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Contents

Federal Register

Vol. 87, No. 55

Tuesday, March 22, 2022

Separate Parts In This Issue

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

5 CFR
185 16093

9 CFR
Proposed Rules:
390 16105

12 CFR
Proposed Rules:
404 16107

14 CFR
39 (2 documents) 16094, 16097
71 16100
Proposed Rules:
39 (3 documents) 16118, 16120, 16123

33 CFR
Proposed Rules:
110 16126
165 16129

38 CFR
78 16101

40 CFR
52 16101
300 16103
Proposed Rules:
52 16131
174 16133
180 16133
300 16135

41 CFR
Proposed Rules:
60–1 16138
60–2 16138
60–4 16138
60–20 16138
60–30 16138
60–40 16138
60–50 16138
60–300 16138
60–741 16138

47 CFR
Proposed Rules:
73 (6 documents) 16155, 16156, 16157, 16158, 16159

49 CFR
Proposed Rules:
40 16160

50 CFR
Proposed Rules:
17 16320

Rules and Regulations

Federal Register
Vol. 87, No. 55
Tuesday, March 22, 2022

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 185

RIN 3206–AN39

Program Fraud Civil Remedies: Civil Monetary Penalty Inflation Adjustment

AGENCY: Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: This rule adjusts the level of civil monetary penalties contained in U.S. Office of Personnel Management regulations implementing the Program Fraud Civil Remedies Act of 1986, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 and Office of Management and Budget guidance.

DATES: Effective April 21, 2022.

FOR FURTHER INFORMATION CONTACT: Valerie Dew, Office of the General Counsel, Office of Personnel Management, 1900 E St. NW, Washington, DC 20415, *Valerie.Dew@opm.gov,* (202) 606–1700.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74, 28 U.S.C. 2461 note) (''the Act''). The Act required agencies to: (1) Adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through an interim final rulemaking, and (2) make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties. OPM has updated the agency's monetary penalties on four occasions since the passage of the 2015 Act.

This rule takes into account adjustment for the year 2021 based on inflation for that year. These calculations were made based on guidance contained in Office of Management and Budget Memorandum M–21–10:

CFR citation	Description of the penalty	2020 Adjusted penalty	2021 Inflation adjustment
5 CFR 185.103(a)	Civil Penalty for False Claims	$11,665	$11,803
5 CFR 185.103(f)(2)	Civil Penalty for False Statements	11,665	11,803

Finally, this rule makes an additional adjustment for the year 2022 based on inflation for that year. These calculations were made based on guidance contained in Office of Management and Budget Memorandum M–22–07:

CFR citation	Description of the penalty	2021 Adjusted penalty	2022 Inflation adjustment
5 CFR 185.103(a)	Civil Penalty for False Claims	$11,803	$12,537
5 CFR 185.103(f)(2)	Civil Penalty for False Statements	11,803	12,537

This final rule is being issued without prior public notice or opportunity for public comments. The 2015 Act's amendments to the Inflation Adjustment Act required the agency to adjust penalties initially through an interim final rulemaking, which did not require the agency to complete a notice and comment process prior to promulgating the interim final rule. The amendments also explicitly required the agency to make subsequent annual adjustments notwithstanding 5 U.S.C. 553 (the section of the Administrative Procedure Act that normally requires agencies to engage in notice and comment). The formula used for adjusting the amount of civil penalties is given by statute, with no discretion provided to OPM regarding the computation of the adjustments. OPM is charged only with performing ministerial computations to determine the amount of adjustment to the civil penalties due to increases in the Consumer Price Index for all Urban Consumers (CPI–U).

II. Calculation of Adjustment

The Office of Management and Budget (OMB) issues guidance annually on calculating adjustments. Under this guidance, OPM has identified applicable civil monetary penalties and calculated the annual adjustment. 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, or fees for services, licenses, permits, or other regulatory review.

Office of Management and Budget Memorandum M–21–10 stated that the cost-of-living multiplier for calculating adjustments in 2021 was 1.01182. OPM did not issue the final rule to implement the penalties for 2021. Therefore, the multiplier is to be applied to the 2020 level of civil monetary penalties for agencies. When OPM's 2020 penalties of $11,665 are multiplied by 1.01182, the resulting penalty amount for 2021 is $11,803.

Finally, Office of Management and Budget Memorandum M–22–07 stated that the cost-of-living multiplier for

calculating adjustments in 2022 was 1.06222. This multiplier is to be applied to the 2021 level of civil monetary penalties for agencies. When OPM's 2021 penalties of $11,803 are multiplied by 1.06222, the resulting penalty amount is $12,537.

III. Procedural Requirements

A. Regulatory Impact Analysis: Executive Order 12866, as Supplemented by Executive Order 13563

OPM, with the concurrence of the Office of Management and Budget (OMB), has determined that this is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, no regulatory impact analysis is required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for 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 Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties annually. No discretion is allowed. Thus, the RFA does not apply to this final rule.

C. Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does 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.

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

D. Unfunded Mandate Reform Act of 1995 (2 U.S.C. 1532)

This rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

E. E.O. 12630, Takings.

This rule does not have takings implications.

F. E.O. 13132, Federalism

This rule does not have federalism implications. The rule does not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

G. E.O. 12988, Civil Justice Reform

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

(a) Does not unduly burden the judicial system.

(b) 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

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

H. E.O. 13175, Consultation With Indian Tribes

In accordance with Executive Order 13175, OPM has evaluated this rule and determined that it has no tribal implications.

I. Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

List of Subjects in 5 CFR Part 185

Program fraud civil remedies, Claims, Penalties, Basis for civil penalties and assessments.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

For the reasons set forth in the preamble, OPM amends part 185 of title 5 of the Code of Federal Regulations as follows:

PART 185—PROGRAM FRAUD CIVIL REMEDIES: CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

■ 1. The authority citation for part 185 continues to read:

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812.

§ 185.103 [Amended]

■ 2. Section 185.103 is amended in paragraphs (a) introductory text and (f)(2) by revising ''$11,665'' to read ''$12,537''.

