states can have on GHG emissions.'' [235] The commenter noted that ''[w]ith a total population of over 140 million people, these 19 jurisdictions collectively account for more than 42 percent of the U.S. population . . . and more than 40 percent of the U.S. new car market.'' [236]

Finally, these commenters also argued that climate change and its impacts are, themselves, ''extraordinary and compelling'' conditions. They provided evidence of increased weather events, agricultural effects, and wildfires, amongst other impacts of climate change, which have already begun to severely affect California.[237]

one important element of the broader response.''); Tesla at 8–9 (citing *Massachusetts* v. *EPA,* 549 U.S. 497, 525–26 (2007)) (''Nor is it dispositive that developing countries such as China and India are poised to increase greenhouse gas emissions substantially over the next century: A reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere.'').

[234] Tesla at 8–9 (''Indeed, the Supreme Court rejected this logic in *Massachusetts* v. *EPA,* 549 U.S. 497 (2007), explaining: ''Because of the enormity of the potential consequences associated with man-made climate change, the fact that the effectiveness of a remedy might be delayed during the (relatively short) time it takes for a new motor-vehicle fleet to replace an older one is essentially irrelevant.''); States and Cities at 41.

[235] NESCAUM at 7.

[236] *Id.*

[237] States and Cities at 43–48; Twelve Public Interest Organizations at 5; Center for Biological Diversity at 3; Tesla at 8–9. States and Cities at 43–48; Twelve Public Interest Organizations at 5–6; Center for Biological Diversity at 3 (''California *also* experiences uniquely dangerous effects from increases in greenhouse gases. For example, the California legislature has found that global warming will cause adverse health impacts from increased air pollution and a projected doubling of catastrophic wildfires. Many of the state's most extreme weather events have occurred in the last decade, including a severe drought from 2012–2016, an almost non-existent Sierra Nevada winter snowpack in 2014–2015, three of the five deadliest wildfires in state history, and back-to-back years of the warmest average temperatures on record. These ongoing disasters demonstrate California's status as 'one of the most 'climate-challenged' regions of North America.' '').

D. Analysis: California Needs the ACC Program GHG Standards and ZEV Sales Mandate To Address Compelling and Extraordinary Conditions Under Section 209(b)(1)(B)

In this action, EPA first finds that the Agency should not have reinterpreted section 209(b)(1)(B) in evaluating California's ''need'' for GHG standards and ZEV sales mandate requirements at issue. The analysis below walks through the statutory language and history associated with this provision. As part of this discussion, the relationship of this provision and California's authority and deference is highlighted. The two interpretations of the waiver prong are then reviewed, presenting the Agency's rationale for its findings of the inappropriate SAFE 1 interpretation and support for its conclusion about the better interpretation. Second, as shown below, the factual record before the Agency at the time of SAFE 1 supports the GHG standards and ZEV sales mandate requirements at issue under either the traditional or SAFE 1 interpretation of section 209(b)(1)(B).

1. EPA Is Withdrawing the SAFE 1 Section 209(b)(1)(B) Interpretation

Except for two short-lived exceptions in the context of the 2008 waiver denial and SAFE 1, EPA has consistently recognized that reading the ''needs'' test of the second waiver prong as calling for a standard-specific evaluation would be inconsistent with congressional intent given the text of section 209(b)(1) legislative history, as well as the way the different standards in the ACC program work together to reduce criteria and GHG pollution and spur innovation. As further explained below, all of these aspects lend support to the Agency practice of not subjecting California's waiver requests to review of the specific standards under the second waiver prong, and we agree that the traditional interpretation of section 209(b) is, at least, the better interpretation.

Under section 209(b)(1)(B), EPA must grant a waiver request unless the Agency finds that California ''does not need such State standards to meet compelling and extraordinary conditions.'' EPA has historically read the phrase ''such State standards'' in section 209(b)(1)(B) as referring back to standards ''in the aggregate'' in section 209(b)(1), which addresses the protectiveness finding that California must make for its waiver requests. In addition, as EPA has explained in the past, reading the provision otherwise would conflict with Congress's 1977 amendment to the waiver provision to allow California's standards to be ''at least as protective'' as the federal standards ''in the aggregate.'' This amendment must mean that some of California's standards may be weaker than federal standards counterbalanced by others that are stronger. If, however, a waiver can only be granted if each standard on its own meets a compelling need, then California could never have a standard that is weaker than the federal standard, rendering Congress's 1977 amendment inoperative. Congress would not have created the option for California's individual standards to be at least as protective ''in the aggregate'' and then taken that option away in the second waiver prong's ''compelling need'' inquiry.

In addition, EPA has reasoned that giving effect to section 209(b)(1) means that both subparagraph (b)(1)(B) and paragraph (b)(1) must be read together such that the Agency reviews the same standards that California considers in making its protectiveness determination. ''§ 209 (formerly § 208) was amended to require the U.S. Environmental Protection Agency (EPA) to consider California's standards as a package, so that California could seek a waiver of preemption if its standards 'in the aggregate' protected public health at least as well as federal standards.'' [238]

EPA has thus explained the reasoning for the reading of ''such State standards'' for instance, as follows:

> [I]f Congress had intended a review of the need for each individual standard under (b)(1)(B), it is unlikely that it would have used the phrase ''. . . does not need such state standards,'' which apparently refers back to the phrase ''State standards . . . in the aggregate,'' as used in the first sentence of section 209(b)(1), rather than to the particular standard being considered. The use of the plural, *i.e.,* ''standards,'' further confirms that Congress did not intend EPA to review the need for each individual standard in isolation.[239]

EPA has also explained that ''to find that the 'compelling and extraordinary conditions' test should apply to each pollutant would conflict with the amendment to section 209 made in 1977 allowing California to select standards 'in the aggregate' at least as protective as federal standards. In enacting that change, Congress explicitly recognized that California's mix of standards could include some less stringent than the corresponding federal standards.'' [240] This is in accord with *MEMA I,* where the D.C. Circuit explained that:

> The intent of the 1977 amendment was to accommodate California's particular concern

[238] *Motor Vehicle Mfrs. Ass'n* v. *NYS Dep't of Env't Conservation,* 17 F.3d 521, 525 (2d Cir. 1994).

[239] 49 FR at 18890.

[240] *Id.* at 18890 n.24.

with oxides of nitrogen, which the State regards as a more serious threat to public health and welfare than carbon monoxide. California was eager to establish oxides of nitrogen standards considerably higher than applicable federal standards, but technological developments posed the possibility that emission control devices could not be constructed to meet both the high California oxides of nitrogen standard and the high federal carbon monoxide standard.[241]

EPA has further explained that the crucial consequence of the 1977 Amendment was to require waiver grants for California's specific standards that are part of the State's overall approach to reducing vehicle emissions to address air pollution even if those specific standards might not be needed to address compelling and extraordinary conditions.[242] For instance, EPA has previously granted a waiver for what was then described as ''harmless emissions constituents such as methane'' while reminding objectors of ''EPA's practice to leave the decisions on controversial matters of public policy, such as whether to regulate methane emissions, to California.'' [243] Similarly, in the 1984 p.m. standards waiver decision, EPA also discussed California's ''need'' for its own standards at length in response to comments that California must have worse air quality problems than the rest of the country to qualify for a waiver.[244] There, EPA explained that California need not ''have a 'unique' particulate problem, *i.e.,* one that is demonstrably worse than in the rest of the country [because], there is no indication in the language of section 209 or the legislative history that California's pollution problem must be the worst in the country, for a waiver to be granted.'' [245] Indeed, the word ''unique'' is not contained in the statutory provision. EPA further explained that ''even if it were true that California's total suspended particulate problem is, as certain manufacturers argue, no worse than some other areas of the country, this does not mean that diesel particulates do not pose a special problem in California.'' [246]

As explained at length earlier, EPA believes Congress intended the Agency to grant substantial deference to California on its choice of standards that are appropriate to meet its needs. EPA has explained that ''Congress has made it abundantly clear that the manufacturers would face a heavy burden in attempting to show 'compelling and extraordinary conditions' no longer exist: The Administrator, thus, is not to overturn California's judgment lightly. Nor is he to substitute his judgment for that of the State. There must be ''clear and compelling evidence that the State acted unreasonably in evaluating the relative risks of various pollutants in light of the air quality, topography, photochemistry, and climate in that State, before EPA may deny a waiver.'' [247] Likewise, the House Committee Report explained for instance that ''[t]he [1977] amendment is intended to ratify and strengthen the California waiver provision and to affirm the underlying intent of that provision, *i.e.,* to afford California the *broadest possible discretion* in selecting the best means to protect the health of its citizens and the public welfare.'' [248] EPA's past practice prior to SAFE 1, except for one instance, was consistent with this deferential stance.

In enacting section 209(b)(1), Congress struck a deliberate balance first in 1967 when it acknowledged California's serious air quality problems as well as its role as a laboratory for emissions control technology for the country,[249] and again, in the 1977 Amendments that allowed for California to seek and obtain waivers for standards that are less stringent than the federal standards (by amending section 209(b)(1)(A)) and also added section 177 to acknowledge that states may have air quality problems similar to California's by allowing states, subject to certain conditions, to adopt California's new motor vehicle standards once waived by EPA.[250] These provisions struck a balance between having only one national standard and having 51 different state standards by settling on two standards—a federal one and a California one that other states may also adopt. Since 1967, in various amendments to section 209, Congress has also not disturbed this reading of section 209(b)(1)(B) as calling for the review of the standards as a whole program. Likewise, Congress has also not placed any additional constraints on California's ability to obtain waivers beyond those now contained in section 209(b)(1). The Agency has thus viewed the text, legislative history, and structure of section 209(b)(1) as support for the program-level review of waiver requests as well for the conclusion that California's air quality need not be worse than the rest of the country for EPA to grant a waiver of preemption. In addition, to the extent that SAFE 1 was intended to preclude California's regulation of all greenhouse gases from light-duty vehicles, the SAFE 1 interpretation creates a structural conflict within the relevant CAA provisions and could also create an inability for California to address GHG emissions and its contribution to the serious air quality problems within the State. There is a fundamental relationship between sections 209(a) and 209(b). Section 209(a) preempts states from adopting or enforcing new motor vehicle emission standards, and section 209(b) calls for EPA to waive that preemption for California vehicular emission standards unless EPA finds that one or more of the waiver criteria set out therein are not met. Nothing on the face of the CAA or applicable legislative history indicates that the scope of section 209(b)—the pollutants for which California may obtain a waiver—is more limited than the scope of section 209(a).[251] The D.C. Circuit has

[241] *MEMA I,* 627 F.2d 1095, 1110 n.32 (D.C. Cir. 1979).

[242] 74 FR at 32761 (''Congress decided in 1977 to allow California to promulgate individual standards that are not as stringent as comparable federal standards, as long as the standards are 'in the aggregate, at least as protective of public health and welfare as applicable federal standards.'''); ''[T]he 1977 amendments significantly altered the California waiver provision.'' *Ford Motor Co.,* 606 F.2d 1293, 1302 (D.C. Cir. 1979).

[243] 43 FR at 25735.

[244] It bears note that these are the same kinds of comments that EPA received in the context of the ACC program waiver proceedings on California's need for GHG standards.

[245] 49 FR at 18891.

[246] *Id.*

[247] *Id.* at 18890 n.25 (citing H.R. Rep. No. 95–294, 95th Cong., 1st Sess. 302 (1977)).

[248] *MEMA I,* 627 F.2d at 1110 (citing H.R. Rep. No. 294, 95th Cong., 1st Sess. 301–02 (1977)) (emphasis added). Congress amended section 209(b)(1)(A) so that California's determination that its standards are as at least as protective as applicable Federal standards so that such determination may be done ''in the aggregate'' looking at the summation of the standards within the vehicle program.

[249] The CAA has been a paradigmatic example of cooperative federalism, under which ''States and the Federal Government [are] partners in the struggle against air pollution.'' *General Motors Corp.* v. *United States,* 496 U.S. 530, 532 (1990). Motor vehicles ''must be either 'federal cars' designed to meet the EPA's standards or 'California cars' designed to meet California's standards.'' *Engine Mfrs.,* 88 F.3d at 1079–80, 1088 (''Rather than being faced with 51 different standards, as they had feared, or with only one, as they had sought, manufacturers must cope with two regulatory standards.''). *See also MEMA II,* 142 F.3d at 463.

[250] ''§ 177 . . . permitted other states to 'piggyback' onto California 's standards, if the state's standards 'are identical to the California standards for which a waiver has been granted for such model year.''' *Motor Vehicle Mfrs. Ass'n* v. *New York State Dep't of Envtl. Conservation,* 17 F.3d 521, 525 (2d Cir. 1994).

[251] EPA believes that, to the extent the SAFE 1 interpretation has the practical effect of defining or implementing the scope of section 209(b) differently depending on the pollutants involved, the interpretation is contrary to legislative intent and the Agency's historic practice given the criteria emission benefits of CARB's GHG emission

Continued

already held as much as to section 209(a): ''whatever is preempted [by section 209(a)] is subject to waiver under subsection (b).'' [252] As demonstrated by EPA's review of the record in this decision, California's GHG emission standards at issue meet the SAFE 1 interpretation of the second waiver prong. Nevertheless, to the extent that SAFE 1 was intended to preclude all California regulation of greenhouse gases, EPA believes it improper to exclude entirely a pollutant from a waiver under section 209(b) that is otherwise preempted by section 209(a).

In addition, Congress has cited California's GHG standards and ZEV sales mandate in subsequent legislation. Federal procurement regulations direct the EPA to issue guidance identifying the makes and models numbers of vehicles that are low GHG emitting vehicles.[253] In a clear reference to California's motor vehicle GHG standards, Congress has required EPA when identifying those vehicles to ''take into account the most stringent standards for vehicle greenhouse gas emissions applicable to and enforceable against motor vehicle manufacturers for vehicles sold anywhere in the United States.'' [254] And in its State Implementation Plan provision regarding fleet programs required for certain non-attainment areas relating to issuing credits for cleaner vehicles, Congress stated that the ''standards established by the Administrator under this paragraph . . . shall conform as closely as possible to standards which are established for the State of California for ULEV and ZEV vehicles in the same class.[255] Congress would not likely have adopted California's standards into its own legislation if it believed those standards to be preempted.

EPA also disagrees with SAFE 1's related argument that the statutory criteria must be interpreted in the context of the constitutional doctrine of ''equal sovereignty.'' As explained in detail in Section VIII, waiver requests should be reviewed based solely on the criteria in section 209(b)(1) and the Agency should not consider constitutional issues in evaluating waiver requests.[256] The constitutionality of section 209 is not one of the three statutory criteria for reviewing waiver requests. However, because the Agency asserted in SAFE 1 that the equal sovereignty doctrine formed a gloss on its statutory interpretation of the three criteria, EPA addresses that argument here briefly. In short, in SAFE 1, EPA stated that because section 209(b)(1) provides ''extraordinary treatment'' to California, the second waiver prong should be interpreted to require a ''state-specific'' and ''particularized'' pollution problem.[257] But section 177's grant of authority to other states to adopt California's standards undermines the notion that the regulatory scheme treats California in an extraordinary manner. Indeed, if section 209(b) is interpreted to limit the types of air pollution that California may regulate, it would diminish the sovereignty of California and the states that adopt California's standards pursuant to section 177 without enhancing any other state's sovereignty. Nor does section 209(b) impose any burden on any state. For these reasons, EPA agrees with commenters who argued that the Supreme Court's decision in *Shelby County* is inapposite. In section 209(b), Congress did not authorize ''federal intrusion into sensitive areas of state and local policymaking.'' [258] Rather, it underscored a foundational principle of federalism—allowing California to be a laboratory for innovation. Nor is section 209(b) an ''extraordinary departure from the traditional course of relations between the States and the Federal Government.'' [259] To the contrary, it is just one of many laws Congress passes that treat States differently, and where, as discussed more fully below, Congress struck a reasonable balance between authorizing one standard and authorizing 51 standards in deciding to authorize two. SAFE 1's invocation of the rarely used equal sovereignty principle as an aid in interpreting the second waiver prong simply does not fit section 209.

SAFE 1 dismissed the Agency's traditional interpretation of the second waiver prong under which EPA reviews the same standards that California considers in making its protectiveness determination, asserting that the practical implications of reviewing standards in the ''aggregate'' compared to specific standards presented in a waiver request meant that the Agency would never have the discretion to determine that California did not need any subsequent standards. But nothing in section 209(b)(1)(B) can be read as calling for scrutinizing the specific California standards under the waiver.[260] Under section 209(b)(1)(B), EPA is to grant a waiver unless California does not need ''such State standards'' (plural). EPA interprets section 209(b)(1)(B) to refer back to the phrase ''in the aggregate'' in section 209(b)(1), which was added in the 1977 CAA Amendments when Congress removed the stringency requirements for waiver of California standards allowing instead for standards that are not as stringent as comparable federal standards, so long as the standards were ''in the aggregate, at least as protective of public health and welfare as applicable Federal standards.'' EPA believes that referring back to section 209(b)(1) is appropriate given that it precedes the language prior to section 209(b)(1)(B) and is in accord with the deference Congress intended by the 1977 Amendments.[261] Conversely, EPA believes that under the SAFE 1 interpretation California would, of necessity, be required to make a protectiveness finding for each of the specific standards, and the Agency believes this would be an inappropriate outcome from SAFE 1. Under the 1977 Amendments, California can ''include some less stringent [standards] than the corresponding federal standards.'' [262] As previously explained, ''Congress could not have given this flexibility to California and simultaneously assigned to the state the seemingly impossible task of establishing that 'extraordinary and compelling conditions' exist for each standard.'' [263]

SAFE 1 further argued that its interpretation read the use of ''such standards'' consistently between the second and third waiver prongs,

standards and ZEV sales requirements as well as the impacts of climate change on California's local and regional air quality.

[252] *MEMA I,* 627 F.2d 1095, 1106–08 (D.C. Cir. 1979).

[253] 42 U.S.C. 13212(f)(3).

[254] *Id.*

[255] 42 U.S.C. 7586(f)(4).

[256] 78 FR at 2145.

[257] 84 FR 51340, 51347.

[258] *Shelby County* v. *Holder,* 570 U.S. 529, 535, 545 (2013).

[259] *Id.*

[260] In the 2009 GHG waiver, and again in the 2013 ACC program waiver, EPA explained that the traditional approach does not make section 209(b)(1)(B) a nullity, as EPA must still determine whether California does not need its motor vehicle program to meet compelling and extraordinary conditions as discussed in the legislative history. Conditions in California may one day improve such that it may no longer have a need for its motor vehicle program, or a program designed for a particular type of air pollution problem, if the underlying specific air pollutant is no longer at issue.

[261] EPA had applied the traditional interpretation of the second waiver prong prior to the 1977 Amendments.

[262] *See* H.R. Rep. No. 294, 95th Cong., 1st Sess. 302 (1977); ''In further amendments to the Act in 1977, § 209 (formerly § 208) was amended to require the U.S. Environmental Protection Agency (EPA) to consider California's standards as a package, so that California could seek a waiver from preemption if its standards 'in the aggregate' protected public health at least as well as federal standards.'' *Motor Vehicle Mfrs. Ass'n* v. *NYS Dep't of Env't Conservation,* 17 F.3d at 525.

[263] 49 FR at 18890 n.24.

sections 209(b)(1)(B) and (C).[264] It is true that section 209(b)(1)(C) employs the same phrase ''such State standards'' as employed in section 209(b)(1)(B), and it similarly uses that phrase to refer to standards in the aggregate. Indeed, section 209(b)(1)(C) involves an analysis of feasibility that can take more than the feasibility and impacts of the new standards into account. The feasibility assessment conducted for a new waiver request focuses on the standards in that request but builds on the previous feasibility assessments made for the standards already in the program and assesses any new feasibility risks created by the interaction between the standards in the petition and the existing standards.[265]

In sum, EPA now views as inconsistent with congressional intent the SAFE 1 interpretation, which was a flawed interpretation and also a significant departure from the traditional interpretation under which the Agency reviews California's need for the same standards as those that the State determines are ''in the aggregate'' as protective of public health and welfare, under section 209(b)(1).[266] EPA believes the traditional interpretation is, at least, the better reading of the statute.

As previously explained, in reviewing waiver requests EPA has applied the traditional interpretation in the same way for all air pollutants, criteria and GHG pollutants alike.[267] In SAFE 1, however, EPA reinterpreted section 209(b)(1)(B) and further set out a particularized nexus test and applied this test separately to GHG standards at issue. SAFE 1 then concluded that no nexus exists for GHG emissions in California.[268] SAFE 1 further posited that California must demonstrate ''compelling and extraordinary circumstances sufficiently different from the nation as a whole to justify standards on automobile emissions which may, from time to time, need to be more stringent than national standards.'' [269] This has resulted in potentially different practical results depending on whether GHG standards or criteria emission pollutants are at issue, a distinction neither found in nor supported by the text of section 209(b)(1)(B) and legislative history. Specifically, SAFE 1 would have the ACC program MYs 2017–2025 criteria pollutants standards subject to review under the traditional interpretation while GHG standards at issue would be subject to review under the SAFE 1 particularized nexus test or individualized scrutiny.[270] This uneven application is even more irreconcilable given that California's motor vehicle emission program includes two GHG standards for highway heavy-duty vehicles that EPA previously reviewed under the traditional approach.[271] EPA acknowledges that ascribing different meanings to the same statutory text in the same provision here, depending on its application, ''would render every statute a chameleon.'' [272] Nothing in either section 209 or the relevant legislative history can be read as calling for a distinction between criteria pollutants and GHG standards and thus, the individualized scrutiny under the SAFE 1 particularized nexus test.[273] Nothing in section 209(b) can be read as calling for EPA to waive preemption only if California seeks to enforce criteria pollutant standards. The Administrator is required to waive the preemption in section 209(a) unless California ''does not need *such State standards to meet compelling and extraordinary conditions.*'' [274] This is in stark contrast to, for example, section 211(c)(4)(C), which calls for a waiver of preemption only if a state demonstrates that a fuel program is ''necessary'' to achieve the NAAQS.[275] Moreover, as previously noted, ''[I]f Congress had intended a review of the need for each individual standard under (b)(1)(B), it is unlikely that it would have used the phrase ''. . . does not need *such* state standards'' (emphasis in original), which apparently refers back to the phrase ''State standards . . . in the aggregate as used in the first sentence of section 209(b)(1), rather than the particular standard being considered.'' [276] EPA has also explained that an individualized review of standards would mean that Congress ''g[ave] flexibility to California and simultaneously assigned to the state the seemingly impossible tasks of establishing that 'extraordinary and compelling conditions' exist for each less stringent standard.'' [277]

[264] Section 209(b)(1)(C) provides that no such waiver shall be granted if the Administrator finds that ''such State standards and accompanying enforcement procedures are not consistent with section 7521(a) [202(a)] of this title.''

[265] For example, in the 2013 ACC waiver that contains CARB's LEV III criteria pollutant standards and GHG emission standards, as well as the ZEV sales mandate, EPA assessed information submitted by CARB regarding the technological feasibility, lead time available to meet the requirements, and the cost of compliance and the technical and resource challenges manufacturers face in complying with the requirements to simultaneously reduce criteria and GHG emissions. 78 FR at 2131.

[266] 84 FR at 51345. EPA notes that in SAFE 1 the following rationale was used to interpret both 209(b)(1)(C) and then connect it with 209(b)(1)(B): ''[B]ecause both sections 209(b)(1)(B) and (C) employ the term 'such state standards,' it is appropriate for EPA to read the term consistently between prongs (B) and (C). Under section 209(b)(1)(C), EPA conducts review of standards California has submitted to EPA for the grant of a waiver to determine if they are consistent with section 202(a). It follows then that EPA must read 'such state standards' in section 209(b)(1)(B) as a reference to the same standards in subsection (C).'' Although the Agency has not pointed to 209(b)(1)(C) as a basis of statutory construction to support the traditional interpretation of 209(b)(1)(B), EPA nevertheless believes it is supportive. EPA notes that the term ''such state standards'' in 209(b)(1)(C) allows the Agency, in appropriate circumstances, to review the consistency of CARB's suite of standards, for a particular vehicle category, with section 202(a). For example, EPA evaluated all of the standards (LEV III criteria pollutant, ZEV sales mandate, and GHG standards) of the ACC program in recognition of the aggregate costs and lead time associated with CARB's standards as well as technologies that may be employed to meet more than one standard. 78 FR 2131–45. EPA's assessment under 209(b)(1)(C) is not in practice a standard-by-standard review. EPA believes it appropriate to read the entirety of 209 together, along with its purposes, in order to properly interpret its components such as 209(b)(1)(B).

[267] 74 FR at 32763–65; 76 FR at 34693; 79 FR at 46256; 81 FR at 95982.

[268] SAFE 1 also relied on *UARG* v. *EPA,* 134 S. Ct. 2427 (2014), where the Supreme Court disagreed with the Agency's decision to regulate all sources of GHG under Titles I and V as the consequence of the Agency's section 202(a) endangerment finding for motor vehicle GHG emissions. In EPA's view upon reconsideration of SAFE 1, *UARG* is distinguishable because here the Agency is acting under a specific exemption to section 202(a) that allows for California to set its own standards for motor vehicle GHG standards under California state law, and thus, regulate major sources of GHG emissions within the State. California's authority to promulgate standards is neither contingent nor dependent on the Agency's section 202(a) endangerment finding for GHG. *See* 74 FR at 32778–80; 79 FR at 46262. Moreover, as discussed above, EPA's waiver authority under section 209(b) is coextensive with preemption under section 209(a). *See MEMA I,* 627 F.2d at 1107. UARG is inapplicable to the scope of preemption under section 209(a).

[269] 84 FR at 51341.

[270] *Id.* at 51337.

[271] The first HD GHG emissions standard waiver related to certain new 2011 and subsequent model year tractor-trailers. 79 FR 46256 (August 7, 2014). The second HD GHG emissions standard waiver related to CARB's ''Phase I'' regulation for 2014 and subsequent model year tractor-trailers. 81 FR 95982 (December 29, 2016).

[272] *See* States and Cities at 24 (quoting *Clark* v. *Martinez,* 543 U.S. 371, 382 (2005) and citing *U.S.* v. *Santos,* 553 U.S. 507, 522 (2008); *U.S. Dep't of the Treasury* v. *FLRA,* 739 F.3d 13, 21 (D.C. Cir. 2014)). The commenter notes that in the SAFE 1 brief, EPA claimed that its new approach to section 209(b)(1)(B) would apply ''for all types of air pollutants'' but EPA could point to nowhere in SAFE 1 decision where this was said. *Id.* at 25. And ''only two sentences later,'' EPA acknowledged that its review under this second prong would change ''depending upon which 'air quality concerns' were implicated.'' *Id.*

[273] H.R. Rep. No. 294, 95th Cong., 1st Sess. 302 (1977); 49 FR at 18890 n.24.

[274] CAA section 209(b)(1)(B) (emphasis added).

[275] Section 211(c)(4)(C) allows EPA to waive preemption of a state fuel program respecting a fuel characteristic or component that EPA regulates through a demonstration that the state fuel program is necessary to achieve a NAAQS.

[276] 49 FR at 18890.

[277] *Id.* at 18890 n.24.

Similarly, nothing in either section 209 or legislative history can be read as requiring EPA to grant GHG standards waiver requests only if California's GHG pollution problem is the worst in the country.[278] ''There is no indication in either the statute or the legislative history that . . . the Administrator is supposed to determine whether California's standards are in fact sagacious and beneficial.'' [279] And most certainly, nothing in either section 209 or the legislative history can be read as calling for EPA to draw a comparison between California's GHG pollution problem and the rest of the country (or world) when reviewing California's need for GHG standards. Instead, the crucial consequence of the 1977 Amendment was to require waiver grants for California's specific standards that are part of the State's overall approach to reducing vehicle emissions to address air pollution even if those specific standards might not be needed to address compelling and extraordinary conditions.[280] Thus, ''even if it were true that California's [GHG] problem is, . . . no worse than some other areas of the country, this does not mean that [GHG] do not pose a special problem in California.'' [281] Rather, ''EPA's practice [is] to leave the decisions on controversial matters of public policy, such as whether to regulate [GHG] emissions, to California.'' [282]

In addition, in Title II, Congress established only two programs for control of emissions from new motor vehicles: EPA emission standards adopted under the Clean Air Act and California emission standards adopted under its state law. And states other than California may not ''tak[e] any action that has the effect of creating a car different from those produced to meet either federal or California emission standards, a so-called 'third vehicle.' '' [283]

As previously explained, and noted in the Notice of Reconsideration, since the grant of the initial GHG waiver request in 2009, the Agency has applied the traditional interpretation in granting two additional waivers for CARB's Heavy-Duty Vehicle GHG emission standards and these GHG standards are now part of California's motor vehicle program, but EPA did not address these waivers in SAFE 1.[284] It also bears note that, given the limited analysis and application of the SAFE 1 interpretation of the second waiver prong, it is uncertain whether the traditional interpretation remains otherwise applicable to earlier model year GHG standards under prior waivers. Ambiguity also applies to SAFE 1's interpretation of this prong in respect to all criteria pollutant standards in the ACC program. While SAFE 1 stated it was only applicable to the GHG standards at issue, in at least one instance the Agency indicated that the SAFE 1 interpretation could also be applicable to future evaluation of waiver requests for criteria pollutant standards.[285] This uncertainty between these statements in SAFE 1 further highlights the inappropriateness of the new interpretation of the second prong.

In sum, for the reasons noted above, EPA is withdrawing the SAFE 1 interpretation and reinstating certain aspects of the ACC program waiver that were earlier granted under the traditional interpretation and approach. EPA concludes it erred by not properly evaluating the statutory interpretation of section 209, the associated legislative history including the policy deference that should be afforded to California to address its serious air quality problems and to serve as a laboratory for the country, and because the ''need'' for a motor vehicle emission program and related standards within the program are necessarily better viewed as a comprehensive and interrelated effort to address the range of air quality problems facing California.[286] At the same time, EPA notes that the traditional interpretation is reasonable and consistent with the text, structure and congressional intent and purpose of section 209(b) and EPA is thus confirming that the traditional interpretation of section 209(b)(1)(B) was appropriate and is, at least, the better interpretation.[287]

2. California Needs the GHG Standards and ZEV Sales Mandate Even Under the SAFE 1 Interpretation

Even if the SAFE 1 interpretation of section 209(b)(1)(B) was appropriate, the record of both the ACC program waiver and SAFE 1 proceeding demonstrate that California has a need for the GHG standards and ZEV sales mandate at issue under the SAFE 1 interpretation as well. The opponents of the waiver (including EPA in SAFE 1) did not met their burden of proof to demonstrate that California does not need its GHG emission standards and ZEV sales mandate, whether individually or as part of California's motor vehicle emission program, to meet compelling and extraordinary conditions.[288]

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[278] *Id.* at 18891.

[279] *Ford Motor Co.,* v. *EPA,* 606 F.2d 1293, 1302 (D.C. Cir. 1979).

[280] 74 FR at 32761 (''Congress decided in 1977 to allow California to promulgate individual standards that are not as stringent as comparable federal standards, as long as the standards are 'in the aggregate, at least as protective of public health and welfare as applicable federal standards.' ''); ''[T]he 1977 amendments significantly altered the California waiver provision.'' *Ford Motor Co.,* 606 F.2d 1293, 1302 (D.C. Cir. 1979).

[281] 49 FR at 18891.

[282] 43 FR at 25735.

[283] *Motor Vehicle Mfrs. Ass'n* v. *NYS Dep't of Env't Conservation, 17 F.3d 521, 526, 528 (2d Cir. 1994).*

[284] 79 FR 46256 (August 7, 2014); 81 FR 95982 (December 29, 2016).

[285] 84 FR at 51341 n.263. ''EPA determines in this document that GHG emissions, with regard to the lack of a nexus between their State-specific sources and their State specific impacts, and California's GHG standard program, are sufficiently distinct from criteria pollutants and traditional, criteria pollutant standards, that it is appropriate for EPA to consider whether California needs its own GHG vehicle emissions program. *EPA does not determine in this document and does not need to determine today how this determination may affect subsequent reviews of waiver applications with regard to criteria pollutant control programs.*'' (Emphasis added). *See also id.* at 51344 n.268 (''EPA is adopting an interpretation of CAA section 209(b)(1)(B), specifically its provision that no waiver is appropriate if California does not need standards ''to meet compelling and extraordinary conditions,'' similar to the interpretation that it adopted in the 2008 waiver denial but abandoned in the 2009 and 2013 waiver grants, and applying that interpretation to determine to withdraw the January 2013 waiver for California's GHG and ZEV program for model years 2021 through 2025''), and at 51346 (''EPA therefore views this interpretation and application of CAA section 209(b)(1)(B) set forth here as, at minimum, a reasonable one that gives appropriate meaning and effect to this provision.'').

[286] As noted previously, in the context of evaluating the ''need'' for California's motor vehicle emission standards the Agency is informed by the legislative history from 1967 and 1977, whereby California is properly viewed as a laboratory for the country and that its policy decisions on how best to address its serious air quality issues, and that deference on the question of ''need'' is in order. Therefore, EPA believes it misapplied the concept of deference in the context of the second waiver prong application in SAFE 1. *See e.g.,* 84 FR at 51344 n.268. While EPA believes it appropriate to not defer when it is interpreting its own statute, the Agency nevertheless determines that California's policy choices in term of its ''need'' in how best to address compelling and extraordinary conditions in California requires deference by the Agency. This is consistent with EPA's longstanding waiver practice and its integration of the legislative history behind section 209. In any event, EPA would reach the same conclusions regarding the second waiver prong even if it did not defer to California regarding the nature of its air quality problems. 86 FR at 74489 (''The 2009 Endangerment Finding further explained that compared with a future without climate change, climate change is expected to increase tropospheric ozone pollution over broad areas of the U.S., including in the largest metropolitan areas with the worst tropospheric ozone problems, and thereby increase the risk of adverse effects on public health (74 FR 66525).''). *See also* 86 FR at 74492.

[287] ''The interpretation that my inquiry under (b)(1)(B) goes to California's need for its own mobile source program is borne out not only by the legislative history, but by the plain meaning of the statue as well.'' 49 FR at 18890.

[288] EPA notes that by this action it is rescinding the interpretation of section 209(b)(1)(B) as set forth in SAFE 1. Nevertheless, EPA believes it appropriate to address comments received that suggest the SAFE 1 interpretation was not only

As previously explained, the 1977 CAA Amendments allow California to promulgate standards that might not be considered needed to meet compelling and extraordinary circumstances but would nevertheless be part of California's overall approach of reducing vehicle emissions to address air pollution in California.[289] Thus, CARB may now design motor vehicle emission standards, individually, that might sometimes not be as stringent as federal standards but collectively with other standards would be best suited for California air quality problems because under the 1977 Amendments, California can ''include some less stringent [standards] than the corresponding federal standards.'' [290] And EPA is ''required to give very substantial deference to California's judgments on this score.'' [291]

Indeed, as EPA noted in the ACC program waiver, Congress intentionally provided California the broadest possible discretion in adopting the kind of standards in its motor vehicle program that California determines are appropriate to address air pollution problems that exist in California, whether or not those problems are only local or regional in nature, and to protect the health and welfare of its citizens:

> Congress did not intend this criterion to limit California's discretion to a certain category of air pollution problems, to the exclusion of others. In this context it is important to note that air pollution problems, including local or regional air pollution problems, do not occur in isolation. Ozone and PM air pollution, traditionally seen as local or regional air pollution problems, occur in a context that to some extent can involve long range transport of this air pollution or its precursors. This long range or global aspect of ozone and PM can have an impact on local or regional levels, as part of the background in which the local or regional air pollution problem occurs.[292]

In the context of implementing section 209(b)(1)(B) and assessing the ''need'' for California's standards even under the SAFE 1 interpretation, EPA sees no reason to distinguish between ''local or regional'' air pollutants versus other pollutants that may be more globally mixed. Rather, it is appropriate to acknowledge that all pollutants and their effects may play a role in creating air pollution problems in California and that EPA should provide deference to California in its comprehensive policy choices for addressing them. Again, even if a new interpretation of section 209(b)(1)(B) were appropriate in SAFE 1, and EPA believes it is not, it is important to note that historically, criteria pollutant reductions have been relevant to section 209(b)(1)(B). As previously noted, nothing in section 209(b) can be read as calling for EPA to waive preemption only if California seeks to enforce criteria pollutant standards. The Administrator is required to waive the preemption in section 209(a) unless California ''does not need *such State standards to meet compelling and extraordinary conditions*.'' [293] As also previously noted this is in stark contrast to, for example, section 211(c)(4)(C), which calls for a waiver of preemption only if a state demonstrates that a fuel program will result in criteria pollutant reductions that will enable achievement of applicable NAAQS.

The first section below focuses on criteria pollution reduction, which has long been relevant to section 209(b)(1)(B). EPA has never put in doubt that California's serious criteria air pollution problems (such as NAAQS nonattainment and the factors that give rise to those conditions, including the geographic and climate conditions in the State, the number of motor vehicles in California, and local and regional air quality) are ''compelling and extraordinary,'' or that California ''needs'' regulations that address such emissions in order to achieve every fraction of criteria pollutant emissions it can achieve.[294] The factual record before the Agency in 2013 and again in 2019 includes ample documentation of criteria emission reductions from California's GHG standards and ZEV sales mandate.[295] Nothing in the record is sufficient to demonstrate that California does not need the ACC program (or the motor vehicle emission program) or, in the context of the SAFE 1 interpretation, the specific GHG emission standards and the ZEV sales mandate to meet compelling needs related to criteria pollution. These benefits have a clear connection to California's ''need'' for its specific GHG standards and ZEV sales mandate, at issue under the waiver. The second section below focuses on the GHG reduction benefits of California's GHG standards and ZEV sales mandate. EPA acknowledges that California is particularly impacted by climate change, including increasing risks from record-setting fires, heat waves, storm surges, sea-level rise, water supply shortages and extreme heat, and that climate-change impacts in California are therefore ''compelling and extraordinary conditions'' for which California needs the GHG standards and ZEV sales mandate.

a. GHG Standards and ZEV Sales Mandates Have Criteria Emission Benefits

As shown below, criteria pollutant reductions are demonstrably connected to California's ''need'' for its GHG standards and ZEV sales mandate at issue under the waiver.[296] EPA first concluded that there is a ''logical link between the local air pollution problem

correct, but that the factual record supported the SAFE 1 withdrawal of the ACC waiver based on this interpretation.