[FR Doc. 2022–05700 Filed 3–21–22; 8:45 am]

BILLING CODE 6325–48–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0506; Project Identifier MCAI–2021–00200–T; Amendment 39–21968; AD 2022–06–02]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2013–25–11, which applied to all Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2013–25–11 required repetitive inspections of the 80VU rack lower lateral fittings, upper fittings, and shelves for damage, repetitive inspections of the 80VU rack lower central support for cracking, and corrective action if necessary. AD 2013–25–11 also specified optional terminating action for the repetitive inspections. Since the FAA issued AD 2013–25–11, new damage occurrences have been reported, and a different compliance time has been determined for certain inspections, depending on airplane configuration. This AD expands the applicability, removes the optional terminating action, and requires new repetitive inspections; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 26, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 26, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this

AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *https://www.airbus.com.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0506.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0506; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0172, dated July 20, 2021 (EASA AD 2021–0172) (also referred to after this as the MCAI), to correct an unsafe condition for all Airbus SAS Model A318–111, A318–112, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued an NPRM to amend 14 CFR part 39 by adding an AD to supersede AD 2013–25–11, Amendment 39–17707 (78 FR 78705, December 27, 2013) (AD 2013–25–11) that would apply to all Airbus SAS Model A318–111 and –112, airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The NPRM published in the **Federal Register** on June 22, 2021 (86 FR 32653) (the NPRM). The NPRM was prompted by reports of damaged lower lateral fittings of the 80VU rack, and reports of new damage on airplanes on which certain optional service information had been accomplished. The NPRM proposed to expand the applicability, remove the optional terminating action, and require new repetitive inspections.

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2013–25–11. AD 2013–25–11 applied to all Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. The SNPRM published in the **Federal Register** on November 17, 2021 (86 FR 64092). The SNPRM proposed to establish a different compliance time for the initial inspection on certain airplane configurations. The SNPRM also proposed to expand the applicability, remove the optional terminating action, and require new repetitive inspections, as specified in EASA AD 2021–0172.

The FAA is issuing this AD to address damage or cracking of the 80VU fittings and supports, which could lead to possible disconnection of the cable harnesses to one or more computers, and if occurring during a critical phase of flight, could result in reduced control of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from The Air Line Pilots Association, International (ALPA) and United Airlines, who supported the SNPRM without change.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the SNPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0172 specifies procedures for repetitive special detailed inspections of the 80VU rack lower lateral fittings, lower central support, upper fittings, central post, and shelves attachments for discrepancies (including broken fittings, missing bolts, an electronics rack FIN 80VU that is in contact with structure, any bush that has migrated, burred material, and cracks), and corrective action if necessary. Corrective actions include modification, repair, and replacement. EASA AD 2021–0172 also describes procedures for reporting inspection results to Airbus.

The FAA has also reviewed Airbus Service Bulletin A320–25–1BKJ, Revision 02, dated April 9, 2020. Airbus Service Bulletin A320–25–1BKJ, Revision 02, dated April 9, 2020, describes inspections of the 80VU rack lower lateral fittings, lower central support, upper fittings, central post, and shelves attachments for discrepancies and corrective action.

The FAA has also reviewed Airbus Technical Adaptation 80827186/024/2020, Issue 1, dated September 18, 2020, which addresses discrepancies found in Airbus Service Bulletin A320–25–1BKJ, Revision 02, dated April 9, 2020.

This material 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.

Costs of Compliance

The FAA estimates that this AD affects 1,528 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
New actions	Up to 8 work-hours × $85 per hour = Up to $680.	$0	Up to $680	Up to $1,039,040.

* Table does not include estimated costs for reporting.

The FAA estimates that it would take about 1 work-hour per product to comply with the reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting the inspection results on U.S. operators to be $129,880, or $85 per product.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Repair	122 work-hours × $85 per hour = $10,370.	$4,150	$14,520.
Replacement	Up to 189 work-hours × $85 per hour = Up to $16,065.	Up to $6,928	Up to $22,993.
Modification	189 work-hours × $85 per hour = $16,065.	$7,407	$23,472.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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:

■ a. Removing Airworthiness Directive (AD) 2013–25–11, Amendment 39–17707 (78 FR 78705, December 27, 2013); and

■ b. Adding the following new AD:

2022–06–02 Airbus SAS: Amendment 39–21968; Docket No. FAA–2021–0506; Project Identifier MCAI–2021–00200–T.

(a) Effective Date

This airworthiness directive (AD) is effective April 26, 2022.

(b) Affected ADs

This AD replaces AD 2013–25–11, Amendment 39–17707 (78 FR 78705, December 27, 2013) (AD 2013–25–11).

(c) Applicability

This AD applies to all Airbus SAS airplanes, certificated in any category, identified in paragraphs (c)(1) through (4) of this AD.

(1) Model A318–111 and –112 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Reason

This AD was prompted by reports of damaged lower lateral fittings of the 80VU rack, and reports of new damage on airplanes on which certain optional service information had been accomplished. The FAA is issuing this AD to address damage or cracking of the 80VU fittings and supports, which could lead to possible disconnection of the cable harnesses to one or more computers, and if occurring during a critical phase of flight, could result in reduced control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0172, dated July 20, 2021 (EASA AD 2021–0172).

(h) Exceptions to EASA AD 2021–0172

(1) Where EASA AD 2021–0172 refers to its effective date, this AD requires using the effective date of this AD.

(2) The remarks section of EASA AD 2021–0172 does not apply to this AD.

(3) Where paragraph (3) of EASA AD 2021–0172 specifies ''any discrepancy,'' for this AD ''any discrepancy'' includes broken fittings, missing bolts, an electronics rack FIN 80VU that is in contact with structure, any bush that has migrated, burred material, and cracks.