[289] *See Ford Motor Co.,* v. *EPA,* 606 F.2d 1293, 1296–97 (D.C. Cir. 1979); See H.R. Rep. No. 294, 95th Cong., 1st Sess. 302 (1977).

[290] 43 FR 25729, 25735 (June 14, 1978). See *Ford Motor Co.,* 606 F.2d at 1296–97.

[291] 40 FR at 23104. See also LEV I (58 FR 4166 (January 13, 1993)) Decision Document at 64.

[292] 78 FR at 2128–29. *See* ''Our Changing Climate 2012 Vulnerability & Adaptation to the Increasing Risks from Climate Change in California.'' Publication # CEC–500–2012– 007. Posted: July 31, 2012; available at *https://ucanr.edu/sites/Jackson_Lab/files/155618.pdf* at 4 (''Higher temperatures also increase ground-level ozone levels. Furthermore, wildfires can increase particulate air pollution in the major air basins of California. Together, these consequences of climate change could offset air quality improvements that have successfully reduced dangerous ozone concentrations. Given this ''climate penalty,'' as it is commonly called, air quality improvement efforts in many of California's air basins will need to be strengthened as temperatures increase in order to reach existing air quality goals.'').

[293] CAA section 209(b)(1)(B) (emphasis added).

[294] In SAFE 1, EPA found that California's criteria pollution conditions remain ''compelling and extraordinary and that California needs standards to produce any and all reductions in criteria pollutant emissions.'' 84 FR at 51344, 51346.

[295] When California originally adopted a ZEV sales mandate into its regulations, a significant factor in support of its action was addressing criteria pollutant emissions. In SAFE 1 EPA acknowledged that California's ZEV mandate initially targeted only criteria pollution. 84 FR at 51329. EPA's 2013 waiver grant recognized that with California's ACC program California had shifted to relying on the ZEV requirements to reduce both criteria and GHG pollution. 78 FR at 2114.

[296] In response to comments arguing that upstream emission benefits should not be considered in determining the criteria pollutant benefits of CARB' standards or that it is inappropriate to elevate stationary source criteria pollutant emissions into a make-or-break factor in waivers for motor vehicle emission programs, EPA believes it appropriate to reiterate the air quality problems facing California, as evidenced by NAAQS attainment challenges. Waiver practice and applicable case law, as previously noted, afford California wide deference in its policy and regulatory approaches in addressing these challenges. Therefore, EPA believes that to the degree a nexus between CARB's standards and addressing its serious air quality problems is required, that it is reasonable to base the need on related criteria emission impacts. EPA notes that, in setting its federal light-duty vehicle GHG standards, it is afforded discretion under the CAA to consider upstream emission impacts and does include such consideration in its own rulemakings. 77 FR 62624, 62819 (October 15, 2012) (taking fuel related upstream GHG emissions into account in setting compliance values for vehicle GHG emissions standards).

of ozone and GHGs'' in the 2009 California GHG waiver by explaining, for instance, that ''the impacts of global climate change can nevertheless exacerbate this local air pollution problem.'' [297] Moreover, as previously explained, in two additional GHG waiver requests and associated EPA waiver decisions since the 2009 GHG waiver, EPA acknowledged that CARB had demonstrated the need for GHG standards to address criteria pollutant concentrations in California. In the 2014 HD GHG waiver request, CARB projected, for example, ''reductions in NO_X emissions of 3.1 tons per day in 2014 and one ton per day in 2020'' in California.[298]

In SAFE 1, EPA distinguished prior GHG waivers from the ACC program GHG waiver solely on grounds of how CARB attributed the pollution benefits in its waiver request. EPA explained that CARB had linked those prior waived GHG standards to criteria pollutant benefits but had not done so in the ACC program waiver request: ''California's *approach* in its ACC program waiver request differed from the state's approach in its waiver request for MY 2011 and subsequent heavy-duty tractor-trailer GHG standards, where California quantified NO_X emissions reductions attributed to GHG standards and explained that they would contribute to PM and ozone NAAQS attainment.'' [299] Moreover, how CARB attributes the pollution reductions for accounting purposes from its various standards does not reflect the reality of how the standards deliver emissions reductions and should not drive whether or not a waiver can be withdrawn. EPA believes, based on its historical deference to CARB in waiver proceedings, that CARB is entitled to this discretion.

EPA also believes that prior waiver decisions indicate that the ''approach'' taken by California in its waiver requests needs to be carefully assessed and understood by the Agency before discounting the benefits of its mobile source emission standards. The characterization of CARB's ''approach,'' as not calling out criteria emissions benefits (such as upstream criteria emission benefits) of GHG standards, was incorrect and should not have undermined EPA's findings and grant of the initial ACC program waiver request for the following reasons: (1) As previously noted, the ACC program standards are interrelated and all serve to reduce both criteria and GHG pollution; (2) CARB conducted a combined emissions analysis of the elements of the ACC program because the program was designed to work as an integrated whole; and (3) EPA has always considered California's standards as a whole or ''in the aggregate'' under the traditional interpretation of section 209(b)(1)(B).[300] EPA noted the associated criteria pollutant and GHG emissions benefits for the whole ACC program: ''the ACC program will result in reductions of both criteria pollutants and GHG emissions that, in the aggregate, are more protective than the pre-existing federal standards.'' [301] EPA also made the requisite finding that California's protectiveness finding for the ACC program was not arbitrary and capricious, under section 209(b)(1)(A), by explaining that ''California's ZEV and GHG emission standards are an addition to its LEV program.'' [302]

In SAFE 1, EPA further asserted that ''California's responses to the SAFE proposal do not rebut the Agency's views that the ZEV standards for MY 2021–2025 are inextricably interconnected with the design and purpose of California's overall GHG reduction strategy.'' [303] For the following reasons, however, EPA was also incorrect in the assessment of criteria emission benefits of CARB's ZEV sales mandate. EPA focused on only the following snippet from one salient paragraph in CARB's 2012 waiver request as support for the lack of criteria emissions benefits: ''There is no criteria emissions benefit from including the ZEV proposal in terms of vehicle (tank-to-wheel or TTW) emissions. The LEV III criteria pollutant fleet standard is responsible for those emission reductions in the fleet; the fleet would become cleaner regardless of the ZEV regulation because manufacturers would adjust their compliance response to the standard by making less polluting conventional vehicles.'' [304] But, as discussed above, that was merely an attribution of benefits and did not reflect the practical reality of how California's standards work. Moreover, the paragraph in its entirety goes on to explain that CARB's ZEV sales mandate would achieve criteria emission reductions: ''However, since upstream criteria and PM emissions are not captured in the LEV III criteria pollutant standard, net upstream emissions are reduced through the increased use of electricity and concomitant reductions in fuel production.'' [305]

It bears note that this attribution of criteria pollutant reductions was similar to the one that CARB made almost a decade ago for the 2009 GHG waiver request.[306] For example, CARB provided ''extensive evidence of its current and serious air quality problems and the increasingly stringent health-based air quality standards and federally required state planning efforts to meet those standards firmly.'' [307] The States and Cities also commented that ''the attribution CARB made as part of its waiver request was never intended to, and did not, establish the absence of any

[297] 74 FR at 32763. According to California, ''California's high ozone levels–clearly a condition Congress considered–will be exacerbated by higher temperatures from global warming . . . [T]here is general consensus that temperature increases from climate change will exacerbate the historic climate, topography, and population factors conducive to smog formation in California, which were the driving forces behind Congress's inclusion of the waiver provision in the Clean Air Act.'' *Id.* (quoting comments submitted by CARB during the 2009 reconsideration). CARB also explained that ''the factors that cause ozone are primarily local in nature and [ ] ozone is a local or regional air pollution problem, the impacts of global climate change can nevertheless exacerbate this local air pollution problem. Whether or not local conditions are the primary cause of elevated concentrations of greenhouse gases and climate change, California has made a case that its greenhouse gas standards are linked to amelioration of California's smog problems . . . . There is a logical link between the local air pollution problem of ozone and California's desire to reduce GHGs as one way to address the adverse impact that climate change may have on local ozone conditions.'' *Id.*

[298] 79 FR at 46261. See *also* 81 FR at 95985–86 n.27 (referencing Resolution 13–50's statements supporting California's continued need for its own motor vehicle program in order to meet serious ongoing pollution problems).

[299] 84 FR at 51337 n.252 (citing 79 FR at 46256, 46257 n.15, 46261, 46262 n.75).

[300] ZEV ISOR, EPA–HQ–OAR–2012–0562–0008 at 72; CARB Supplemental Comments, EPA–HQ–OAR–2012–0562–0373 at 3.

[301] 74 FR at 2122.

[302] *Id.* at 2125.

[303] 84 FR at 51337.

[304] *Id.* at 51337, 51330, 51337, 51353–54, 51356, 51358.

[305] 2012 Waiver Request at 15–16. CARB also noted that criteria and PM emission benefits will vary by region throughout the State depending on the location of emission sources. Refinery emission reductions will occur primarily in the east Bay Area and South Coast region where existing refinery facilities operate. As refinery operations reduce production and emissions, the input and output activities, such as truck and ship deliveries, will also decline. This includes crude oil imported through the Los Angeles and Oakland ports, as well as pipeline and local gasoline truck distribution statewide. EPA again notes that in its light-duty vehicle GHG rulemaking in 2012 it also noted the upstream emission impacts. 77 FR at 62819.

[306] ''The establishment of greenhouse gas emission standards will result in a reduction in upstream emissions (emission due to the production and transportation of the fuel used by the vehicle) of greenhouse gas, criteria and toxic pollutants due to reduced fuel usage.'' EPA–HQ–OAR–2006–0173–0010.107 at 8.

[307] CARB, EPA–HQ–OAR–2012–0562–0371. CARB estimated benefits of the ZEV and GHG standards for calendar years by which the South Coast air basin must meeting increasingly stringent NAAQS for ozone: 2023, 2031, and 2037. States and Cities app. A at 2–4, app. C at 8–9.

vehicular emission benefits from the ZEV standard.'' EPA believes that CARB's statement was merely a ''simplification that distinguished the standards based on the *primary* objectives of the two, complementary standards.'' [308] EPA agrees that the record from 2013, and 2019, demonstrates that CARB's attribution of short-term emissions benefits did not undercut the long-term vehicular emission benefits of the ZEV standards. Thus, regardless of how the emissions reductions are attributed, the GHG standards and ZEV sales mandate drive reductions in criteria pollution.

EPA has also consistently explained that ''consideration of all the evidence submitted concerning a waiver decision is circumscribed by its relevance to those questions . . . consider[ed] under section 209(b).'' [309] And so, as earlier noted, any reconsideration of a prior waiver decision must comport with criteria in section 209(b)(1) as well as have record support. Moreover, in prior waiver requests for ZEV sales mandate requirements, CARB has discussed criteria pollutant emissions reductions because of the mandate for sale of vehicles that have zero emissions.[310] CARB's 2012 waiver request also indicated the clear intent regarding the evolution of the ZEV program and California's decision to focus both on criteria pollutant and GHG reductions.[311] EPA's reading of and reliance on the snippet from CARB's waiver request describing the ZEV sales mandate requirements in the ACC program was both incorrect and improper, as well as contrary to congressional intent and EPA's historic practice of affording broad discretion to California in selecting the best means for addressing the health and welfare of its citizens.

b. California Needs Its Standards To Address the Impacts of Climate Change in California

Under section 209(b)(1)(B), EPA is to grant a waiver request unless California does not need the standards at issue to address ''compelling and extraordinary conditions.'' In applying the traditional approach, EPA has consistently reasoned that ''compelling and extraordinary conditions'' refers primarily to the factors that tend to produce higher levels of pollution in California—geographical and climatic conditions (like thermal inversions) that, when combined with large numbers and high concentrations of automobiles, create serious air pollution problems.[312] These conditions continue to exist in California and CARB, since the initial 2009 GHG waiver, has consistently drawn attention to the existential crisis that California faces from climate change and maintained that air quality issues associated with GHG emissions have exacerbated this crisis and have yet to attenuate.[313]

EPA now recognizes that CARB, as part of its original waiver request and in comments in response to SAFE 1, submitted ample evidence of multiple ways California is particularly impacted by climate change, including increasing risks from record-setting fires, heat waves, storm surges, sea-level rise, water supply shortages and extreme heat; in other words that GHG emissions contribute to local air pollution, and that climate-change impacts in California are ''compelling and extraordinary conditions.'' For example, CARB noted that ''[r]ecord-setting fires, deadly heat waves, destructive storm surges, loss of winter snowpack—California has experienced all of these in the past decade and will experience more in the coming decades. California's climate—much of what makes the State so unique and prosperous—is already changing, and those changes will only accelerate and intensify in the future. Extreme weather will be increasingly common as a result of climate change. In California, extreme events such as floods, heat waves, droughts and severe storms will increase in frequency and intensity. Many of these extreme events have the potential to dramatically affect human health and well-being, critical infrastructure and natural systems.'' [314] Within the ACC waiver request, CARB provided a summary report on the third assessment from the California Climate Change Center (2012), which described dramatic sea level rises and increases in temperatures in California and associated impacts on local air quality and other conditions in California.[315]

To the extent that SAFE 1 relied on the premise that GHG emissions from motor vehicles located in California become globally-mixed as part of global climate change, and therefore do not pose a local air quality issue (placing aside the impacts of heat on ozone as

[308] States and Cities at 31 (original emphasis).

[309] 74 FR at 32748. *See also* 78 FR at 2115.

[310] 71 FR 78190 (December 28, 2006); 75 FR 11878 (March 12, 2010) and 76 FR 61095 (October 3, 2011).

[311] *See* 2012 Waiver Request at 2. At the December 2009 hearing, the Board adopted Resolution 09–66, reaffirming its commitment to meeting California's long term air quality and climate change reduction goals through commercialization of ZEV technologies. The Board further directed staff to consider shifting the focus of the ZEV regulation to both GHG and criteria pollutant emission reductions, commercializing ZEVs and PHEVs in order to meet the 2050 goals, and to take into consideration the new LEV fleet standards and propose revisions to the ZEV regulation accordingly.

[312] 49 FR at 18890 (citing legislative history).

[313] 2012 Waiver Request at 1.

[314] CARB supplemental comment at EPA–HQ–OAR–2012–0562–0371. CARB notes that EPA's reasoning that the ''compelling and extraordinary conditions'' criteria should be viewed as a ''program as a whole'' was upheld as ''eminently reasonable'' in *ATA* v. *EPA,* 600 F.3d 624, 627–29 (D.C. Cir. 2010), and that the ACC program appropriately integrates the passenger vehicle program to address multiple pollutant types, which also reflects the intent of Congress in 1977 to broaden California's discretion to adjust its program as needed (*Ford Motor Co.* v. *EPA,* 606 F.2d at 1294). This comment extensively lays out the compelling and extraordinary conditions associated with California's air quality challenges and the need to reduce criteria emissions and greenhouse gas emissions associated with CARB's ZEV sale mandate and GHG standards. *Id.* at 5 (''The critical nature of the LEV III regulation is also highlighted in the recent effort to take a coordinated look at strategies to meet California's multiple air quality and climate goals well into the future. This coordinated planning effort, Vision for Clean Air: A Framework for Air Quality and Climate Planning (Vision for Clean Air) demonstrates the magnitude of the technology and energy transformation needed from the transportation sector and associated energy production to meet federal standards and the goals set forth by California's climate change requirements.'').

[315] 78 FR at 2129 (''To the extent that it is appropriate to examine the need for CARB's GHG standards to meet compelling and extraordinary conditions, as EPA discussed at length in its 2009 GHG waiver decision, California does have compelling and extraordinary conditions directly related to regulations of GHG. EPA's prior GHG waiver contained extensive discussion regarding the impacts of climate change in California. In addition, CARB has submitted additional evidence in comment on the ACC waiver request that evidences sufficiently different circumstances in California. CARB notes that 'Record-setting fires, deadly heat waves, destructive storm surges, loss of winter snowpack—California has experienced all of these in the past decade and will experience more in the coming decades. California's climate—much of what makes the state so unique and prosperous—is already changing, and those changes will only accelerate and intensify in the future. Extreme weather will be increasingly common as a result of climate change. In California, extreme events such as floods, heat waves, droughts and severe storms will increase in frequency and intensity. Many of these extreme events have the potential to dramatically affect human health and well-being, critical infrastructure and natural systems.'') (''Our Changing Climate 2012 Vulnerability & Adaptation to the Increasing Risks from Climate Change in California. Publication # CEC–500–2012– 007. Posted: July 31, 2012; available at *http://www.climatechange.ca.gov/adaptation/third-assessment*''). EPA also noted that ''the better interpretation of the text and legislative history of this provision is that Congress did not intend this criterion to limit California's discretion to a certain category of air pollution problems, to the exclusion of others. In this context it is important to note that air pollution problems, including local or regional air pollution problems, do not occur in isolation. Ozone and PM air pollution, traditionally seen as local or regional air pollution problems, occur in a context that to some extent can involve long range transport of this air pollution or its precursors. This long-range or global aspect of ozone and PM can have an impact on local or regional levels, as part of the background in which the local or regional air pollution problem occurs.'' 78 FR at 2128.

well as air quality impacts from the dramatic increase in wildfires), EPA notes that in addition to the record from the ACC waiver proceeding noted above, the SAFE 1 record contains sufficient and unrefuted evidence that there can be locally elevated carbon dioxide concentrations resulting from nearby carbon dioxide emissions.[316] This can have local impacts on, for instance, the extent of ocean acidification.[317] Thus, like criteria pollution, emissions of GHGs can lead to locally elevated concentrations with local impacts, in addition to the longer-term global impacts resulting from global increases in GHG concentrations.

Finally, in demonstrating the need for GHG standards at issue, CARB attributed GHG emissions reductions to vehicles in California. For instance, ''CARB project[ed] that the standards will reduce car CO_2 emissions by approximately 4.9%/year, reduce truck CO_2 emissions by approximately 4.1%/year (the truck CO_2 standard target curves move downward at approximately 3.5%/year through the 2016–2021 period and about 5%/year from 2021–2025), and reduce combined light-duty CO_2 emissions by approximately 4.5%/year from 2016 through 2025.'' [318] CARB also projected that its GHG emissions standards for MYs 2017–2025 will reduce fleet average CO_2 levels by about 34 percent from MY 2016 levels of 251 g/mile down to about 166 g/mile, based on the projected mix of vehicles sold in California.'' [319] CARB further noted that there might be a GHG emission deficit if only the Federal GHG standards were implemented in California.[320] The GHG emissions from California cars, therefore, are particularly relevant to both California's air pollution problems and GHG standards at issue.

In SAFE 1, EPA dismissed California's ''need'' for the GHG standards at issue because their impact on GHG emissions would be too small to ''meaningfully address global air pollution problems of the sort associated with GHG emissions'': ''[T]he most stringent regulatory alternative considered in the 2012 final rule and [Final Regulatory Impact Analysis] . . . , which would have required a seven percent average annual fleetwide increase in fuel economy for MYs 2017–2025 compared to MY 2016 standards, was forecast to decrease global temperatures by only 0.02 °C in 2100.'' [321] EPA also received similar comments in response to the Notice of Reconsideration. But since the inception of the waiver program, EPA has never applied a test to determine whether a California waiver request under 209(b)(1) would independently solve a pollution problem. EPA has never applied a *de minimis* exemption authority to California waiver request under section 209(b)(1).[322] EPA believes there is no basis for exercise of such a test under section 209(b), considering that CARB continues to maintain that emissions reductions in California are essential for meeting the NAAQS.[323] EPA has reiterated that ''California's policy judgment that an incremental, directional improvement will occur and is worth pursuing is entitled, in EPA's judgment, to great deference.'' [324] As the Supreme Court has recognized, ''[a]gencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop. . . . They instead whittle away at them over time, refining their preferred approach as circumstances change and as they develop a more nuanced understanding of how best to proceed.'' [325] And so, in the ACC program waiver decision, EPA also explained that ''[t]he issue of whether a proposed California requirement is likely to result in only marginal improvement in air quality not commensurate with its cost or is otherwise an arguably unwise exercise of regulatory power is not legally pertinent to my decision under section 209.'' [326]

Further, nothing in either section 209 or the legislative history could be read as requiring EPA to grant GHG standards waiver requests only if California's GHG pollution problem is the worst in the country.[327] CARB further demonstrated a ''need'' for its GHG standards by projecting GHG emissions reductions deficits from implementation of only the Federal GHG program in California. ''[I]f a National Program standard was theoretically applied only to California new vehicle sales alone, it might create a GHG deficit of roughly two million tons compared to the California standards.'' [328]

3. California's ZEV Sales Mandate as Motor Vehicle Control Technology Development

Congress also envisioned that California's other role under section 209(b) would be an innovative laboratory for motor vehicle emission

[316] CARB comment at EPA–HQ–OAR–2018–0283–5054 at 305–06 (California's Fourth Climate Assessment; *https://www.energy.ca.gov/sites/default/files/2019-12/Governance_External_Ekstrom_ada.pdf*).

[317] See, for example, reports from California's Fourth Climate Change Assessment, ''California Mussels as Bio-indicators of Ocean Acidification,'' *available at https://www.energy.ca.gov/sites/default/files/2019-12/Oceans_CCCA4-CNRA-2018-003_ada.pdf* (''Because of the coupling between natural (upwelling-driven) and anthropogenic (CO2 emission-driven) processes, California waters are already experiencing declines in pH that are not expected in other areas of the world's oceans for decades (Feely et al. 2008; Chan et al. 2017). These perturbations to seawater chemistry join others associated with changing seawater temperatures (García-Reyes and Largier 2010) and reductions in ocean oxygenation (Bograd et al. 2008; Chan et al. 2008). Therefore, marine communities along the coast of California are increasingly subjected to a suite of concurrent environmental stressors. Substantial impetus exists to understand, quantify, and project biological and ecological consequences of these stressors, which current work suggests may be pervasive and diverse (Kroeker et al. 2010, 2013; Gaylord et al. 2015).''). Further, evidence in the record from a 2019 study demonstrated that locally enhanced carbon dioxide concentrations above Monterey Bay, California, fluctuate by time of day likely because of the magnitude of nearby urban carbon dioxide pollution and the effects of topography on offshore winds, and that this fluctuation increases the expected rate of acidification of the Bay. *See* Northcott, et al., *Impacts of urban carbon dioxide emissions on sea-air flux and ocean acidification in nearshore waters,* PLoS ONE (2019). For decades, the monthly average carbon dioxide concentrations off California's coast have been consistently higher and more variable than those at Mauna Loa (which are commonly used as the global measurements). In fact, another more recent study shows that the waters of the California Current Ecosystem, off the coast of Southern California, have already acidified more than twice as much as the global average. *E.g.,* Cal. Office of Environmental Health Hazard Assessment, *Atmospheric Greenhouse Gas Concentrations* (Feb. 11, 2019).

[318] 78 FR at 2139.

[319] *Id.* at 2135.

[320] *Id.* at 2122.

[321] 84 FR at 51349.

[322] *See, e.g.,* 74 FR at 32766 (''As noted by the Supreme Court in *Massachusetts* v. *EPA,* while it is true that regulating motor vehicle GHG emissions will not by itself reverse global warming, a reduction in domestic automobile emissions would slow the pace of global emissions increase no matter what happens with regard to other emissions.'').

[323] *See Alabama Power Co.* v. *Costle,* 636 F.2d 323, 360–66, n.89 (D.C. Cir. 1979).

[324] 74 FR at 32766 (''Under this approach, there is no need to delve into the extent to which the GHG standards at issue here would address climate change or ozone problems. That is an issue appropriately left to California's judgment. . . . Given the comments submitted, however, EPA has also considered an alternative interpretation, which would evaluate whether the program or standards has a rational relationship to contributing to amelioration of the air pollution problems in California. Even under this approach, EPA's inquiry would end there. California's policy judgment that an incremental, directional improvement will occur and is worth pursuing is entitled, in EPA's judgment, to great deference.'').

[325] *Massachusetts* v. *EPA,* 549 U.S. 497, 524 (2007).

[326] 78 FR at 2134.

[327] 49 FR at 18891.

[328] 78 FR at 2122 (citing EPA–HQ–OAR–2012–0562–0374 at 3). CARB also noted that ''to the extent a manufacturer chooses not to exercise their National Program compliance option in California this would actually provide additional GHG benefits in California, so compliance in California can never yield fewer cumulative greenhouse gas reductions from the industry wide fleet certified in California.'' *Id.* at 2122 n.61.

standards and control technology. California is to serve as ''a kind of laboratory for innovation'' [329] and to ''blaze its own trail with a minimum of federal oversight.[330] California's ''unique [air pollution] problems and [its] pioneering efforts justif[ied] a waiver of the preemption section.'' [331] Congress stressed that California should serve the Nation as a ''testing area'' for more protective standards.'' [332] In the 2009 GHG waiver, for example, EPA explained that ''the basic nature of the compromise established by Congress [is that] California could act as the laboratory for the nation with respect to motor vehicle emission control, and manufacturers would continue to face just two sets of emissions standards—California's and EPA's.'' [333] California's ZEV sales mandates have so far supported development of technologies such as battery electric and fuel cell vehicles that embody the pioneering efforts Congress envisaged. EPA acknowledged this important role in the ACC program waiver by explaining that California needs the ZEV sales mandate requirement to ensure the development and commercialization of technology required for the future, deeper vehicular emission reductions California will have to attain to meet its NAAQS obligations as well as achieve other long-term emission goals of new vehicle sales between 2040 and 2050.[334] In SAFE 1, however, EPA did not consider this additional role carved out in section 209(b)(1) for California as a proven ground for motor vehicle control emissions technology.[335]

In sum, while nothing in section 209 or the legislative history limits EPA's waiver authority to standards that reduce criteria pollution,[336] analyses in this section again recognize the way the different requirements in the ACC program work together to reduce criteria and GHG pollution and spur technological innovation. These analyses conclude that GHG pollution exacerbates tropospheric ozone pollution, worsening California's air quality problems, and the manner in which GHG and criteria pollutant standards work together to reduce both forms of pollution. Ample record support exists on California's need for both GHG standards and ZEV sales mandate at issue to address compelling and extraordinary conditions in California. As noted above, in SAFE 1 EPA, however, relied on an excerpt of the ACC program waiver record to determine the lack of criteria emission benefits of GHG emission standards and ZEV sales mandate at issue. In doing so, EPA did not evaluate the complete record from the ACC waiver proceeding and the nature of California's air quality problem, including the relationship of climate change to California's ability to achieve the ozone NAAQS in the assessment of California's need for these requirements.[337]

As noted above, in SAFE 1, EPA established a new test under section 209, requiring a particularized, local nexus between (1) pollutant emissions from sources, (2) air pollution, and (3) resulting impact on health and welfare, a test that would exclude GHG pollution from the scope of the waiver.[338] But this test is found nowhere in the text of section 209— the statute does not contain this requirement, or even use these terms.

EPA's review of the complete record confirms the Agency's conclusions in the ACC program waiver that California needs the GHG standards at issue to meet a compelling and extraordinary conditions regardless of whether the Agency focuses on criteria or greenhouse gas pollution reduction. This review also indicates that opponents of the waiver (including EPA in SAFE 1) did not meet the burden of proof necessary to demonstrate that California did not have a need for the GHG standards, including under the nexus test applied in SAFE 1. It also bears note that EPA's longstanding practice, based on the statutory text, legislative history, and precedent calls for deference to California in its approach to addressing the interconnected nature of air pollution within the state and is not limited to criteria pollutant problems. Critically, EPA is not to engage in ''probing substantive review'' of waiver requests,[339] but rather ''afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.'' [340]

E. Conclusion

Considering the text, legislative history, and precedent that support the Agency's historical practice of interpreting section 209(b)(1)(B) as calling for a program-level evaluation of waiver requests, as well as the uncertainty in settled expectations created by the SAFE 1 interpretation, EPA rescinds its actions in SAFE 1 regarding both the interpretation of section 209(b)(1)(B) and the findings regarding California's need for the GHG standards and ZEV sales mandate. EPA believes that the burden of proof had not been met in SAFE 1, based on the complete factual record, to demonstrate that California did not have a need for the GHG standards and ZEV sales mandate under the SAFE 1 interpretation of the second waiver prong nor had the burden been met to support a finding that the ample evidence in the record at the time of the ACC waiver decision did not demonstrate that California had a need for its standards to meet compelling and extraordinary conditions. As noted above, the result of the recission of the SAFE 1 action is the reinstatement of the ACC program waiver. EPA confirms the traditional interpretation of section 209(b)(1)(B) was appropriate and continues to be, at least, a better interpretation regardless of the recission of the SAFE 1 interpretation of this criterion.[341]

[329] *MEMA I,* 627 F.2d 1095, 1111 (D.C. Cir. 1979).

[330] *Ford Motor Co.,* v. *EPA,* 606 F.2d 1293, 1297 (D.C. Cir. 1979).

[331] S. Rep. No. 90–403, at 33 (1967).

[332] *Id.*

[333] 74 FR at 32763.

[334] 78 FR at 2123, 2130–31.

[335] 84 FR at 51343 (''[I]n a statute designed to address public health and welfare, it certainly cannot mean standards that allow a state to be ''a laboratory for innovation'' in the abstract, without any connection to a need to address pollution problems.'').

[336] The Agency again notes that, unlike provisions of the CAA such as section 211(c)(4)(C) which allows EPA to waive preemption of a state fuel program respecting a fuel characteristic or component that EPA regulates through a demonstration that the state fuel program is necessary to achieve a NAAQS, section 209(b) makes no mention of NAAQS pollutants or otherwise indicates that air pollutants should be treated differently.

[337] For example, CARB's ISOR for its ZEV standards identifies at Table 6.2 the well to wheel emission benefits of the ZEV program compared to the LEV III program. ZEV ISOR, EPA–HQ–OAR–2012–0562–0008 at 78. *See also* 2012 Waiver Request at 16. CARB noted in its comments on the SAFE proposal that ''Rising temperatures exacerbate California's ozone problem by increasing ground-level ozone concentrations.'' CARB, EPA–HQ–OAR–2018–0283–5054 at 371–72 (citing the 2012 Waiver Request). In addition, ''Several studies indicate that a warming climate is expected to exacerbate surface ozone in California's two major air basins: South Coast Air Basin and San Joaquin Valley. *Id.* at 372 (citing Jacob & Winner. *Effect of Climate Change on Air Quality,* 43:1 ATMOS. ENVIRON. 51 (Jan. 2009); Wu, et al., *Effects of 2000–2050 Global Change on Ozone Air Quality in the United States,* 113, D06302, J. GEOPHYS. RES.-ATMOS. (Mar. 19, 2008), *available at https://doi.org/10.1029/2007JD008917;* Rasmussen, et al., *The Ozone-climate Penalty: Past, Present, and Future,* 47:24 ENVTL. SCI. & TECH. 14258 (Dec. 17, 2013), *available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3990462/*).

[338] 84 FR at 51339–40.

[339] *Ford Motor Co.* v. *EPA,* 606 F.2d 1293, 1300 (D.C. Cir. 1979).

[340] *MEMA II,* 142 F.3d 449, 453 (D.C. Cir. 1998).

[341] *See* 84 FR at 51344 n.269.

VI. EPA Inappropriately Considered Preemption Under the Energy Policy and Conservation Act (EPCA) in Its Waiver Decision

SAFE 1's other justification for withdrawing the ACC program waiver was that California's GHG standards and ZEV sales mandate were preempted under EPCA. As explained in detail in Section IV, EPA believes this basis for reconsideration was outside the appropriate bounds of EPA's authority to reconsider previously granted waivers. In particular, if EPA could reconsider and withdraw a waiver based on a factor not contained in the specified criteria for denial in section 209(b)(1), EPA could circumvent the specified criteria for denial via reconsideration of previously granted waiver.

Even if it were appropriate for EPA to reconsider a previously granted waiver based on non-statutory factors, in this action, EPA concludes that it was inappropriate to rely on preemption under EPCA as a basis for withdrawing certain aspects of the ACC program waiver. In SAFE 1, a joint action between NHTSA and EPA, NHTSA concluded that state or local regulations of tailpipe carbon dioxide emissions are ''related to fuel economy standards'' and are therefore preempted under EPCA.[342] As a direct result of NHTSA's codified text and pronouncements on preemption set forth in SAFE 1, EPA withdrew the ACC program waiver for California's GHG standards and ZEV sales mandate on grounds that they were preempted under EPCA. In SAFE 1, EPA believed it was appropriate to consider the effect of NHTSA's actions, including the view that California cannot enforce standards that are void *ab initio,* and thus EPA stated that ''to the extent that administrative action is necessary on EPA's part to reflect that state of affairs, EPA hereby withdraws that prior grant of a waiver on this basis.'' [343] NHTSA has since issued a new final rule that formally repeals the codified text and pronouncements regarding preemption under EPCA found in SAFE 1. Upon reconsideration, EPA now believes that, given NHTSA's repeal of its regulation and pronouncements in SAFE 1, preemption under EPCA cannot serve as a basis for the withdrawal of the ACC program waiver as it did in SAFE 1—if it could ever legitimately serve as such basis. EPA thus believes it is appropriate to rescind the portion of the waiver withdrawal that was based on preemption under EPCA.

In addition, given the unique consideration of preemption under EPCA in SAFE 1 and its effect on an otherwise validly issued waiver under the CAA, EPA believes it is helpful to provide additional information regarding the Agency's historical practice and views to demonstrate why consideration of preemption under EPCA was inappropriate. Consideration of preemption under EPCA is beyond the statutorily prescribed criteria for EPA in section 209(b)(1). Preemption under EPCA was not a factor that California addressed under the applicable waiver criteria in its initial request nor was it a factor that EPA considered in granting the ACC program waiver. Until SAFE 1, the Agency consistently refrained from reviewing waiver requests against factors beyond the statutorily listed criteria under section 209(b)(1). Thus, EPA also believes that in the reconsideration of a waiver where EPA had previously declined to consider preemption under EPCA, SAFE 1 was contrary to congressional intent and the Agency's historic practice of hewing to section 209(b)(1) statutory criteria in reviewing waiver requests. Given this backdrop, EPA believes that the joint rulemaking context of SAFE 1 was an improper basis to deviate from EPA's long held belief to not consider factors outside the scope of section 209(b)(1), especially given that the Agency indicated it would only be a singular occurrence. EPA continues to view the text and congressional intent of the statute, as well as subsequent case law, as best supporting a limited scope of review for waiver requests under section 209(b)(1)—irrespective of whether a waiver proceeding is undertaken either solely by EPA or in unison with another agency. Therefore, based on EPA's historical practice of not considering factors outside of the section 209(b)(1) criteria and because EPA believes the ''joint-action'' premise was improper, the Agency is rescinding its withdrawal of the ACC program waiver based on preemption under EPCA.

A. Historical Practice and Legislative History

Historically, in reviewing California's waiver requests, EPA has refrained from the consideration of factors beyond those criteria set out in section 209(b)(1).[344] EPA has generally explained that the text, structure, and purpose of the California waiver provision indicate congressional intent for EPA to provide significant deference to California's judgment, especially on ''ambiguous and controversial matters of public policy.'' [345] In section 209(a), Congress generally preempted state standards relating to the control of emissions from new motor vehicles and engines, but, in section 209(b), Congress carved out an exception for California, directing EPA to grant California a waiver of section 209(a) unless the Agency can make a finding under section 209(b). Congress recognized that California's ''compelling and extraordinary circumstances,'' and its historical practice of regulating in the area, were sufficient ''to justify standards on automobile emissions which may, from time to time, need be more stringent than national standards.'' [346] In creating the waiver program, Congress intended not only for California to be able to meet its own emission reduction needs, but also for California to act as ''a kind of laboratory for innovation'' for motor vehicle standards and control technology.'' [347]

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[342] 49 U.S.C. 32919(a) (''When an average fuel economy standard prescribed under this chapter is in effect, a State or a political subdivision of a State may not adopt or enforce a law or regulation related to fuel economy standards or average fuel economy standards for automobiles covered by an average fuel economy standard under this chapter.''). NHTSA noted that a law or regulation having the direct or substantial effect of regulating or prohibiting tailpipe carbon dioxide emissions from automobiles or automobile fuel economy is a law or regulation related to fuel economy standards and expressly preempted under 49 U.S.C. 32919(a). 84 FR at 51317–18. NHTSA's rule was codified at 49 CFR 531.7 (''Preemption'') and 533.7 (''Preemption''), as well as each Appendix B in 49 CFR part 531 (''APPENDIX B TO PART 531—PREEMPTION'') and Part 533 (''APPENDIX B TO PART 533—PREEMPTION'').

[343] 84 FR at 51338.

[344] *See, e.g.,* 43 FR at 32184 (rejecting objections to the procedures at state level, objections that section 207(c)(3)(A) establishes field protection, and constitutional objections all as beyond the ''narrow'' scope of the Administrator's review); 74 FR at 32783 (rejecting comments asking for the consideration of EPCA because it is not one of the three statutorily prescribed criteria); 78 FR at 2145 (again rejecting comments asking for the consideration of EPCA because it is outside the statutory criteria); 79 FR at 46265 (rejecting the argument that the HD GHG Regulations ''impermissibly regulate fuel economy'' because, like the commerce clause and Federal Aviation Administration Authorization Act of 1994 (FAAAA) issues, this issue is ''outside the proper scope of review since it is not among the criteria listed under section 209(b).'').