(i) Method of Compliance for Paragraphs (1), (2), and (3) of EASA AD 2021–0172

Accomplishing inspections and correctives actions in accordance with the Accomplishment Instruction of Airbus Service Bulletin A320–25–1BKJ, Revision 02, dated April 9, 2020, with corrections referenced in the Airbus Technical Adaptation 80827186/024/2020, Issue 1, dated September 18, 2020, is an acceptable method of compliance for the inspections and corrective actions specified in paragraphs (1), (2), and (3) of EASA AD 2021–0172.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, 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 responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified 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 procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(k) Related Information

For more information about this AD, contact Sanjay Ralhan, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3223; email *sanjay.ralhan@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 this AD specifies otherwise.

(i) Airbus Service Bulletin A320–25–1BKJ, Revision 02, dated April 9, 2020.

(ii) Airbus Technical Adaptation 80827186/024/2020, Issue 1, dated September 18, 2020.

(iii) European Union Aviation Safety Agency (EASA) AD 2021–0172, dated July 20, 2021.

(3) For EASA AD 2021–0172, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.* For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* internet *https://www.airbus.com.*

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

(5) You may view this material 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 March 8, 2022.

Ross Landes,

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

[FR Doc. 2022–05617 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1178; Project Identifier MCAI–2021–00986–R; Amendment 39–21986; AD 2022–06–20]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited) Helicopters

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–20–06, which applied to certain Bell Helicopter Textron Canada Limited (now Bell Textron Canada Limited) Model 429 helicopters. AD 2020–20–06 required repetitive inspections of certain cyclic and collective assembly bearings. This AD was prompted by new bellcrank assemblies, which have been upgraded with corrosion resistant steel bearings. This AD retains certain requirements of AD 2020–20–06, and depending on the inspection results, requires removing certain parts from service and installing the upgraded cyclic and collective bellcrank

assemblies. This AD also requires installing the upgraded collective and cyclic bellcrank assemblies on certain helicopters if not already installed, and prohibits installing certain bellcrank assemblies. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective April 26, 2022.

ADDRESSES: For service information identified in this final rule, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; 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–2021–1178; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the Transport Canada AD, 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: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–20–06, Amendment 39–21262 (85 FR 60356, September 25, 2020) (AD 2020–20–06). AD 2020–20–06 applied to Bell Helicopter Textron Canada Limited Model 429 helicopters with a bellcrank assembly part number (P/N) 429–001–523–101, 429–001–523–103, 429–001–532–101, or 429–001–532–103 installed. The NPRM published in the **Federal Register** on January 14, 2022 (87 FR 2362). In the NPRM, the FAA proposed to retain some of the requirements of AD 2020–20–06, and proposed to require, for certain serial-numbered helicopters, within 12 months after the helicopter was manufactured or 30 days, whichever occurs later, and thereafter at intervals not to exceed 6 months, disconnecting certain parts, stowing certain parts to prevent binding, and moving the cyclic stick and the collective stick to inspect for roughness in the flight control system and binding in the collective, lateral, and longitudinal arm assemblies. If any of these conditions exist, the NPRM proposed to require, before further flight, removing certain parts from service and installing upgraded bellcrank assemblies.

Additionally, the NPRM proposed to require, for certain serial-numbered helicopters that do not have the upgraded bellcrank assemblies installed, within 24 months, installing the upgraded bellcrank assemblies, which would provide a terminating action for the recurring inspections. Finally, the NPRM proposed to prohibit installing any affected bellcrank assembly on any helicopter.

The NPRM was prompted by Transport Canada AD CF–2016–11R3, dated August 30, 2021 (Transport Canada AD CF–2016–11R3), issued by Transport Canada, which is the aviation authority for Canada, to correct an unsafe condition for Bell Textron Canada Limited Model 429 helicopters, all serial numbers. Transport Canada advises of new collective and cyclic bellcrank assemblies which have been upgraded with corrosion resistant steel bearings. This condition, if not addressed, could result in restrictions in the collective, directional, or pitch control systems, and subsequent loss of helicopter control.

Accordingly, Transport Canada AD CF–2016–11R3 requires for certain serial-numbered helicopters, within 12 months from the helicopter manufacture date, or for helicopters that have exceeded the age threshold of 12 months from the helicopter manufacturer date, within 30 days, and thereafter at intervals not to exceed 6 months, performing a functional check of the flight controls to detect roughness in the pivot bearings and binding of the collective, lateral, or longitudinal arm end bearings of the bellcrank assemblies. If any roughness or binding is detected, Transport Canada AD CF–2016–11R3 requires replacement of each affected bellcrank assembly before further flight. Transport Canada AD CF–2016–11R3 also requires, within 24 months, installing the upgraded collective and cyclic bellcrank assemblies and considers this action a terminating action to the recurring inspections. Finally, Transport Canada AD CF–2016–11R3 prohibits an affected bellcrank assembly from being installed on any helicopter.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with Canada, Transport Canada, its technical representative, has notified the FAA of the unsafe condition described in its AD. The FAA reviewed the relevant data, 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 helicopters. This AD is adopted as proposed in the NPRM.

Related Service Information

The FAA reviewed Bell Technical Bulletin 429–18–58, Revision B, dated August 23, 2021 (TB 429–18–58 Rev B), which specifies procedures to upgrade certain part-numbered bellcrank assemblies to the bellcrank assemblies that utilize the corrosion resistant steel bearings.

The FAA also reviewed Bell Helicopter Alert Service Bulletin 429–15–21, Revision C, dated August 23, 2021 (ASB 429–15–21 Rev C), which specifies moving the cyclic stick fore, aft, and laterally, and the collective stick up and down from stop to stop to detect deteriorated pivot bearings. ASB 429–15–21 Rev C also specifies inspecting to determine whether the bearings in the collective, lateral, and longitudinal arm assemblies rotate freely. If discrepant arm bearings are found, ASB 429–15–21 Rev C specifies contacting Bell Product Support Engineering to report the findings and replacing the discrepant parts with serviceable parts.