[345] 78 FR at 2112, 2115; 40 FR at 23103–04; 58 FR 4166.

[346] H.R. Rep. No. 90–728, 90th Cong., 1st Sess. 21 (1967); S. Rep. No. 403, 90th Cong., 1st Sess. 33 (1967) (''The waiver of preemption is for California's 'unique problems and pioneering efforts.' '').

[347] *MEMA I,* 627 F.2d 1095, 1111 (D.C. Cir. 1979); 113 Cong. Rec. 30950, 32478 (Statement of Sen. Murphy) (''The United States as a whole will benefit by allowing California to continue setting its own more advanced standards for control of motor vehicle emissions. . . [The] State will act as a testing agent for various types of controls and the country as a whole will be the beneficiary of this research.'').

Thus ''Congress consciously chose to permit California to blaze its own trail with a minimum of federal oversight.'' [348]

Legislative history makes clear that the Administrator must ''presume'' that the California standards ''satisfy the waiver requirements'' and that the burden of proving otherwise rests on the Administrator or other parties favoring denial of the waiver.[349] Further, according to the House Committee Report for the 1977 amendments that strengthened California's waiver provisions, EPA is ''to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.'' [350] According to the House Report, ''The Administrator, thus, is not to overturn California's judgment lightly. Nor is he to substitute his judgment for that of the State. There must be ''clear and compelling evidence that the State acted unreasonably in evaluating the relative risks of various pollutants in light of the air quality, topography, photochemistry, and climate in that State, before EPA may deny a waiver.'' [351] EPA's historic practice of considering only listed criteria is thus in keeping with the highly deferential review of waiver requests that Congress intended in carving out the exception from preemption of new motor vehicle and engine standards in section 209(a).[352]

Courts have generally agreed with the Agency's consideration of only listed CAA criteria in reviewing waiver requests, also pointing to the statute's lack of any indication of the ability to consider non-statutory criteria as well as the waiver program's significant deference to California. The D.C. Circuit has stated that, under the text of the statute, the section 209(b) criteria are ''the only waiver standards with which California must comply'' and that, therefore, ''[i]f EPA concludes that California's standards [meet section 209(b)], it is obligated to approve California's waiver application.'' [353] The D.C. Circuit has repeatedly described EPA's waiver approval role as ''limited'' and ''narrow.'' In *MEMA I,* for example, the court explained that ''the Administrator has consistently held since first vested with the waiver authority, [that] his inquiry under section 209 is modest in scope. He has no 'broad and impressive' authority to modify California regulations.'' [354] The court further noted that ''there is no such thing as a 'general duty' on an administrative agency to make decisions based on factors other than those Congress expressly or impliedly intended the agency to consider.'' [355] Similarly, the court has stated that ''[t]he statute does not provide for any probing substantive review of the California standards by federal officials'' and that ''EPA's only role is to review California's proposed rules under a narrowly defined set of statutory criteria.'' [356] Thus, the court has consistently rejected arguments requiring EPA to consider factors outside of the statutory criteria. In *MEMA I,* the court rejected a constitutional objection to a waiver, explaining that, because ''the Administrator operates in a narrowly circumscribed proceeding requiring no broad policy judgments on constitutionally sensitive matters,'' ''[n]othing in section 209 requires him to consider the constitutional ramifications of the regulations for which California requests a waiver . . . although nothing in section 209 categorically forbids'' it.[357] In the same case, the court also rejected an antitrust objection as outside the scope of the Administrator's review.[358] The court again upheld EPA's decision to not consider constitutional objections in *American Trucking Association (ATA)* v. *EPA,* stating, ''We agree with EPA that ATA is seeking 'improperly to engraft a type of constitutional Commerce Clause analysis onto EPA's [s]ection 7543(e) waiver decisions that is neither present in nor authorized by the statute.'' [359]

It is against this backdrop that EPA has reviewed waiver requests by evaluating them solely under the criteria of section 209(b). For instance, prior to SAFE 1, EPA had solicited comment, in the context of the 2008 and 2009 GHG notices for comment on CARB's first waiver request for GHG emission standards, as to whether the EPCA fuel economy preemption provisions were relevant to EPA's consideration of CARB's authority to implement its motor vehicle GHG regulations.[360] In both instances, EPA declined to consider preemption under EPCA.[361] In the 2009 waiver, EPA explained that ''section 209(b) of the Clean Air Act limits our authority to deny California's requests for waivers to the three criteria therein.'' [362] EPA further pointed to its historic practice of ''refrain[ing] from denying California's requests for waivers based on any other criteria,'' which had been reviewed and upheld by the Court of Appeals for the District of Columbia Circuit.[363] In the 2013 review of the ACC program waiver request, the Agency again declined to consider factors outside the statutory criteria, explaining that ''EPA may only deny waiver requests based on the criteria in section 209(b), and inconsistency with EPCA is not one of those criteria.'' [364] A year later, EPA yet again declined to consider constitutionality claims, preemption under EPCA, and the implications of the Federal Aviation Administration Authorization Act of 1994 (FAAAA).[365] EPA explained that section 209(b) limits the Agency's authority to deny California's requests for waivers to the three criteria therein and that the Agency has consistently refrained from denying California's requests for waivers based on any other criteria.[366]

In SAFE 1, EPA changed course, reasoning instead that the Agency pronouncement in the ACC program waiver decision on factors EPA could consider in denying a waiver request ''was inappropriately broad, to the extent it suggested that EPA is categorically forbidden from ever determining that a waiver is inappropriate due to consideration of anything other than the 'criteria' or 'prongs' at section 209(b)(1)(B)(A)–

[348] *Ford Motor Co.* v. *EPA,* 606 F.2d 1293, 1297 (D.C. Cir. 1979).

[349] *MEMA I,* 627 F.2d at 1121–22 (citing, for example, S. Rep. No. 403, 90th Cong., 1st Sess. 33 (1967)).

[350] *MEMA II,* 142 F.3d 449, 453 (D.C. Cir. 1998) (quoting H.R. Rep. No. 95–294, at 301–02 (1977)).

[351] H.R. Rep. No. 95–294, at 302 (1977), reprinted in 1977 U.S.C.C.A.N. at 1381.

[352] *See, e.g.,* 74 FR at 32783; 78 FR at 2145.

[353] *MEMA II,* 142 F.3d at 463.

[354] *MEMA 1,* 627 F.2d at 1119 (internal citations omitted).

[355] *Id.* at 1116–17.

[356] *Ford Motor Co.* v. *EPA,* 606 F.2d 1293, 1300 (D.C. Cir. 1979), and *ATA* v. *EPA,* 600 F.3d 624, 628 (2010), respectively.

[357] *MEMA I,* 627 F.2d at 1115 (declining to consider whether California standards are constitutional).

[358] *Id.* at 1117 (''[N]othing in section 209 or elsewhere in the Clean Air Act can fairly be read to imply a duty on the Administrator to deny a waiver on the basis of the antitrust implications of California regulations.'').

[359] *ATA* v. *EPA,* 600 F.3d at 628.

[360] 73 FR at 12159.

[361] *Id.;* 74 FR at 32783.

[362] 74 FR at 32783.

[363] *Id.* (citing *MEMA I,* 627 F.2d at 1111, 1114–20, and *MEMA II,* 142 F.3d 449, 466–67 (D.C. Cir. 1998)).

[364] 78 FR at 2145.

[365] HD GHG Regulations for certain model year sleeper-cab tractors and dry-van and refrigerated-van trailers. 79 FR at 46256, 46264.

[366] *Id.* In rejecting the commerce clause objection, the decision cited *MEMA I*'s statement that ''[t]he waiver proceeding produces a forum ill-suited to the resolution of constitutional claims.'' *Id.* (citing *MEMA I,* 627 F.2d at 1114–20). Thus, the decision concluded, ''Constitutional challenges to the HD GHG Regulations [were] more appropriately addressed by a legal challenge directly against the state.'' *Id.*

(C).'' [367] EPA explained that this statement and EPA's historical practice of not considering preemption under EPCA ''were made in the context of EPA acting on its own to administer section 209(b) in considering such applications.'' [368] Further, EPA distinguished these previous single-agency actions from its SAFE 1 joint action context by explaining that ignoring NHTSA's determination of preemption in the same action, ''would place the United States Government in the untenable position of arguing that one federal agency can resurrect a State provision that, as another federal agency has concluded and codified, Congress has expressly preempted and therefore rendered void *ab initio.*'' [369] At the same time, EPA expressed intentions not to consider factors outside the statutory criteria in future waiver proceedings.[370] EPA then concluded that NHTSA's determination of preemption in the same action ''renders EPA's prior grant of a waiver for those aspects of California's regulations that EPCA preempts invalid, null, and void'' because ''California cannot enforce standards that are void *ab initio.*'' [371]

B. Notice of Reconsideration of SAFE 1 and Request for Comment

In its April 28, 2021, Notice of Reconsideration, EPA acknowledged that SAFE 1's consideration of NHTSA's finding of preemption under EPCA deviated from its historic practice of ''declin[ing] to look beyond the waiver criteria in section 209(b) when deciding the merits of a waiver request from CARB.'' [372] EPA sought comment on whether ''EPA properly considered and withdrew portions of the ACC program waiver pertaining to GHG standards and the ZEV sales mandate based on NHTSA's EPCA preemption action, including whether EPA had the authority to withdraw an existing waiver based on a new action beyond the scope of section 209.'' [373] Given EPA's reliance on NHTSA's preemption findings as a basis of waiver withdrawal in SAFE 1, EPA also sought comment on how the repeal of SAFE 1, should NHTSA take final action to do so, would affect its own reconsideration of SAFE 1.

C. Comments Received

EPA received comments in support of and against the consideration of preemption under EPCA in reviewing requests for waivers by California. Multiple comments related to the Agency's use of the joint action with NHTSA as a justification for deviating from the Agency's practice of reviewing waiver requests under the specific statutory criteria. Some commenters agreed that the context of a joint action necessitated consideration of preemption under EPCA because NHTSA was the agency charged with interpreting and implementing EPCA and so EPA must consider its findings in the same action.[374] One commenter also argued that the joint rulemaking of SAFE 1 would be consistent with pronouncements in *Massachusetts* v. *EPA* (2007) on the agencies' respective statutory obligations and the need to avoid inconsistency and so, ''[o]nce NHTSA proposed to finalize a determination that EPCA preempts California's GHG motor vehicle standards, it would be unreasonable for the EPA to refuse to take NHTSA's action into account.'' [375]

Other commenters argued that the context of the rulemaking, whether joint or not, was irrelevant. One commenter stated emphatically that ''what Congress directed EPA to consider when it wrote Section 209(b)(1) does not change depending on whether EPA acts alone or with another agency.'' [376] Some commenters also argued that the context of the rulemaking was a particularly insufficient justification for revoking the waiver given language in SAFE 1 that allowed for inconsistent consideration of EPCA preemption. Several commenters noted that EPA constrained the future applicability of SAFE 1 by explaining that the Agency would not consider factors outside statutory criteria in future waiver reviews in other subject areas.[377] Another commenter also noted that ''the action purported to be 'joint,' and yet as now acknowledged, SAFE Part 1 'is properly considered as two severable actions, a rulemaking by NHTSA and a final informal adjudication by EPA.' '' [378] These inconsistencies, they argued, made SAFE 1's distinction between single-agency and joint actions arbitrary and capricious.

Commenters also argued for and against consideration of factors outside the statutory criteria—including, but not limited to, preemption under EPCA—regardless of the kind of agency action, although EPA did not make this argument in SAFE 1. Commenters argued that EPA's authority to look outside the statutory criteria at EPCA was at least permissive, if not mandatory. According to one commenter, ''EPA exaggerates the Court's position'' in *MEMA I* in its Reconsideration notice: ''[T]he court did not say that the EPA is *forbidden* to take constitutional ramifications into consideration, only that it is *not required* to do so.'' [379] Another commenter agreed that *MEMA I* and *MEMA II* ''do not preclude EPA from considering'' preemption under EPCA but then went further, saying that ''EPA is *required* to consider EPCA preemption.'' [380] The commenter argued that *MEMA I* rejected petitioners' constitutional objections to a waiver under an institutional competence line of reasoning, concluding that ''[t]he waiver proceeding produces a forum ill-suited to the resolution of constitutional claims.'' [381] In contrast, they continued, the waiver proceeding is an appropriate forum for determining whether emission standards ''relate to'' fuel economy because this issue is ''within the agency's competence, as this relationship is mathematical and based in science rather than understandings of Constitutional law and precedent.'' [382] However, the other commenter, who agreed that EPA is not ''forbidden'' from considering preemption under EPCA, also noted that EPA ''has no special competence to interpret EPCA.'' [383]

Several commenters also argued that EPA could not reinstate the waiver because NHTSA concluded that EPCA preempts the standards, such standards were void *ab initio,* and therefore ''the state mandates referenced in CA's petition for reconsideration are not even eligible to be considered for a CAA waiver of preemption.'' [384] To ignore

[367] A complete discussion of preemption under EPCA in SAFE 1 can be found at 84 FR at 51337–38.

[368] *Id.*

[369] *Id.* Citing *Massachusetts* v. *EPA,* the Agency also asserted that the consideration of EPCA was supported by the Supreme Court's holding because it ensured consistency between NHTSA and EPA's programs. *Id.*

[370] 84 FR at 51338.

[371] *Id.*

[372] 86 FR at 22429.

[373] *Id.*

[374] *See, e.g.,* CEI at 11–12; AFPM at 2, 6.

[375] CEI at 11.

[376] States and Cities at 20. *See also* Twelve Public Interest Organizations app. 1 64–65.

[377] NESCAUM at 3; Twelve Public Interest Organizations at app. 1 64–65; States and Cities at 20.

[378] SCAQMD at 7 (quoting 86 FR at 22439, n.40).

[379] CEI at 10 (original emphasis).

[380] AFPM at 5–6.

[381] *Id.* at 6 (quoting *MEMA I,* 627 F.2d 1095, 1114–15 (DC Cir. 1979)).

[382] *Id.*

[383] CEI at 11.

[384] NADA at 3–4; *See also* AFPM at 3 (''Since California's GHG tailpipe standards and ZEV mandate are related to fuel economy, they are not lawfully adopted and void *ab initio*—and there is nothing for EPA to reinstate.''); Urban Air at 47–48; CEI at 2 (''But EPCA preemption is the proverbial elephant in the room. If SAFE 1's EPCA preemption argument is correct, the EPA could not grant a valid CAA preemption waiver for California's tailpipe

this, they claimed, would violate the Supremacy Clause of the Constitution. EPA, therefore, must look outside the statutory criteria to consider preemption under EPCA because it cannot ''reasonably claim that the lawfulness and constitutionality of state actions over which it has supervision are issues outside the scope of its responsibility[.]'' [385]

In contrast, other commenters pointed to EPA's historical practice of evaluating waiver requests under the section 209 statutory criteria, the text of the statute, and the policy implications of looking outside the statutory criteria, to support a return to EPA's traditional narrow approach. Most commenters argued that EPA's traditional interpretation was consistent with the text of section 209(b), which has no reference to preemption under EPCA or any other factors outside the three statutory criteria.[386] Not only does EPA have ''no grounds to read EPCA preemption considerations into the statute,'' [387] these commenters argued, but to consider non-statutory criteria would actually be ''arbitrary and capricious'' [388] and contrary to ''precedent respecting separation of powers and federalism principles.'' [389] Yet another commenter stated that the narrow interpretation ''provides a safeguard from the capricious injection of outside-the-scope argumentation'' because ''[w]hen the adjudication is permitted to stray from the statutory criteria, prospects for a fair hearing can be derailed, and the EPA Administrator may be more prone to overstep and exert policy preferences that are impermissible.'' [390]

Additionally, in their petitions for reconsideration of SAFE 1, several states and cities asserted that EPA unlawfully changed course in SAFE 1 by considering (and relying on) the purported preemptive effect of EPCA, which is outside the confines of section 209(b) and argued that this rationale for withdrawing the waiver was flawed.[391]

D. Analysis: EPA Is Rescinding Its SAFE 1 Actions Related to Preemption Under EPCA

Since SAFE 1, NHTSA has formally withdrawn its conclusions (and associated regulatory text) that state or local regulations of tailpipe carbon dioxide emissions are related to fuel economy standards and therefore preempted under EPCA.[392] Thus the predicate for EPA's decision to withdraw the ACC waiver on that basis no longer exists. Furthermore, given the context of EPA's reconsideration of the ACC program waiver at the time of SAFE 1, the Agency believes it was inappropriate to reconsider the validity of the waiver against criteria such as preemption under EPCA. In this action, based on the two independent grounds noted above, the Agency is rescinding the portion of SAFE 1 that withdrew the ACC program waiver based on preemption under EPCA.

1. NHTSA Has Since Repealed Its Findings of Preemption Made in SAFE 1

In the Notice of Reconsideration, EPA sought comment on the Agency's reliance on NHTSA's preemption findings as a basis for its withdrawal of the ACC program waiver in SAFE 1. EPA also sought comment on how the repeal of SAFE 1, should NHTSA take final action to do so, would affect its own reconsideration of SAFE 1.[393] NHTSA has since withdrawn its findings of preemption and the preemption basis of withdrawal is no longer applicable. Specifically, NHTSA has issued a new final rule that formally repeals the codified text and additional pronouncements regarding preemption under EPCA found in SAFE 1.[394] In SAFE 1, EPA stated that it was appropriate to consider the effect of NHTSA's actions, including the view that California cannot enforce standards that are void *ab initio* and thus EPA stated that ''to the extent that administrative action is necessary on EPA's part to reflect that state of affairs, EPA hereby withdraws that prior grant of a waiver on this basis.'' [395] Since this condition no longer exists, EPA believes it is appropriate to rescind the waiver withdrawal that was based on preemption under EPCA. EPA believes that, to the extent it was ever appropriate for the Agency to base its action on NHTSA's finding of preemption under EPCA in SAFE 1, the repeal of the preemption rule makes it likewise appropriate to rescind the Agency's action in SAFE 1. This would also act to minimize regulatory uncertainty as to do otherwise would create further confusion that resulted from the joint action in SAFE 1 and would not appropriately reflect the current state of affairs under the circumstances of a unique federal regulation that had otherwise motivated EPA's actions in SAFE 1. NHTSA's recent action also supports EPA's belief that its practice of limiting its review of section 209(b) criteria, as explained below, remains appropriate in the context of preemption under EPCA.

2. EPA Improperly Deviated From Its Historical Practice of Limiting Its Review to Section 209(b) Criteria

Section 209(b)(1) of the Act limits the Agency's authority to deny California's requests for waivers to the three criteria contained therein and the Agency has consistently refrained from reviewing California's requests for waivers based on any other criteria. EPA acknowledges that California adopts its standards as a matter of law under its state police powers, that the Agency's task in reviewing waiver requests is limited to evaluating California's request according to the criteria in section 209(b), and that it is appropriate to defer to litigation brought by third parties in other courts, such as state or federal district court, for the resolution of any constitutionality claims and assertions of inconsistency with other statutes.

CO_2 standards and ZEV mandates, because EPCA had already turned those policies into legal phantoms—mere proposals without legal force or effect.'').

[385] CEI at 11.

[386] *See, e.g.,* States and Cities at 20 (''EPA's traditional understanding of its limited role is entirely consistent with the text of Section 209(b)(1) and precedent interpreting it.''); NCAT at 12 (''As EPA has stated in several prior waiver decisions, there is no reference in Section 209(b) to EPCA preemption nor anything that could be construed to address this issue. Section 209(b) is unambiguous in this regard, and EPA has no grounds to read EPCA preemption considerations into the statute.'').

[387] NCAT at 12.

[388] NESCAUM at 7 (''As the D.C. Circuit has explained in the context of Section 209(b), 'there is no such thing as a general duty' on an administrative agency to make decisions based on factors other than those Congress expressly or impliedly intended the agency to consider.' It is a basic principle of administrative law that an agency action is 'arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider.' '').

[389] States and Cities at 20 (''It is likewise entirely consistent with precedent respecting separation of powers and federalism principles and holding that 'a federal agency may pre-empt state law only when and if it is acting within the scope of its congressionally delegated authority.' *Louisiana Pub. Serv. Comm'n* v. *FCC,* 476 U.S. 355, 374 (1986).'').

[390] SCAQMD at 7.

[391] 86 FR at 22428.

[392] 86 FR 74236.

[393] 86 FR at 22429.

[394] 86 FR 74236. NHTSA notes in this rulemaking that ''the Agency is repealing all regulatory text and appendices promulgated in the SAFE I Rule. In doing so, the Agency underscores that any positions announced in preambulatory statements of prior NHTSA rulemakings, including in the SAFE I Rule, which purported to define the scope of preemption under the Energy Policy and Conservation Act (EPCA), do not reflect the Agency's reconsidered understanding of its proper role in matters of EPCA preemption.''

[395] EPA distinguished these previous single-agency actions from its joint action context by explaining that ignoring NHTSA's determination of preemption in the same action, ''would place the United States Government in the untenable position of arguing that one federal agency can resurrect a State provision that, as another federal agency has concluded and codified, Congress has expressly preempted and therefore rendered void *ab initio*.'' 84 FR at 51338.

Considering the lack of statutory and precedential support as shown below, even if EPA were to have discretion to consider criteria outside section 209(b), EPA now views the joint-action context of SAFE 1 as an insufficient justification for deviating from its statutory authority and the Agency's historical practice and therefore the Agency rescinds its actions regarding preemption under EPCA in SAFE 1.

Withdrawal of the waiver was premised on NHTSA's preemption regulations in what EPA explained was a joint rulemaking action. But nothing in section 209(b) can be read as calling for consideration of preemption under EPCA in evaluating waiver requests regardless of whether EPA engaged in joint rulemaking with another agency or acted alone. Specifically, under section 209(b), EPA must grant California a waiver of the preemption contained in section 209(a) unless the Administrator makes a finding under any one of the listed criteria: ''The Administrator shall . . . waive application of the preemption in section 209(a) if the Administrator finds any of the following: '(A) [California's] determination [that its standards in the aggregate will be at least as protective] is arbitrary and capricious, (B) [California] does not need such State standards to meet compelling and extraordinary conditions, or (C) such State standards and accompanying enforcement procedures are not consistent with section [202(a)].' '' [396] Evaluation of preemption under EPCA is not a listed criterion.

Nor did SAFE 1 premise preemption under EPCA on any of the three statutory criteria. In the ACC program waiver request, CARB made a protectiveness finding that, as a quantitative matter, its standards, in the aggregate, were as protective as the Federal standards and did not address preemption under EPCA.[397] In fact, while California might opt to respond to comments on preemption under EPCA, California would not be expected to take it into account in any protectiveness finding made for a waiver request. It bears note that California's practice is not unusual because there are other factors and provisions of the CAA that California does not account for in making its protectiveness finding under section 209(b)(1).[398] In granting the ACC program waiver request, EPA found that California's protectiveness finding was neither arbitrary nor capricious.[399] EPA also responded to comments on the consideration of preemption under EPCA in granting the waiver but dismissed such objections as outside the scope of its review.[400] Historically, EPA draws a comparison between the numerical stringency of California and federal standards in making the requisite finding as to whether California's protectiveness determination is arbitrary and capricious.[401] Thus, neither California's initial request, nor EPA's waiver grant, considered preemption under EPCA and as previously explained in the ACC program waiver, EPA declined to consider preemption under EPCA viewing it as outside the scope of Agency review.

SAFE 1 made clear that consideration of and reliance on preemption under EPCA was the consequence of regulations promulgated by NHTSA. As SAFE 1 also acknowledged, however, EPA does not ''administer'' EPCA; that task falls to NHTSA.[402] Instead, ''[i]f EPA concludes that California's standards [meet section 209(b)], it is obligated to approve California's waiver application.'' [403] EPA therefore disagrees with the comment that *Massachusetts* provides the Agency special duty to consider preemption under EPCA in a joint rulemaking action in reviewing waiver requests. In *Massachusetts,* the Supreme Court recognized the potential overlap between NHTSA's and EPA's statutory obligations and concluded that ''there is no reason to think the two agencies cannot both administer their obligations yet avoid inconsistency.'' [404]As one commenter noted, EPA and NHTSA have previously engaged in joint actions that addressed fuel economy and GHG emissions. In those actions, NHTSA's role has been to set national fuel economy standards and EPA's role has been to set national GHG standards.[405] These roles are complementary, but distinct. The Court acknowledged the independence of these roles in *Massachusetts:* ''EPA has been charged with protecting the public's 'health' and 'welfare,' 42 U.S.C. 7521(a)(1), a statutory obligation wholly independent of DOT's mandate to promote energy efficiency. See Energy Policy and Conservation Act, § 2(5), 89 Stat. 874, 42 U.S.C. 6201(5).'' [406]

Regarding the Agency's simultaneous pronouncement that reliance on preemption under EPCA would be a singular exercise that would not be repeated, statutory support or past precedent for this singular consideration was also lacking.[407] In fact, this singular exercise would allow for EPA to evaluate the same waiver request differently and depending on EPA's own choice—the choice to act with another agency or not—rather than on the merits of the waiver request itself within specified criteria in section 209(b). Again, the result of this unique application of EPA's authority is unsupported under section 209(b)(1).

As previously noted, EPCA is generally administered by NHTSA and consideration of preemption under EPCA in reviewing waiver requests would for instance call for EPA to resolve the much debated and differing views as to what is a ''law or regulation related to fuel economy,'' as contemplated by 39 U.S.C. 32919(a).[408] Relevant judicial precedent would also appear to call into question whether California's GHG standards and ZEV sales mandates are indeed preempted under EPCA.[409] But as previously explained, EPA does not implement EPCA, and the Agency's review of waiver requests is highly deferential.

EPA also disagrees with comments that the Agency must generally consider factors outside the criteria listed in section 209(b), including preemption under EPCA, regardless of the joint- or single-agency nature of the action. EPA

[396] CAA section 209(b)(1)(A)–(C).

[397] 2012 Waiver Request at 15–17.

[398] For example, ''California is not required to comply with section 207 to get a waiver.'' *MEMA II,* 142 F.3d 449, 467 (D.C. Cir. 1989).

[399] 78 FR at 2125.

[400] *Id.* at 2145.

[401] Section 209(b)(2) provides that if each State [California] standard is at least as stringent as comparable applicable Federal standards then such standard shall be deemed to be as protective of public health and welfare as such federal standards for purposes of section 209(b)(1)(A). EPA acknowledges that in 1977 Congress amended the waiver provision to allow for California to address its unique combination of air quality problems and that California only be required to demonstrate stringency in the aggregate and that therefore some pollutant standards may not be as stringent.

[402] 84 FR at 51338 (''EPA agrees with commenters that EPA is not the agency that Congress has tasked with administering and interpreting EPCA. This is especially so because '[t]he waiver proceeding produces a forum ill-suited to the resolution of constitutional claims.' *MEMA I,* 627 F.2d at 1115.'').

[403] *MEMA II,* 142 F.3d at 463.

[404] *Massachusetts* v. *EPA,* 549 U.S. 497, 532 (2007).

[405] In its most recent rulemaking addressing GHG emissions from light-duty vehicles, EPA extensively coordinated with NHTSA on details of the program but did not conduct it as a joint rulemaking. *See* 86 FR 74434, 74436 (December 30, 2021).

[406] *Massachusetts,* 549 U.S. at 497, 532.

[407] ''EPA does not intend in future waiver proceedings concerning submissions of California programs in other subject areas to consider factors outside the statutory criteria in section 209(b)(1)(A)–(C).'' 84 FR at 51338.

[408] EPA takes no position on any role NHTSA might play under 42 U.S.C. 32919(a) and acknowledges that NHTSA discusses this in its recent final rulemaking. *See generally* 86 FR 74236.

[409] *See, e.g., Cent. Valley Chrysler-Jeep, Inc.* v. *Goldstene,* 529 F. Supp. 2d 1151, 1153–54 (E.D. Cal. 2007), *as corrected* Mar. 26, 2008; *Green Mountain Chrysler Plymouth Dodge Jeep* v. *Crombie,* 508 F. Supp. 2d 295, 300–01 (D. Vt. 2007).

has never claimed that it has such broad authority to consider factors outside section 209(b) and the decades of waiver practice, as well as judicial precedent, are indicative of the Agency's narrow scope of review for California waiver requests: ''[T]he Administrator has consistently held since first vested with the waiver authority, [that] his inquiry under section 209 is modest in scope. He has no 'broad and impressive' authority to modify California regulations.'' [410] Instead, EPA has consistently declined to consider factors outside the three statutory criteria listed in section 209(b).[411] This limited scope of review has been repeatedly upheld by the courts. For example, in *MEMA I,* the D.C. Circuit stated that ''there is no such thing as a ''general duty'' on an administrative agency to make decisions based on factors other than those Congress expressly or impliedly intended the agency to consider.'' [412] In *MEMA II,* the D.C. Circuit again rejected consideration of a factor outside the 209(b) statutory criteria because doing so would restrict California's ability to ''exercise broad discretion.'' [413]

Commenters also claim that ignoring NHTSA's finding of preemption would violate the Supremacy Clause of the Constitution because the necessary consequence of NHTSA's conclusion in SAFE 1 is that certain standards were void *ab initio* as preempted under EPCA and as such that ''the state mandates referenced in [California's] petition for reconsideration are not even eligible to be considered for a CAA waiver of preemption.'' [414] EPA disagrees. As the D.C. Circuit has held, ''[t]hat [the Administrator] like every other administrative officer owes allegiance to the Constitution does not mean that he is required to issue rulings of constitutional dimension.'' [415] Thus, ''[n]othing in section 209 requires [the Administrator] to consider the constitutional ramifications of the regulations for which California requests a waiver.'' [416]

Moreover, consideration of factors beyond those set out in section 209(b)(1) would subject California and vehicle and engine manufacturers to changes in regulatory schemes by other federal agencies not acting under the authority of the CAA.[417] SAFE 1 and subsequent events perfectly encapsulate this problem. For instance, NHTSA has since finalized the repeal of the regulatory provisions and pronouncements it made in SAFE 1 that were the underpinnings for EPA withdrawing certain aspects of the ACC program waiver and with that action the Agency's basis for revocation of the waiver under EPCA has now evanesced.[418] Additionally, this is affirmation of EPA's long held view that waiver proceedings are not the appropriate venue for resolving these issues, and the joint-rulemaking context is not and should never have been justification for deviating from statutory authority and the Agency's historical practice.

It also bears note that consideration of factors beyond the criteria contained in section 209(b) would not be limited to preemption under EPCA. Commenters suggested, for instance, that EPA would not be able to ''ignore the First Amendment,'' in the hypothetical situation where California impos[ed] standards on some manufacturers in retaliation for their voiced opposition to California's authority as well as criminality such as ''bribery and extortion had been instrumental in assembling the legislative majorities.'' [419] In short, under the commenter's view, factors for consideration in waiver proceedings would be innumerable. And yet these factors bear little or no relation to specific criteria in section 209(b) that would otherwise warrant the denial of a waiver request. The D.C. Circuit has already, several times, held that EPA is not required to consider factors outside of and unconnected to these statutory criteria, especially constitutional objections. In fact, regarding the commenter's example, the court has already specifically rejected consideration of the First Amendment in waiver evaluations. In *MEMA I,* the court considered and upheld EPA's decision declining to consider a First Amendment objection to a waiver as beyond the scope of agency review.[420] Courts have also rejected objections based on the applicability of CAA section 207 to California waiver requests [421] and the Commerce Clause.[422] EPA is therefore not persuaded by these arguments. Additionally, courts have long held that administrative proceedings for California waiver requests are ill-suited for consideration of constitutional issues. Nothing precludes commenters from challenging California's standards themselves—whether under EPCA, another statute, or the Constitution—in other, better-suited fora. According to the D.C. Circuit, for instance, [w]hile nothing in section 209 categorically forbids the Administrator from listening to constitutionality-based challenges, petitioners are assured through a petition of review . . . that their contentions will get a hearing.'' [423] The D.C. Circuit has also repeatedly stated that challenges which go to the legality of California's standards themselves, are better addressed directly by either courts or Congress.[424] Challenges based on preemption under EPCA similarly go to the legality of California's standards themselves and are thus more appropriate in court or addressed to Congress.

E. Conclusion

Because the landscape of federal law has changed since SAFE 1 due to NHTSA's repeal of its regulatory text, appendix, and pronouncements regarding EPCA preemption in SAFE 1, EPA believes that it is appropriate to rescind its waiver withdrawal actions in SAFE 1 that were predicated on the federal law context created by NHTSA's SAFE 1 action. On separate grounds, EPA also believes that, based on the foregoing, EPA should not have deviated from its practice of limiting its waiver review to the criteria in section

[410] *MEMA I,* 627 F.2d 1095, 1119 (D.C. Cir. 1979).

[411] *See, e.g.,* 43 FR at 32184 (rejecting objections to the procedures at state level, objections that section 207(c)(3)(A) establishes field protection, and constitutional objections all as beyond the ''narrow'' scope of the Administrator's review); 74 FR at 32783 (declining to consider EPCA preemption, stating that ''section 209(b) of the Clean Air Act limits our authority to deny California's requests for waivers to the three criteria therein.''); 79 FR at 46264 (reiterating that EPA can only deny a waiver request based on the 209(b) statutory criteria, dismissing comments on preemption under EPCA, as well as the Constitution and the implications of the FAAAA).

[412] 627 F.2d at 1116.

[413] 142 F.3d at 464.

[414] NADA at 3.

[415] *MEMA I,* 627 F.2d at 1114–15.

[416] *Id.* at 1115.

[417] ''The manufacture of automobiles is a complex matter, requiring decisions to be made far in advance of their actual execution. The ability of those engaged in the manufacture of automobiles to obtain clear and consistent answers concerning emission controls and standards is of considerable importance so as to permit economies in production.'' S. Rep. No. 403, 90th Cong., at 730 1st Sess. (1967).

[418] *See* 86 FR 74236.

[419] CEI at 11.

[420] *MEMA I,* 627 F.2d 1095, 1115 (D.C. Cir. 1979).

[421] *MEMA II,* 142 F.3d 449, 467 (D.C. Cir. 1998).

[422] *ATA* v. *EPA,* 600 F.3d 624, 628 (D.C. Cir. 2010) (''EPA's only role is to review California's proposed rules under a narrowly defined set of statutory criteria.''); *OOIDA* v. *EPA,* 622 Fed. Appx. 4, 5 (D.C. Cir. 2015) (rejecting a challenge for lack of jurisdiction because challengers objected to California's regulations themselves, not EPA's approval of them in a waiver under 209(b)).

[423] *MEMA I,* 627 F.2d at 1115.

[424] *Id.*at 1105. In *ATA* v. *EPA,*the D.C. Circuit rejected a constitutional challenge to a California waiver, concluding that Congress made the decision to give California ''the primary role in regulating certain mobile pollution sources'' so the challenger's argument was best directed to Congress. 600 F.3d 624, 628 (D.C. Cir. 2010).

209(b)(1). Thus, for the reasons stated above, EPA is rescinding those portions of SAFE 1 that withdrew the waiver of the ACC program on the basis of preemption under EPCA.

VII. EPA Inappropriately Set Forth an Interpretive View of Section 177 in SAFE 1

In SAFE 1, EPA provided an interpretive view of section 177 of the CAA, stating that states adopting California's new motor vehicle emission standards (section 177 states) could not adopt California's GHG standards.[425] In this action, EPA determines that it was both inappropriate and unnecessary within a waiver proceeding to provide an interpretive view of the authority of section 177 states to adopt California standards, as EPA plays no statutory approval role in connection with states' adoption of standards identical to those standards for which a waiver has been granted to California.[426] Rather, if a state chooses to submit such standards for inclusion in an SIP, EPA's role with regard to approval of these standards is to review them in the same way that EPA reviews all SIP revisions a state submits, via a notice and comment process, to ensure that the submission meets all statutory and regulatory requirements as part of the Agency's decision whether to approve or disapprove the submission. Therefore, the Agency is rescinding the interpretive views on section 177 set out in SAFE 1.