Differences Between This AD and Transport Canada AD CF–2016–11R3

Transport Canada AD CF–2016–11R3 provides requirements if the most recent functional check was performed using a hydraulic test stand as an alternate procedure. This AD provides no such alternate procedure. Transport Canada AD CF–2016–11R3 provides requirements for helicopters that have exceeded the age threshold of 12 months from the helicopter

manufacturer date to complete the initial functional check within 30 days from the effective date of its AD. This AD requires the initial inspection within 12 months after the helicopter was manufactured or 30 days after the effective date of this AD, whichever occurs later. Transport Canada AD CF–2016–11R3 allows credit for the corrective actions of Part I if the initial functional check was accomplished prior to the effective date of Transport Canada AD CF–2016–11R3, whereas this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 64 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.

Inspecting the cyclic and the collective bellcrank assemblies for roughness in the pivot bearings and binding in the collective, lateral, and longitudinal arm end bearings takes about 3 work-hours for an estimated cost of $255 per inspection cycle.

Installing the upgraded collective and cyclic bellcrank assemblies takes about 18 work-hours and parts cost about $1,750 for an estimated cost of $3,280 per upgrade installation.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(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:

■ a. Removing Airworthiness Directive 2020–20–06, Amendment 39–21262 (85 FR 60356, September 25, 2020); and

■ b. Adding the following new airworthiness directive:

AD 2022–06–20 Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited): Amendment 39–21986; Docket No. FAA–2021–1178; Project Identifier MCAI–2021–00986–R.

(a) Effective Date

This airworthiness directive (AD) is effective April 26, 2022.

(b) Affected ADs

This AD replaces AD 2020–20–06, Amendment 39–21262 (85 FR 60356, September 25, 2020) (AD 2020–20–06).

(c) Applicability

This AD applies to Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 429 helicopters, certificated in any category, with a bellcrank assembly part number (P/N) 429–001–523–101, 429–001–523–103, 429–001–532–101, or 429–001–532–103 installed.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by new bellcrank assemblies, which have been upgraded with corrosion resistant steel bearings. The FAA is issuing this AD to prevent corrosion of the bearings due to pooling at the bellcrank assembly from precipitation in the forward portion of the roof structure. The unsafe condition, if not addressed, could result in restrictions in the collective, directional, or pitch control systems, and subsequent loss of helicopter control.

(f) Compliance

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

(g) Required Actions

(1) For Model 429 helicopters serial number (S/N) 57001 through 57296 inclusive, within 12 months after the helicopter was manufactured or 30 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 6 months:

(i) Disconnect the forward ends of the collective control tube, longitudinal stability and control augmentation system (SCAS) actuator, and lateral SCAS actuator. Stow the collective control tube and each SCAS actuator to prevent binding.

(ii) Move the cyclic stick fore, aft, and laterally, and the collective stick up and down from stop to stop to determine if there is any roughness. If there is any roughness in the flight control system, before further flight, remove each pivot bearing P/N MS27646–41, each arm assembly bearing P/N MS27643–4, and each sleeve P/N 120–13–4A from service and install bellcrank assemblies P/N 429–001–523–101FM and 429–001–532–101FM; or 429–001–523–107FM and 429–001–532–107FM; or 429–001–523–107 and 429–001–532–107.

(iii) Inspect the collective arm assembly P/N 429–001–525–101, the lateral arm assembly P/N 429–001–527–101, and the longitudinal arm assembly P/N 429–001–530–101, by rotating each bearing and determining whether each bearing rotates freely. If there is any binding in any arm end bearing or on the longitudinal bellcrank assembly, before further flight, remove each pivot bearing P/N MS27646–41, each arm assembly bearing P/N MS27643–4, and each sleeve P/N 120–13–4A from service and install bellcrank assemblies P/N 429–001–523–101FM and 429–001–532–101FM; or 429–001–523–107FM and 429–001–532–107FM; or 429–001–523–107 and 429–001–532–107.

(2) For Model 429 helicopters S/N 57001 through 57296 inclusive, unless already accomplished by following paragraphs (g)(1)(ii) or (iii) of this AD, within 24 months after the effective date of this AD, install bellcrank assemblies P/N 429–001–523–101FM and 429–001–532–101FM; or 429–001–523–107FM and 429–001–532–107FM; or 429–001–523–107 and 429–001–532–107.

(3) As of the effective date of this AD, installing bellcrank assemblies P/N 429–001–523–101FM and 429–001–532–101FM; or 429–001–523–107FM and 429–001–532–107FM; or 429–001–523–107 and 429–001–

532–107, constitutes a terminating action for the recurring inspections required by paragraph (g)(1) of this AD.

(4) As of the effective date of this AD, do not install any bellcrank assembly P/N 429–001–523–101, 429–001–523–103, 429–001–532–101, or 429–001–532–103 on any helicopter.

(h) Special Flight Permits

Special flight permits are prohibited.

(i) 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 International Validation Branch, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed 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.

(j) Related Information

(1) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

(2) For service information identified in this AD, contact Bell Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J 1R4, Canada; telephone 1–450–437–2862 or 1–800–363–8023; fax 1–450–433–0272; email *productsupport@bellflight.com;* or at *https://www.bellflight.com/support/contact-support.* You may view this referenced 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.

(3) The subject of this AD is addressed in Transport Canada AD CF–2016–11R3, dated August 30, 2021. You may view the Transport Canada AD on the internet at *https://www.regulations.gov* in Docket No. FAA–2021–1178.

(k) Material Incorporated by Reference

None.

Issued on March 10, 2022.

Ross Landes,

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

[FR Doc. 2022–05664 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0816; Airspace Docket No. 21–ANM–27]

RIN 2120–AA66

Modification of Class D and Class E Airspace, and Establishment of Class E Airspace; Southwest Oregon Regional Airport, OR; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting a final rule that appeared in the **Federal Register** on March 3, 2022. The rule modified the Class D and Class E surface airspace, established Class E airspace designated as an extension to Class D & E surface areas, Class E airspace beginning at 700 feet above the surface, removed navigational aids (NAVAIDs) from text headers, and made administrative changes to the legal descriptions at Southwest Oregon Regional Airport, North Bend, OR. The Final Rule did not explain the purposeful removal of Class E airspace beginning at 1,200 feet above the surface, nor did it properly exclude the Sunnyhill Airport cut-out. This action adds verbiage explaining the removal of Class E airspace beginning at 1,200 feet above the surface, and corrects the legal description for the newly established Class E airspace designated as an extension to Class D & E surface areas to properly exclude Sunnyhill Airport, OR.

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 7400.11 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

History

The FAA published a final rule in the **Federal Register** (87 FR 11955; March 3, 2022) for Docket FAA–2021–0816, which modified the Class D and Class E surface airspace, established Class E airspace designated as an extension to Class D & E surface areas, modified the Class E airspace beginning at 700 feet above the surface, removed navigational aids (NAVAIDs) from text headers, and made administrative changes to the legal descriptions at Southwest Oregon Regional Airport, North Bend, OR. Subsequent to publication, the FAA identified that the removal of Class E airspace beginning at 1,200 feet above the surface at the airport was not disclosed. This airspace was removed as it is not needed at Southwest Oregon Regional Airport. The Bend E6 en route domestic airspace area beginning at 1,200 feet above the surface provides sufficient containment to accommodate arriving instrument flight rules (IFR) operations at 1,500 feet and higher above the surface and departing IFR operations from the point they reach 1,200 feet above the surface. Additionally, it was discovered after publication of the Final Rule that the legal description for the Class E airspace designated as an extension to Class D & E surface areas did not properly exclude the Sunnyhill Airport, OR cut-out. This action corrects those errors.

Class D, Class E2, Class E4, and Class E5 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 FAA Order JO 7400.11.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, Amendment of Class D and Class E airspace, and Establishment of Class E airspace; Southwest Oregon Regional Airport, North Bend, OR, published in the **Federal Register** of March 3, 2022 (87 FR 11955), FR Doc. 2022–04326, is corrected as follows:

§ 71.1 [Corrected]

■ 1. On page 11957, in the first column, beginning on line 8, the legal description for ANM OR E4 is corrected to read:

ANM OR E4 North Bend, OR [New]

Southwest Oregon Regional Airport, OR
(Lat. 43°25′01″ N, long. 124°14′49″ W)
Sunnyhill Airport, OR
(Lat. 43°28′59″ N, long. 124°12′10″ W)

That airspace extending upward from the surface within 3.6 miles north and 3.5 miles south of the 092° bearing from the airport, extending from the Southwest Oregon Regional Airport Class D 4.2-mile radius to 11.7 miles east of the airport, excluding that airspace within a 0.9-mile radius of Sunnyhill Airport, and within 2.0 miles southeast and 2.1 miles northwest of the 242°

bearing from the airport, extending from the Class D 4.2-mile radius to 9.4 miles southwest of the airport.

Issued in Des Moines, Washington, on March 11, 2022.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–05620 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 78

RIN 2900–AR16

Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule; correction.

SUMMARY: On March 10, 2022, the Department of Veterans Affairs published in the **Federal Register** an interim final rule to implement a new authority requiring VA to implement a three-year community-based grant program to award grants to eligible entities to provide or coordinate the provision of suicide prevention services to eligible individuals and their families for the purpose of reducing veteran suicide. This correction addresses minor technical and inadvertent errors in the published interim final rule.

DATES: This correction is effective April 11, 2022.

ADDRESSES: Comments must be submitted through *www.Regulations.gov.* Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Sandra Foley, Supervisory Grants Manager—Suicide Prevention Program, Office of Mental Health and Suicide Prevention, 11MHSP, 810 Vermont Avenue NW, Washington, DC 20420, 202–502–0002 (This is not a toll-free telephone number),*VASSGFoxGrants@va.gov.*

SUPPLEMENTARY INFORMATION: VA is correcting technical and inadvertent errors in its interim final rule on the Staff Sergeant Parker Gordon Fox Suicide Prevention Grant Program published on March 10, 2022, in the **Federal Register** (FR) at 87 FR 13806.

In FR Rule Doc. No. 2022–04477, beginning on page 13806 in the March 10, 2022 issue, make the following corrections:

Corrections

1. On page 13836, column 1, line 14, in § 78.5, remove ''veterans'' and add ''veteran'' in its place.
2. On page 13836, column 2, line 35, in § 78.15(a)(3)(ii), remove ''coordination the'' and add ''coordination of the'' in its place.
3. On page 13837, column 2, line 68 through column 3, line 2, in § 78.25(b)(2)(iii), remove '', including language assistance needs of limited English proficient individuals''.
4. On page 13839, column 2, line 24, § 78.50(b), remove ''is'' and add ''are'' in its place.
5. On page 13839, column 2, line 37, § 78.50(c), remove ''is'' and add ''are'' in its place.
6. On page 13839, column 2, line 45, § 78.50(d), remove ''is'' and add ''are'' in its place.
7. On page 13839, column 3, line 20, § 78.60(b), remove ''is'' and add ''are'' in its place.
8. On page 13839, column 3, line 40, § 78.60(c), remove ''is'' and add ''are'' in its place.

Date: March 15, 2022.

Consuela Benjamin,

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

[FR Doc. 2022–05849 Filed 3–21–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2021–0834; FRL–9382–02–R3]

Air Plan Approval; Maryland; Philadelphia Area Base Year Inventory for the 2015 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision formally submitted by the State of Maryland. This revision consists of the base year inventory for the Maryland portion of the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE marginal nonattainment area (Philadelphia Area) for the 2015 ozone national ambient air quality standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective on April 21, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2021–0834. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Adam Yarina, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2103. Mr. Yarina can also be reached via electronic mail at *Yarina.Adam@epa.gov.*

SUPPLEMENTARY INFORMATION: On July 30, 2020, the Maryland Department of the Environment (MDE), on behalf of the State of Maryland, submitted a revision to the Maryland SIP entitled, ''2015 8-Hour Ozone NAAQS (0.070 ppm) Marginal Area State Implementation Plan for the Cecil County, MD Nonattainment Area, SIP # 20–09.'' Cecil County comprises the Maryland portion of the Philadelphia Area. This SIP revision, referred to in this rule action as the ''Cecil County base year inventory SIP,'' addresses the base year inventory requirement for the 2015 ozone NAAQS.