A. SAFE 1 Interpretation

In the SAFE proposal, EPA proposed to conclude that ''States may not adopt California's GHG standards pursuant to section 177 because the text, context, and purpose of section 177 support the conclusion that this provision is limited to providing States the ability, under certain circumstances and with certain conditions, to adopt and enforce standards designed to control criteria pollutants to address NAAQS nonattainment.'' [427] Additionally, the proposal noted the title of section 177 (''New motor vehicle emission standards in nonattainment areas'') indicates a limited scope of application.[428] The proposal also suggested that, because ''[a]reas are only designated nonattainment with respect to criteria pollutants,'' it would be ''illogical'' if states could use their 177 authority ''to adopt California standards that addressed environmental problems other than nonattainment of criteria pollutant standards.'' [429]

In the SAFE 1 decision, EPA finalized its proposed interpretive view, reiterating that ''the text (including both the title and main text), structural location, and purpose of the provision confirm that it does not apply to GHG standards.'' [430] Because section 177's title references nonattainment areas, and because nonattainment designations only exist for criteria pollutants, EPA claimed, states could not adopt standards for purposes of GHG control under section 177.[431]

As evidence for this interpretive view, EPA again pointed to the text and location of the section, which had been the basis for the Agency's interpretation in the SAFE proposal. EPA acknowledged commenters who argued that ''CAA section 177 does not contain any text that could be read as limiting its applicability to certain pollutants only'' and that EPA had ''inappropriately relied on the heading for CAA section 177 to construe a statutory provision as well as arrogated authority to implement an otherwise self-implementing provision,'' but disagreed with these commenters.[432] In addition to the evidence relied on in the proposal, EPA provided examples of legislative history from the 1977 amendments to support its interpretive view.[433]

B. Notice of Reconsideration of SAFE 1 and Request for Comment

Acknowledging that ''section 177 does not require States that adopt California emission standards to submit such regulations for EPA review'' and that ''California in previous waiver requests has addressed the benefits of GHG emissions reductions as it relates to ozone,'' EPA sought comment in the 2021 Notice of Reconsideration on whether EPA had the authority in the SAFE 1 context to interpret section 177 of the CAA and whether the interpretive view was appropriate.[434] Specifically, EPA sought comment on whether it was appropriate for EPA to provide an interpretive view of section 177 within the SAFE 1 proceeding.[435] To the extent it was appropriate to provide an interpretation, EPA sought comment on whether section 177 was properly interpreted and whether California's motor vehicle emission standards adopted by states pursuant to section 177 may have both criteria emission and GHG emission benefits and purposes.[436]

C. Comments Received

In response to SAFE 1, EPA received multiple petitions for reconsideration. One petition submitted by several states and cities asserted that, in adopting its interpretation of section 177, EPA ''relie[d] on information and reasoning not presented in the SAFE Proposal,'' particularly the ''superseded version of Section 172 . . . and legislative history for that outdated provision.'' [437] The petition noted that the use of this information and reasoning was used in the SAFE 1 to conclude that ''section 177 is in fact intended for NAAQS attainment planning and not to address global air pollution.'' [438] Petitioners argued that because this information and reasoning was not presented in the proposal, ''EPA should withdraw and reconsider its finalization of the Section 177 interpretation and allow for full and fair public comment before proceeding further.'' [439]

EPA also received many comments in response to the Notice of Reconsideration of SAFE 1, both supporting and opposing EPA's statements regarding section 177 in SAFE 1. Supporters of SAFE 1 reiterated the reasoning from the proposal and final action.[440] For example, one commenter wrote, ''In short, 'the text, context, and purpose of Section 177 suggest' that the provision is limited to motor vehicle standards 'designed to control criteria pollutants to address NAAQS nonattainment.' '' [441] Like the SAFE proposal and final action, the commenter stated that in addition to the text and context of the section, there is ''substantial legislative history showing that Congress's purpose in creating the Section 177 program was to address

[425] 84 FR at 51310, 51350.

[426] EPA is aware of instances of States adopting California new motor vehicle emission standards and not subsequently including such standards in their SIP. In these circumstances EPA has not played and would not play an approval role.

[427] 83 FR at 43240.

[428] *Id.*

[429] *Id.*

[430] 84 FR at 51350.

[431] *Id.*

[432] *Id.*

[433] In particular, EPA cited legislative history on section 172(b), which set forth the ''requisite provisions'' for state plans for nonattainment areas. *Id.* at 51350 n.286. According to the legislative history, one of the many factors that must be considered by a state plan is ''actual emissions of such pollutant resulting from in-use motor vehicles.'' *Id.* (quoting H.R. Rep. No. 294, 95th Cong., 1st Sess. 212 (1977), 1977 U.S.C.C.A.N. 1077, 1291, 1997 WL 16034). Therefore, EPA claimed, this legislative history ''identifies section 177 as a means of addressing the NAAQS attainment planning requirements of CAA section 172, including the specific SIP content and approvals criteria for EPA.'' *Id.* at 51351.

[434] 86 FR at 22429.

[435] *Id.*

[436] *Id.*

[437] *See* States and Cities' Petition at 27.

[438] *Id.* (quoting 84 FR at 51351).

[439] *Id.*

[440] CEI at 17–18; NADA at 6; AFPM at 12–13.

[441] CEI at 18 (quoting heavily from the SAFE proposal and SAFE final action).

non-attainment with NAAQS for criteria pollutants, not to address any global atmospheric phenomenon.'' [442]

Opponents of SAFE 1 argued both that EPA had no authority to issue its 177 statement and that the merits of EPA's argument were wrong. On the issue of authority, opponents of SAFE 1 claimed that SAFE 1 failed to consider the reliance interests of the stakeholders, particularly section 177 states.[443] SAFE 1, they argued, upset this reliance and created uncertainty.[444] A substantial number of commentors also argued that EPA had no authority to make its statements on section 177 because ''Congress gave EPA no role in implementing Section 177 and no authority to constrain States' decisions regarding adoption of California emissions standards.'' [445]

On the merits of EPA's SAFE 1 argument, opponents of the action commented that EPA misinterpreted section 177 and that, even if EPA's interpretive view were correct, EPA misapplied it. Multiple commenters wrote that the text of section 177 does not limit the types of pollutants for which motor vehicle emission standards can be authorized.[446] Commenters also noted that the title of section 177 refers to geographic *areas,* not pollutants, and argued that the restriction was therefore on which states could adopt California standards (states with plan provisions approved under Part D) not on the pollutants for which those states could adopt standards.[447] A few commenters also argued that EPA's section 177 interpretive view would create a ''third vehicle'' scenario, in contradiction of section 177's identicality requirement.[448] Even if EPA's interpretation were correct, opponents continued, California's standards have both criteria emission and GHG emission benefits and purposes.[449] Commenters cited the factual record as well as EPA's own past findings as evidence of the connection between GHG standards and NAAQS attainment.

D. Analysis: EPA Is Rescinding SAFE 1's Interpretive Views of Section 177

EPA is withdrawing its non-regulatory and non-binding interpretation of section 177 set forth in SAFE 1. EPA plays no statutory approval role in connection with states' adoption of standards identical to those standards for which the Agency has granted a waiver to California.[450] Rather, if a state chooses to submit such standards for inclusion in a SIP, EPA's role with regard to approval of these standards is to review them in the same way that EPA reviews all SIP revisions a state submits, via a notice and comment process, to ensure that the submission meets all statutory and regulatory requirements as part of the Agency's decision whether to approve or disapprove the submission.[451]

In reconsidering SAFE 1, EPA now believes that it was inappropriate to offer an interpretive view of section 177 in the context of that action. EPA believes it acted inappropriately in providing an interpretive view in SAFE 1 and that such action was based on an inaccurate assessment of the factual record. EPA's interpretive view was not compelled by any petition, request, or legislative or judicial mandate and was otherwise not final agency action.[452] EPA is therefore rescinding the interpretive views contained in SAFE 1.

As commenters have noted, section 177 does not describe a direct approval role for EPA. Section 177 says that ''any State which has plan provisions approved under this part may adopt and enforce'' identical California standards and delineates three specific criteria for adoption.[453] Nothing in this language or in the text of the rest of the section requires or allows EPA to approve such adoption and enforcement or directs EPA to implement the section through regulation; EPA plays no statutory approval role in the adoption of California standards by other states other than action on a SIP revision, should those states include the standards in their plans. In fact, there are only three prerequisites to adoption and enforcement by a state: That the state has a federally approved SIP, that the standards are identical (thus the state standards must not create or have the effect of creating a ''third vehicle'') to California standards for which California has received a waiver, and that California and the state adopt the standards with at least two years lead time.[454] This limited role has been

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[442] *Id.*

[443] States and Cities at 50–55; Institute for Policy Integrity Amicus Brief at 22–26 (''[T]he fact that California and many other states have detrimentally relied on this waiver to meet federal and state air-pollution mandates resolves any lingering doubt about the lawfulness of EPA's Action. . . . Revoking the preemption waiver . . . jeopardizes the state's ability to meet federal standards for other harmful air pollutants, since the standards covered by the waiver would have reduced—directly and indirectly—nitrogen-oxide, ozone, and particulate-matter pollution. *See* 78 FR 2122, 2129, and 2134.''); Tesla at 11–13; National Association of Clean Air Agencies (NACAA), Docket No. EPA–HQ–OAR–2021–0257–0096 at 3. Many of the 177 states had also provided comments, during the SAFE 1 comment period, explaining that they have adopted the ACC program standards to meet their public health goals. *See, e.g.,* Maryland Department of the Environment, Docket No. EPA–HQ–OAR–2018–0283–5831 at 2–3; Delaware Department of Natural Resources and Environment Control, Docket No. EPA–HQ–OAR–2018–0283–5066 at 3–5; Massachusetts Department of Environmental Protection, Docket No. EPA–HQ–OAR–2018–0283–5476; State of California et al., Docket No. EPA–HQ–OAR–2018–0283–5481 at 130–31 (California was joined by the States of Connecticut, Delaware, Hawaii, Iowa, Illinois, Maine, Maryland, Minnesota, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, the Commonwealths of Massachusetts, Pennsylvania, and Virginia, the District of Columbia, and the Cities of Los Angeles, New York, Oakland, San Francisco, and San Jose).

[444] *See, e.g.,* States and Cities at 50–55; Tesla at 11–13.

[445] States and Cities at 51. *See also* Tesla at 11–13; Twelve Public Interest Organizations app. 1 at 2; NESCAUM at 8–9; Southern Environmental Law Center (SELC), Docket No. EPA–HQ–OAR–2021–0257–0125 at 2–3; NCAT at 12; Class of '85, Docket No. EPA–HQ–OAR–2021–0257–0454 (correction to an earlier comment by the same commenter, which can be found at Docket No. EPA–HQ–OAR–2021–0257–0388) at 5–6; Maine at 2; OTC at 2. Ironically, one supporter of SAFE 1, while arguing that EPA cannot consider GHG reductions from section 177 states in its second prong analysis, acknowledged EPA's lack of an oversight role under section 177: ''EPA cannot consider GHG reductions, if any, attributable to 'opt-in' states under Section 177, as these are out of the scope of a waiver application. Indeed, EPA has no legal role in reviewing opt-in states, as the statute grants the agency no role in reviewing opt-in by other states.'' AFPM at 15.

[446] *See, e.g.,* States and Cities at 53; NESCAUM at 9; NCAT at 12.

[447] *See, e.g.,* States and Cities at 53 (''[T]he reference in the title to 'nonattainment areas' is not a limitation to 'nonattainment (*i.e.,* criteria) pollutants' or standards that target them'' but rather a limitation on the states that can adopt California's standards); NESCAUM at 9; SELC at 2; NCAT at 12.

[448] Commenters feared that EPA's interpretation, which ''prevents Section 177 States from adopting California's GHG standards, but not any other California standards,'' could require states to ''extract just the GHG portion of the Advanced Clean Cars rules from their programs, thus potentially creating type of ''third vehicle'' forbidden by Section 177 (*i.e.,* a vehicle subject to a hybrid combination of the other California standards and the (now weakened) federal GHG standards.'' States and Cities at 54. *See also* NESCAUM at 11–12; SELC at 5.

[449] States and Cities at 31–32, 50–55; NESCAUM at 12–13; SELC at 5; NCAT at 12; Class of '85 at 4–5.

[450] EPA is aware of instances of States adopting California new motor vehicle emission standards and not subsequently including such standards in their SIP. In these circumstances EPA has not played and would not play an approval role.

[451] EPA notes that although section 177 states that ''. . . any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles . . .'' the language in section 177 does not require a state to submit its adopted motor vehicle emissions standards for SIP approval.

[452] 84 FR at 51338 n.256 (''EPA acknowledges that its actions in this document may have implications for certain prior and potential future EPA reviews of and actions on state SIPs. . . . EPA will consider whether and how to address those implications, to the that they exist, is separate actions.''). EPA action on a state plan (including application of Section 177) is subject to judicial review. 42 U.S.C. 7607(b)(1).

[453] 42 U.S.C. 7507.

[454] *Id.*

acknowledged by courts and EPA alike.[455] Thus, it is well established that states have broad discretion to adopt California standards without being subject to EPA's approval.[456]

States with approved SIPs that have adopted the waived California standard into state law may submit a SIP revision that includes that adopted standard. In that proceeding, EPA could determine whether the statutory criteria for adoption are met for purposes of approving a SIP revision. Indeed, in the litigation following SAFE 1, EPA acknowledged that its interpretive view of section 177 would have no actual effect until applied in a future SIP context.[457] SIPs are a crucial planning tool in helping states reach attainment for NAAQS and California's standards are key components of many of these SIPs.[458] In a SIP proceeding, these states and other stakeholders are better able to provide specific and comprehensive comments about the intent and effect of adopting California standards.[459]

For these reasons, EPA believes that it was inappropriate to provide an interpretive view of section 177 in SAFE 1.[460] Therefore, EPA is withdrawing its SAFE 1 interpretive view of section 177.

E. Conclusion

EPA determines that it was both inappropriate and unnecessary, within the SAFE 1 waiver proceeding, to provide an interpretive view of the authority of section 177 states to adopt California standards. Therefore, EPA withdraws its interpretive views that had been set forth in SAFE 1.

VIII. Other Issues

A. Equal Sovereignty

As explained in Section VI, EPA must grant California's waiver request unless the Agency makes one of the specified findings in section 209(b)(1). In this instance, Congress has made multiple determinations through its adoption of section 209 and subsequent amendments, dating from 1967 through the 1990 CAA Amendments, regarding California's role and its relation to federal standard setting for mobile sources. EPA's longstanding waiver practice, consistent with case law, has been to refrain from considering factors beyond section 209(b)(1) criteria as well as constitutional claims in the review of California waiver requests.[461] EPA acknowledges that California adopts its standards as a matter of law under its police powers,[462] that the Agency's task in reviewing waiver requests is properly limited to evaluating California's request according to the criteria in section 209(b), and that it is appropriate to defer to litigation brought by third parties in other courts, such as state or federal court, for the resolution of constitutionality claims and inconsistency, if any, with other statutes. As further explained this practice flows from the statute and legislative history, which reflect a broad policy deference that is afforded to California to address its serious air quality problems (which are on-going) as well as to drive emission control innovation. And so, EPA has historically declined to consider constitutional issues in evaluating and granting section 209 waivers. In *MEMA I,* the D.C. Circuit rejected a First Amendment challenge to a waiver as outside the scope of review.[463] In 2009, EPA approved a waiver (and authorization) under section 209(e), granting California authority to enforce its Airborne Toxic Control Measure, which established in-use emission performance standards for engines in transport refrigeration units (TRUs) and TRU generator sets.[464] Responding to comments that the waiver reached beyond California's borders in violation of the Dormant Commerce Clause, EPA stated that such considerations are not factors that EPA must consider under section 209(e) because ''EPA's review of California's regulations is limited to the criteria that Congress directed EPA to review.'' [465] This interpretation was upheld by the D.C. Circuit Court of Appeals. The Court agreed with EPA that the commenters had sought to ''improperly . . . engraft a type of constitutional Commerce Clause analysis onto EPA's Section 7543(e) waiver decisions that is neither present in nor authorized by the statute.'' [466]

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[455] In 1979, for example, only two years after the adoption of section 177, the D.C. Circuit stated that the Act only requires the three listed prerequisites, ''not . . . that the EPA administrator conduct a separate waiver proceeding for each state that chooses [to adopt California standards].'' *Ford Motor Co.* v. *EPA,* 606 F.2d 1293, 1298 (D.C. Cir. 1979). Similarly, in 1994, while enacting rules implementing section 209(e)(2)(B), the parallel provision for the nonroad vehicle section of the California Waiver program, EPA noted that section 177 states had not ''ask[ed] for EPA authorization before they adopted the California standards, nor did EPA or the automobile industry suggest that they needed such authorization.'' 56 FR 36969, 36983 (1994). *See also* 77 FR 62637 n.54 (''States are not required to seek EPA approval under the terms of section 177.'').

[456] EPA also notes that there are ample judicial avenues to directly challenge state adoption of California standards. For example, the First and Second Circuits have already addressed objections to the adoption of California standards under section 177. In both *Am. Auto. Mfrs. Ass'n* v. *Mass. DEP* and *Motor Vehicle Mfrs. Ass'n* v. *NYSDEC,* petitioners argued that the States' adoption of California's low emission vehicles standards without the associated clean fuels plan violated section 177. 31 F.3d 18 (1st Cir. 1994); 17 F.3d 521 (2d Cir. 1994).

[457] Several commenters on the Notice of Reconsideration argued that SAFE 1 violated conformity rules by interfering with already approved SIPs. However, as EPA explained in the litigation over SAFE 1, the action had no actual effect on ''either existing approvals of state plans or the plans themselves for criteria pollutants.'' Final Brief for Respondents at 106, *Union of Concerned Scientists* v. *NHTSA,* No. 19–1230 (D.C. Cir. Oct. 27, 2020). *See also* 84 FR 51338, n.256.

[458] Wisconsin at 1 (''These standards provide important and necessary reductions in both GHG and criteria pollutant emissions needed to meet state and local air quality goals and address federal CAA requirements.''); Connecticut at 2 (''These programs enable long-term planning and yield critical emission reductions that are critical to meeting Connecticut's climate goals as well as our statutory obligations to reach attainment with the ozone NAAQS.''); Delaware at 2 (''Delaware adopted the California LEV regulation and incorporated the LEV and GHG standards into the State Implementation Plan. . . . Delaware will not meet air quality goals without more protective vehicle emission standards. ''); Maine at 1 (''[T]he LEV program was initially created to help attain and maintain the health-based National Ambient Air Quality Standards (NAAQS) . . . The California ZEV and GHG programs enable long-term planning for both the states and the regulated community and have been drivers of technological change across the industry.'').

[459] The Agency has considered whether there may be any reliance interests on EPA's previous interpretive view of section 177 described in the SAFE 1 action. EPA is unaware of any such interests, and none were raised in comments.

[460] To the extent that EPA's reasoning in its SAFE 1 section 177 determination lacked fair notice, as the States and Cities' Petition claimed, such a contention is rendered moot by this action.

[461] EPA has declined to consider constitutional challenges to California Waivers since at least 1976. 41 FR 44212 (Oct. 7, 1976) (''An additional argument against granting the waiver was raised by the Motorcycle Industry Council and Yamaha, who contended that the CARB had violated due process when adopting their standards, by not allowing the manufacturers a fair and full opportunity to present their views at a State hearing. If this argument has any validity, the EPA waiver hearing is not the proper forum in which to raise it. Section 209(b) does not require that EPA insist on any particular procedures at the State level. Furthermore, a complete opportunity was provided at the EPA waiver hearing for the presentation of views.''). *See also, e.g.,* 43 FR at 32184 (July 25, 1978) (rejecting objections to the procedures at state level, objections that section 207(c)(3)(A) establishes field protection, and constitutional objections all as beyond the ''narrow'' scope of the Administrator's review).

[462] *Central Valley Chrysler-Jeep, Inc.* v. *Goldstene,* 529 F.Supp.2d 1151, 1174 (''The waiver provision of the Clean Air Act recognizes that California has exercised its police power to regulate pollution emissions from motor vehicles since before March 30, 1966; a date that predates both the Clean Air Act and EPCA.'').

[463] *MEMA I,* 627 F.2d 1095, 1111, 1114–14 (D.C. Cir. 1979).

[464] 74 FR 3030 (January 16, 2009).

[465] Decision Document, EPA–HQ–OAR–2005–0123–0049 at 67.