I. Background

On October 1, 2015, EPA strengthened the 8-hour ozone NAAQS, lowering the level of the NAAQS from 0.075 parts per million (ppm) to 0.070 ppm. 80 FR 65292 (October 26, 2015). Effective August 3, 2018, EPA designated the Philadelphia Area, which consists of Cecil County in Maryland and counties in Delaware, New Jersey, and Pennsylvania, as marginal nonattainment for the 2015 ozone NAAQS. 83 FR 25776 (June 4, 2018). CAA section 182(a)(1) requires ozone nonattainment areas classified as marginal or above to submit a comprehensive, accurate, current inventory of actual emissions from all emissions sources in the nonattainment area, known as a ''base year inventory.'' The Cecil County base year inventory

SIP addresses a base year inventory requirement for the Philadelphia Area.

II. Summary of SIP Revision and EPA Analysis

A. EPA's Evaluation of the Cecil County Base Year Inventory SIP

EPA's review of the Maryland's base year inventory SIP indicates that it meets the base year inventory requirements for the 2015 ozone NAAQS. As required by 40 CFR 51.1315(a), MDE selected 2017 for the base year inventory, which is consistent with the baseline year for the reasonable further progress (RFP) plan required under 40 CFR 51.1310 for the Philadelphia Area, because it is the year of the most recent triennial inventory. MDE included actual ozone season emissions, pursuant to 40 CFR 51.1315(c).

EPA prepared a technical support document (TSD) in support of this rule. In that TSD, EPA reviewed the results, procedures, and methodologies for the SIP base year, and found them to be acceptable and developed in accordance with EPA's technical guidance. The TSD is available online at *http://www.regulations.gov,* Docket ID No. EPA–R03–OAR–2021–0834.

B. Base Year Inventory Requirements

In EPA's December 6, 2018 (83 FR 62998) rule, ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements,'' known as the ''SIP Requirements Rule,'' EPA set out nonattainment area requirements for the 2015 ozone NAAQS. The SIP Requirements Rule established base year inventory requirement, which were codified at 40 CFR 51.1315. As required by 40 CFR 51.1315(a), each 2015 ozone nonattainment area to submit a base year inventory within 2 years of designation, *i.e.,* by no later than August 3, 2020.

Also, 40 CFR 51.1315(a) requires that the inventory year be selected consistent with the baseline year for the RFP plan as required by 40 CFR 51.1310(b), which states that the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of 40 CFR part 51, Air Emissions Reporting Requirements, 40 CFR 51.1 through 50. The most recent triennial inventory year conducted for the National Emissions Inventory (NEI) pursuant to the Air Emissions Reporting Requirements (AERR) rule is 2017. 73 FR 76539 (December 17, 2008). Maryland selected 2017 as their baseline emissions inventory year for RFP. This selection comports with EPA's implementation regulations for the 2015 ozone NAAQS because 2017 is the inventory year. 40 CFR 51.1310(b).[1] 40 CFR 51.1315(c) requires emissions values included in the base year inventory to be actual ozone season day emissions as defined by 40 CFR 51.1300(q).

C. Cecil County Base Year Inventory SIP

The Cecil County base year inventory SIP contains an explanation of MDE's 2017 base year emissions inventory for Cecil County (2017 Cecil County BYE) for stationary, non-point, non-road, and on-road anthropogenic sources, as well as biogenic sources, in the Cecil County Area. The Cecil County Area consists solely of Cecil County, MD. MDE estimated anthropogenic emissions for volatile organic compound (VOC), nitrogen oxide (NOx), and carbon monoxide (CO) for a typical ozone season workweek day.

MDE developed the 2017 Cecil County BYE with the following source categories of anthropogenic emissions sources: Point, quasi-point, non-point, non-road, on-road, and commercial marine vessels, airport, and railroad emissions sources (MAR). Appendix A of the Cecil County base year inventory SIP, 2017 Base Year SIP Emissions Inventory Methodologies (Appendix A), sets out the methodologies MDE used to develop its base year inventory, and is included in the docket for this rule available online at *https://www.regulations.gov,* Docket ID: EPA–R03–OAR–2021–0834.

EPA's review of Maryland's base year inventory SIP for Cecil County indicates that it meets the base year inventory requirements for the 2015 ozone NAAQS. Other specific requirements of MDE's July 30, 2020 submittal and the rationale for EPA's proposed action, including further information on each source category, are explained in the notice of proposed rulemaking (NPRM) and will not be restated here.

III. EPA's Response to Comments Received

EPA received one comment supporting our proposed action in the January 14, 2022 NPRM. The comment received is in the docket for this rulemaking action. EPA received no adverse comments.

IV. Final Action

EPA's review of this material indicates the Cecil County base year inventory SIP meets the base year inventory requirement for the 2015 ozone NAAQS for the Philadelphia Area. Therefore, EPA is approving the Cecil County base year inventory SIP, which was submitted on July 30, 2020.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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

[1] On January 29, 2021, the Court of Appeals for the D.C. Circuit issued its decision regarding multiple challenges to EPA's implementation rule for the 2015 ozone NAAQS which included, among other things, upholding this provision allowing states to use an alternative baseline year for RFP. *Sierra Club* v. *EPA,* No. 15–1465 (D.C. Cir.) (mandate not yet issued). The other provisions of EPA's ozone implantation rule at issue in the case are not relevant for this rule.

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final rule, approving Maryland's base year inventory SIP for the 2015 ozone NAAQS, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Dated: March 8, 2022.

Diana Esher,

Acting Regional Administrator, Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart V—Maryland

■ 2. In § 52.1070, the table in paragraph (e) is amended by adding an entry for ''Philadelphia Area Base Year Inventory for the 2015 Ozone National Ambient Air Quality Standards'' at the end of the table to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
Philadelphia Area Base Year Inventory for the 2015 Ozone National Ambient Air Quality Standards.	Maryland portion of the Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD 2015 ozone nonattainment area..	7/30/20	3/22/22, [insert **Federal Register** citation].	Maryland's portion of the Philadelphia Area consists of Cecil County, Maryland.

[FR Doc. 2022–05605 Filed 3–21–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2021–0485; FRL–9634–01–OLEM]

National Priorities List Deletion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of one site, Beckman Instruments, from the Superfund National Priorities List (NPL). The NPL, created under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the state, through their designated state agency, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: The document is effective on March 22, 2022.

ADDRESSES: *Docket:* EPA has established a docket for this action under the Docket Identification included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the corresponding Regional Records Centers. Locations, addresses, and phone numbers-of the Regional Records Center follows.

Regional Records Center:

• Region 9 (AZ, CA, HI, NV, AS, GU, MP), email: *R9records@epa.gov,* 415/947–8717.

The EPA is temporarily suspending Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. Information in these repositories, including the deletion docket, may not be updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID.

FOR FURTHER INFORMATION CONTACT:

• Holly Hadlock, U.S. EPA Region 9, *hadlock.holly@epa.gov,* 415/972–3171.

• Chuck Sands, U.S. EPA Headquarters, *sands.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: The NPL, created under section 105 of CERCLA, as amended, is an appendix of the NCP. The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. Partial deletion of sites is in accordance with 40 CFR 300.425(e) and are consistent with the ''Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List,'' 60 FR 55466, (November 1, 1995). The site to be deleted is listed in Table 1, including docket information containing reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete. The NCP permits activities to occur at a deleted site, or

that media or parcel of a partially deleted site, including operation and maintenance of the remedy, monitoring, and five-year reviews. These activities for the site are entered in Table 1 in this **SUPPLEMENTARY INFORMATION** section, if applicable, under Footnote such that; 1 = site has continued operation and maintenance of the remedy, 2 = site receives continued monitoring, and 3 = site five-year reviews are conducted. As described in 40 CFR 300.425(e)(3) of the NCP, a site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

TABLE 1

Site name	City/county, state	Type	Docket No.	Footnote
Beckman Instruments	Porterville, CA	Full	EPA–HQ–SFUND–2021–0485	

Information concerning the sites to be deleted and partially deleted from the NPL, the proposed rule for the deletion and partial deletion of the sites, and information on receipt of public comment(s) and preparation of a Responsiveness Summary (if applicable) are included in Table 2 as follows:

TABLE 2

Site name	Date, proposed rule	FR citation	Public comment	Responsiveness summary	Full site deletion (full) or media/parcels/ description for partial deletion
Beckman Instruments	9/14/2021	86 FR 51045	Yes	No	Full.

For the site proposed for deletion, the closing date for comments in the proposed rule was October 14, 2021. The EPA received three public comments on the Beckman Instruments site included for deletion in this final rule. The public comments were supportive of the proposed deletion and of EPA actions. Because no adverse comment was received for this site, no Responsiveness Summary was prepared. EPA placed the comments in the docket, EPA–HQ–SFUND–2021–0485, on *https://www.regulations.gov,* and in the Regional repository listed in the **ADDRESSES** section.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: March 9, 2022.

Dana Stalcup,

Acting Office Director, Office of Superfund Remediation and Technology Innovation.

For reasons set out in the preamble, the EPA amends 40 CFR part 300 as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B to Part 300 [Amended]

■ 2. Amend appendix B to part 300, Table 1, by removing the entry for ''CA'', ''Beckman Instruments'', ''Porterville''.

[FR Doc. 2022–05556 Filed 3–21–22; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 87, No. 55
Tuesday, March 22, 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 390

[Docket Number FSIS–2019–0012]

RIN 0583–AD82

Privacy Act Exemption for AssuranceNet

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to exempt certain records maintained by its AssuranceNet (ANet) system of records from the notification and access provisions of Privacy Act of 1974 (Privacy Act). FSIS is proposing these exemptions because the information in the SORN is directly associated with investigations conducted by FSIS for law enforcement purposes. A notice of system of records for USDA/FSIS–0005, AssuranceNet (ANet) is also published in this issue of the **Federal Register**.

DATES: Comments must be received on or before May 23, 2022.

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

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or 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–2019–0012. 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) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Scott Safian, AssuranceNet System Owner/Manager, Enforcement and Litigation Division, Office of Investigation, Enforcement and Audit, Food Safety and Inspection Service, 355 E Street SW, Room 8–205, Washington, DC 20024, (202) 418–8872.

For Privacy Questions: Privacy Office, Office of the Chief Information Officer, USDA, 1400 Independence Ave. SW, Room 0055, Washington, DC 20250; Telephone 202–619–8503.

SUPPLEMENTARY INFORMATION:

Background

FSIS is the public health regulatory agency in the USDA that is responsible for ensuring that the nation's commercial supply of meat, poultry, and egg products is safe, wholesome, and accurately labeled and packaged. ANet is a management control and performance monitoring system that gathers information from electronic and paper-based sources to enable FSIS to track, measure, and monitor the performance of its and its state partners' critical public health functions and to alert FSIS management to areas of vulnerability or concern. ANet tracks, measures, and monitors the performance of the key public health functions of inspection, verification, surveillance, enforcement, and sampling by FSIS and state meat and poultry inspection program employees. The data and tools of ANet are used to analyze the effectiveness of policies and procedures in meeting public health goals and objectives and to help ensure that methods, evaluations, and enforcement are standardized and traceable nationwide. The Agency also uses data analysis in and through ANet to discern trends; to develop objectives for regulatory food safety functions; to identify and focus on areas of high-risk; and to help determine strategies to combat threats to food safety and defense.

FSIS is proposing to exempt investigatory material, compiled and maintained by ANet for law enforcement purposes, from certain provisions of the Privacy Act.