[466] *ATA* v. *EPA,* 600 F.3d 624, 628 (D.C. Cir. 2010) (quoting the U.S. brief). In a footnote to this statement, the Court said ATA could attempt to bring a constitutional challenge directly (which would argue that the waiver unconstitutionally burdens interstate commerce) but ''express[ed] no view on that possibility.'' *Id.* at n.1. *See also OOIDA* v. *EPA,* 622 Fed. Appx. 4, 5 (D.C. Cir. 2015)

Consistent with the Agency's long standing practice, the decision on whether to grant the ACC program waiver was based solely on criteria in section 209(b) and the Agency did not either interpret or apply the Equal Sovereignty Doctrine or any other constitutional or statutory provision in that waiver decision.[467]

Although EPA specified issues that it was seeking comment on within the Notice of Reconsideration, commenters nevertheless argued that the Equal Sovereignty Doctrine, which was not one of the identified aspects in that notice, preempts reinstitution of the relevant aspects of the ACC program waiver. According to these commenters, ''Section 209, by allowing California and only California to retain a portion of its sovereign authority that the Clean Air Act takes from other States, is unconstitutional and thus unenforceable.'' [468] Other commenters argued that the Equal Sovereignty doctrine does not apply to the California waiver program. One comment maintained that the holding in *Shelby County* v. *Holder* is distinguishable from the CAA.[469] California disagreed with EPA's characterization of the relevance of the doctrine, commenting that the Supreme Court has only applied the ''rarely invoked'' doctrine of Equal Sovereignty in the ''rare instance where Congress undertook 'a drastic departure from basic principles of federalism' by authorizing 'federal intrusion into sensitive areas of state and local policymaking.' '' [470]

As explained in the 2013 ACC program waiver decision, EPA continues to believe that waiver requests should be reviewed based solely on the criteria in section 209(b)(1) and specifically, that the Agency should not consider constitutional issues in evaluating waiver requests.[471] As previously noted in Section VI, the constitutionality of section 209 is not one of the three statutory criteria for reviewing waiver requests, and such objections are better directed to either the courts or Congress. As the D.C. Circuit reasoned in *MEMA I,* ''it is generally considered that the constitutionality of Congressional enactments is beyond the jurisdiction of administrative agencies.'' [472] Although commenters here raise a new constitutional argument—that of Equal Sovereignty rather than the First Amendment or the Dormant Commerce Clause—EPA is no more well-suited to resolve this constitutional objection than it is to resolve previous constitutional objections.[473]

EPA notes that Congress struck a deliberate balance in 1967 when it acknowledged California's serious air quality problems as well as it being a laboratory for the country, and once again in 1977 when Congress continued to acknowledge California's air quality problems as well as problems in other states and decided that California's new motor vehicle standards, once waived by EPA and subject to certain conditions, would be optionally available for all states under section 177 under specified criteria.[474] In striking a balance between one national standard and 51 different state standards, Congress chose to authorize two standards—the federal standard, and California's standards (which other states may adopt). EPA believes this balance reflected Congress's desire for California to serve as a laboratory of innovation and Congress's understanding of California's extraordinary pollution problems on the one hand, and its desire to ensure that automakers were not subject to too many different standards on the other.

In reconsidering the SAFE 1 action and the appropriateness of reinstating the 2013 ACC program waiver, EPA has not considered whether section 209(a) and section 209(b) are unconstitutional under the Equal Sovereignty Doctrine. As in the 2013 ACC program waiver, the decision on whether to grant the waiver and the consequence of a reinstated waiver is based solely on the criteria in section 209(b) and this decision does not attempt to interpret or apply the Equal Sovereignty Doctrine or any other constitutional or statutory provision.

B. CARB's Deemed-To-Comply Provision

EPA received comments arguing that California's 2018 clarification to its deemed-to-comply provision ''changed important underlying requirements of the original 2012 waiver application'' and ''EPA cannot reinstate a Clean Air Act waiver for a program that no longer exists.'' [475] These commenters maintain that California has never sought a waiver for the 2018 amendments or a determination that the change is within the scope of the prior waiver. As such, commenters maintain that EPA lacks a necessary predicate to permit California's enforcement of its amended GHG standards.

Other commenters argued that the ''deemed to comply'' provision was always conditioned on the federal standards providing GHG reductions that were at least equal to or as protective as California's program and so the 2018 amendments did not substantively change the provision or affect any related reliance interests and instead were designed to clarify the

(rejecting a challenge for lack of jurisdiction because challengers objected to the state regulations themselves, not EPA's approval of them in a waiver under 209(b)) (''To the extent there is any tension in our case law surrounding whether we might decide a constitutional claim brought within a broader challenge to an EPA waiver decision, OOIDA does not present us with such a challenge, and we have no occasion to resolve that question here.'').

[467] 78 FR at 2145.

[468] Ohio and 15 States, Docket No. EPA–HQ–OAR–2021–0257–0124 at 1. This commenter also stated that ''The waiver at issue here, allowing only California to regulate carbon emissions, is not sufficiently related to the problem that Section 209(a) targets, Congress enacted that section to permit California to address *local* air pollution. But California seeks special treatment for its proposed greenhouse gas targets . . . designed to mitigate climate change—an inherently global interest.'' *Id.* at 8–9. EPA notes that this characterization of CARB's standards is addressed in Section V.

[469] Twelve Public Interest Organizations at 5 (''*Shelby County* does not govern here. *See* Amicus Br. of Prof. Leah Litman 12–17, *Union of Concerned Scientists* v. *NHTSA,* No. 19–1230 (July 6, 2020) (A–0384). First, Clean Air Act Section 209(b) places no extraordinary burden or disadvantage on one or more States. Rather, the statute benefits California by allowing the exercise of its police power authority to address its particular pollution control needs. Second, the foundation for reserving California's authority has not waned over time. California had in 1967, and continues to have, the Nation's absolute worst air quality. For example, the South Coast air basin, home to 17 million people, typically leads the Nation in ozone (smog) pollution. The American Lung Association's 2021 'State of the Air' report on national air pollution shows that seven of the ten worst areas for ozone pollution in the country are in California, as are six of the worst ten for small particulate matter. Am. Lung Ass'n, *Most Polluted Cities, https://www.lung.org/research/sota/city-rankings/most-polluted-cities* (last visited July 2, 2021) (A–0422).'').

[470] States and Cities at 41–42.

[471] 78 FR at 2145.

[472] *MEMA I,* 627 F.2d 1095, 1114–15 (D.C. Cir. 1979) (holding that EPA did not need to consider whether California's standards ''unconstitutionally burden[ed] [petitioners'] right to communicate with vehicle purchasers.''). *See also* Twelve Public Interest Organizations at 7 (''As regulatory agencies are not free to declare an act of Congress unconstitutional,' *Springsteen-Abbott* v. *SEC,* 989 F.3d 4, 8 (D.C. Cir. 2021), EPA cannot determine whether a statute Congress directed it to implement contravenes the equal-sovereignty principle. Thus, EPA should proceed to rescind the Waiver Withdrawal and leave Ohio's argument for review by an appropriate court.'').

[473] *See, e.g., Johnson* v. *Robison,* 415 U.S. 361, 368, (1974) (''Adjudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies''); *Springsteen-Abbott,* 989 F.3d at 8; *Meredith Corp.* v. *FCC,* 809 F.2d 863, 872 (D.C. Cir. 1987).

[474] ''§ 177 . . . permitted other states to 'piggyback' onto California 's standards, if the state's standards 'are identical to the California standards for which a waiver has been granted for such model year.' '' *Motor Vehicle Mfrs. Ass'n* v. *New York State Dep't of Envtl. Conservation,* 17 F.3d 521, 525 (2d Cir. 1994).

[475] AFPM at 7; Urban Air at 2, 18–19; NADA at 6.

provision.[476] Commenters maintain that CARB adopted ''non-substantive amendments for its LEV III regulations to further clarify that the deemed-to-comply provision would only apply if the federal GHG standards remained substantially as they were as of the date of the 2017 Final Determination.'' [477] According to these commenters, California adopted these amendments after EPA's withdrawal of its 2017 Final Determination that had determined that its Federal GHG standards for model years 2022–2025 remained appropriate and instead concluded that the federal standards for model years 2022–2025 may be too stringent and should be revised. EPA notes that after the January 2017 MTE CARB subsequently found that compliance with those federal standards would result in equivalent or greater GHG benefits than originally projected for California.[478] These commenters further maintain that the clarification of the deemed-to-comply provision is immaterial to the reversal of the waiver withdrawal in SAFE 1 because the SAFE 1 action was expressly based on EPA's decision to rely on NHTSA's preemption findings and section 209(b)(1)(B) determination, neither of which was based on CARB's 2018 clarification rulemaking. As such, the commenters maintain that the clarification of the deemed-to-comply provision has no bearing on and does not preclude EPA's SAFE 1 waiver withdrawal.[479]

As previously explained, under section 209(b)(1) EPA is to grant a waiver of preemption for California to enforce its own standards that would otherwise be preempted under section 209(a). This preemption does not extend to federal standards that are adopted under section 202(a). EPA explained this in responding to comments on the deemed-to-comply provision in the ACC program waiver decision. ''[T]he waiver decision affects only California's emission standards, not the federal standards that exist regardless of EPA's decision.'' [480] This preemptive effect of section 209(a) does not change even when California chooses to allow for compliance with its standards through federal standards as envisaged by the deemed-to-comply provision.

It also bears note that in SAFE 1, EPA made clear that the 2018 amendment was not a ''necessary part of the basis for the waiver withdrawal and other actions that EPA finalizes in this [SAFE1] document.[481] In the Notice of Reconsideration, EPA neither reopened nor reconsidered elements of the 2013 waiver that were not part of EPA's findings in SAFE 1.[482] As noted in this decision, EPA has evaluated the factual and legal errors that occurred in SAFE 1. As part of this evaluation, EPA believes it has considered all appropriate and relevant information necessary to its review of issues associated with the second waiver prong or consideration of preemption under EPCA. The Agency also recognizes that it received comments from parties that raised non-germane issues to EPA's Notice of Reconsideration. EPA did not conduct an analysis of such comments in the context of reconsidering the specific actions taken in SAFE 1. EPA also makes clear that the result of rescinding its part of SAFE 1 is the automatic reinstatement of the waiver granted to California in 2013 for its ACC program. That is the result of the action taken herein.[483]

IX. Decision

After review of the information submitted by CARB and other public commenters, the SAFE 1 action, and the record pertaining to EPA's 2013 ACC program waiver, I find that EPA did not appropriately exercise its limited inherent authority to reconsider waiver grants in SAFE 1. SAFE 1 did not correct a clerical or factual error, nor did the factual circumstances and conditions related to the three statutory criteria change prior to SAFE 1, much less change so significantly as to cast the propriety of the waiver grant into doubt. On this basis, I am rescinding the SAFE 1 action.

Furthermore, after review of both the 2013 ACC program waiver record as well as the SAFE 1 record, to the extent that EPA did have authority to reconsider the ACC program waiver, I have determined that the asserted bases were in error and did not justify the waiver withdrawal. With respect to the Agency's first purported basis—its discretionary decision to undertake a reinterpretation of the second waiver prong—I find that the statutory interpretation adopted in SAFE 1 is a flawed reading of the statute, and I hereby return to the traditional interpretation of the second waiver prong, which is, at least, the better interpretation. Under the traditional interpretation, which looks at the program as a whole, California clearly had a compelling need for the ACC program. Even if SAFE 1's statutory reinterpretation, which focuses on California's compelling need for the specific standards, were an appropriate reading, EPA did not perform a reasonable, accurate, and complete review of the factual record in its findings regarding the criteria emission benefits of CARB's ZEV sales mandate and GHG emission regulations. Upon review, I find that SAFE 1's predicate for concluding that California did not have a compelling need for these specific standards was not reasonable given the record at the time of the ACC program waiver and once again during the SAFE 1 proceeding. A reasonable, accurate, and complete review of the record supports the need for California's specific GHG emission standards and ZEV sales mandate to meet compelling and extraordinary conditions in California. This is true whether I look at how these standards reduce criteria pollution, GHG pollution, or both. In

[476] States and Cities at 58–61. (''California always intended its standards would 'remain an important backstop in the event the national program is weakened or terminated.' 78 FR at 2,128.'').

[477] *Id.* at 60. ''Final Determination on the Appropriateness of the Model Year 2022–2025 Light-Duty Vehicle Greenhouse Gas Emissions Standards under the Midterm Evaluation'' (2017 Final Determination) at *https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100QQ91.pdf.*

[478] 82 FR 14671 (March 22, 2017) and 83 FR 16077 (April 13, 2018).

[479] States and Cities at 60–62.

[480] 78 FR at 2124.

[481] EPA declined to ''take any position at this point on what effect California's December 2018 amendment to its ''deemed to comply' provision . . . [may] have on the continued validity of the January 2013 waiver.'' 84 FR at 51329, n.208, 51334, n.230. Although EPA claimed in SAFE 1 that the deemed to comply clarification confirmed and provided further support for the SAFE 1 action, EPA no longer makes this claim to the extent it is relevant in its reconsideration and rescission of SAFE 1. The consequence of this action is the reinstatement of the ACC program waiver issued in 2013 and does not extend to other regulatory developments in California or by EPA that occurred subsequent to that waiver decision.

[482] 86 FR at 22423. In addition to declining to take a position on the effect of California's 2018 amendments to its ''deemed to comply'' provision, SAFE 1 did not finalize the withdrawal of the waiver under the first or third waiver prongs. EPA also notes that it has previously responded twice to the comments suggesting that CARB's deemed-to-comply provision demonstrates that California does not have a need for its own standards. *See* 78 FR at 2124–25.

[483] EPA acknowledges that motor vehicle emission standards in California as well as federally are periodically clarified, amended, or revised. For example, after California issued its first deemed-to-comply regulation, EPA determined that the state's GHG standards were within the scope of the 2009 waiver. While EPA believes that Congress intended regulatory certainty to be attached to the Agency's waivers issued under section 209, EPA acknowledges that conditions may change over time so significantly that it could merit a review of California's motor vehicle emission program and applicable standards therein or that would prompt California to submit a related waiver request to EPA. As explained in this decision, the conditions associated with the analysis of the three waiver criteria performed in the ACC waiver decision did not change so as to merit the SAFE 1 action. EPA recognizes that federal light-duty vehicle GHG emission standards have been modified twice since SAFE 1 was issued; the current standards do not change EPA's conclusion that SAFE 1 should be rescinded.

sum, although I am not adopting the interpretation of the second waiver prong set forth in SAFE 1, I find that the burden of proof necessary to demonstrate that CARB's ZEV sales mandate and GHG emission standards are not needed to meet compelling and extraordinary conditions has not been met under either interpretation of the second waiver prong. Therefore, I rescind the Agency's part of the SAFE 1 action to the extent it relied upon the second waiver prong to withdraw the ACC program waiver.

With regard to the applicability of preemption under EPCA, I find that, to the extent EPA's authority to reconsider the ACC program waiver rested upon NHTSA's joint action at the time as well as the applicability of its EPCA interpretation to EPA's review, this statute falls clearly outside the confines of section 209(b) where EPA's authority to grant, deny, and reconsider waivers resides. In any event, the grounds for such action under SAFE 1 no longer exist given NHTSA's recent final action withdrawing its EPCA preemption rule in its entirety.

Each of the decisions and justifications contained in this final action is severable.

This decision rescinds EPA's SAFE 1 action and therefore, as a result, the waiver of preemption EPA granted to California for its ACC program ZEV sales mandates and GHG emission standards issued in 2013, including for the 2017 through 2025 model years, comes back into force.

Judicial Review

Section 307(b)(1) of the CAA governs judicial review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, but ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.'' For locally or regionally applicable final actions, the CAA reserves to EPA complete discretion whether to invoke the exception in (ii).

This final action is ''nationally applicable'' within the meaning of section 307(b)(1). In the alternative, to the extent a court finds this action to be locally or regionally applicable, the Administrator is exercising the complete discretion afforded to him under the CAA to make and publish a finding that this action is based on a determination of ''nationwide scope or effect'' within the meaning of section 307(b)(1).[484] This action rescinds EPA's final action in SAFE 1, which withdrew a waiver for new motor vehicle greenhouse gas emission standards and ZEV sales mandate granted to California under section 209(b) of the CAA. In addition to California, sixteen other states and the District of Columbia have already adopted California's motor vehicle greenhouse gas standards. The other states are New York, Massachusetts, Vermont, Maine, Pennsylvania, Connecticut, Rhode Island, Washington, Oregon, Minnesota, New Jersey, Nevada, Maryland, Virginia, Colorado, and Delaware.[485] These jurisdictions represent a wide geographic area and fall within eight different judicial circuits.[486] In addition, this action will affect manufacturers nationwide who produce vehicles to meet the emissions standards of these states. For these reasons, this final action is nationally applicable or, alternatively, the Administrator is exercising the complete discretion afforded to him by the CAA and hereby finds that this final action is based on a determination of nationwide scope or effect for purposes of section 307(b)(1) and is hereby publishing that finding in the **Federal Register**.

Under CAA section 307(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**.

X. Statutory and Executive Order Reviews

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996, also known as the Congressional Review Act, 5 U.S.C. 801, *et seq.,* does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Michael S. Regan,

Administrator.

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[484] In deciding whether to invoke the exception by making and publishing a finding that this final action is based on a determination of nationwide scope or effect, the Administrator has also taken into account a number of policy considerations, including his judgment balancing the benefit of obtaining the D.C. Circuit's authoritative centralized review versus allowing development of the issue in other contexts and the best use of agency resources.

[485] The same states have adopted California's ZEV sales mandate regulation with the exception of Pennsylvania, Washington, and Delaware.

[486] In the report on the 1977 Amendments that revised CAA section 307(b)(1), Congress noted that the Administrator's determination that the ''nationwide scope or effect'' exception applies would be appropriate for any action that has a scope or effect beyond a single judicial circuit. See H.R. Rep. No. 95–294 at 323–24, reprinted in 1977 U.S.C.C.A.N. 1402–03.

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available at *https://www.govinfo.gov*. Some laws may not yet be available.

H.R. 2044/P.L. 117–91

To designate the facility of the United States Postal Service located at 17 East Main Street in Herington, Kansas, as the ''Captain Emil J. Kapaun Post Office Building''. (Mar. 10, 2022; 136 Stat. 29)

H.R. 3210/P.L. 117–92

To designate the facility of the United States Postal Service located at 1905 15th Street in Boulder, Colorado, as the ''Officer Eric H. Talley Post Office Building''. (Mar. 10, 2022; 136 Stat. 30)

H.R. 960/P.L. 117–93

To designate the facility of the United States Postal Service located at 3493 Burnet Avenue in Cincinnati, Ohio, as the ''John H. Leahr and Herbert M. Heilbrun Post Office''. (Mar. 11, 2022; 136 Stat. 31)

H.R. 3419/P.L. 117–94

To designate the facility of the United States Postal Service located at 66 Meserole Avenue in Brooklyn, New York, as the ''Joseph R. Lentol Post Office''. (Mar. 11, 2022; 136 Stat. 32)

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