Privacy Act

The Privacy Act of 1974, 5 U.S.C. 552a, governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in a system of records. A system of records is a group of records under the control of an agency from which information is retrieved by the individual's name or some other personal identifier assigned to that individual. The Privacy Act requires agencies to publish a system of records notice (SORN) for every system of records that it maintains. A SORN informs the public of the existence of a system of records and describes the type of information collected, why it is being collected, what it may be used for, when it may be disclosed to third parties, how it will be safeguarded, and how and when it will be destroyed. A notice of system of records for USDA/FSIS–0005, AssuranceNet (ANet) is also published in this issue of the **Federal Register**. A Privacy Impact Assessment is posted on *https://www.usda.gov/home/privacy-policy/privacy-impact-assessments.*

An Agency that wants to exempt portions of some systems of records from certain provisions of the Privacy Act must promulgate regulations to notify the public and explain the reasons why a particular exemption is claimed. FSIS is proposing to exempt certain investigatory records maintained by the ANet system of records from the notification and access provisions of the Privacy Act under 5 U.S.C. 552a(c)(3), (d)(1)–(4), (e)(1) (e)(4)(G)–(I), and (f). Specifically, ANet includes investigatory material compiled for law enforcement, which fall under the Privacy Act exemptions 5 U.S.C. 552a(k). FSIS is proposing these exemptions because the information contained in the SORN is directly associated with investigations conducted by FSIS for law enforcement purposes. The proposed exemptions would protect the information on the methods used in law enforcement

activities from those individuals who are subjects to the investigation and the identities and physical safety of witnesses and others who aid in investigations. In addition, the exemptions ensure FSIS's ability to obtain information from third parties and safeguards those investigatory records that are needed for litigation.

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

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 benefits, 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 rule has not been reviewed by the Office of Management and Budget (OMB) under E.O. 12866. FSIS anticipates no costs or benefits accruing from this proposal.

Executive Order 13175

This proposed rule will have no implications for Indian Tribal governments. More Specifically, it does not 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. Therefore, the consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

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

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.*

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 also will make copies of this publication available 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 390

Freedom of Information, Privacy.

For the reasons stated in the preamble, FSIS is proposing to amend 9 CFR part 390 as follows:

■ 1. Revise the authority citation for part 390 to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 21 U.S.C. 451–472, 601–695; 7 CFR 1.3, 2.7.

■ 2. Add § 390.11 to read as follows:

§ 390.11 FSIS systems of records exempt from the Privacy Act.

(a) The USDA/FSIS–0005, AssuranceNet system of records is exempt from subsections (c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I), and (f) of the Privacy Act, 5 U.S.C. 552a, to the extent it contains investigatory material compiled for law enforcement purposes in accordance with 5 U.S.C. 552a(k) (2). Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of the disclosure accounting would permit the subject of an investigation to obtain valuable information concerning the nature of that investigation. This would permit record subjects to impede the investigation, *e.g.,* destroy evidence, intimidate potential witnesses, or flee the area to avoid inquiries or apprehension by law enforcement personnel.

(2) From subsection (d)(1) because the records contained in this system relate to official federal investigations and matters of law enforcement. Individual access to these records might compromise ongoing or impending investigations, reveal confidential informants or constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation.

(3) From section (d) (2) because amendment of the records would interfere with ongoing law enforcement proceedings and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

(4) From subsections (d)(3) and (4) because these subsections are inapplicable to the extent exemption is claimed from (d)(1) and (2).

(5) From subsection (e) (1) it is often impossible to determine in advance if investigatory information contained in this system is accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is

necessary to retain this information to aid in establishing patterns of activity and provide investigative leads. Moreover, it would impede the specific investigative process if it were necessary to assure the relevance, accuracy, timeliness and completeness of all information obtained.

(6) From subsections (e)(4) (G) and (H) since an exemption being claimed for subsection (d) makes these subsections inapplicable.

(7) From subsection (e)(4)(I) because the categories of sources of the records in this system have been published in the **Federal Register** in broad generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires. In the event, however, that this subsection should be interpreted to require more detail as to the identity of sources of the records in the system, exemption from this provision is necessary in order to protect the confidentiality of the sources of enforcement information and of witnesses and informants.

(8) From subsection (f) to the extent that the system is exempt from other specific subsections of the Privacy Act.

Done in Washington, DC.

Paul Kiecker,

Administrator.

[FR Doc. 2022–05745 Filed 3–21–22; 8:45 am]

BILLING CODE 3410–DM–P

EXPORT-IMPORT BANK

12 CFR Part 404

[Docket No. EIB–2022–0001]

Freedom of Information Act Requirements

AGENCY: Export-Import Bank of the United States.

ACTION: Proposed rule.

SUMMARY: The Export-Import Bank of the United States (EXIM) is publishing for comment proposed revisions to its regulations under the Freedom of Information Act (FOIA). The revisions are intended to incorporate amendments to the FOIA under the FOIA Improvement Act of 2016, developments in the case law, and changes in Federal and EXIM policies. The proposed revisions are also intended to clarify procedural requirements. The proposed revisions occur throughout the FOIA regulations and are predominantly procedural in nature.

DATES: Comments should be received by April 21, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- The Federal eRulemaking Portal located at *https://www.regulations.gov,* following the instructions for providing comment;
- Email to *foia@exim.gov,* including ''Proposed Rule Comments'' in the subject line.
- Mail to the Chief Freedom of Information Act Officer, Export-Import Bank of the United States, 811 Vermont Ave. NW, Washington, DC 20571; and

Instructions: All submissions should refer to File Number EIB–2022–0001. To help us process and review your comments more efficiently, please use only one method of providing comments. Comments submitted by mail will be accepted as timely if they are postmarked on or before April 21, 2022. Electronic comments may be submitted via *www.regulations.gov* prior to midnight Eastern Standard Time on April 21, 2022. Comments submitted via email will be accepted as timely if they are date stamped on or before the comment date.

Do not include any sensitive information in your submission. All comments received will be posted without change to *regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Chief Freedom Information Act Officer Lisa Terry at *lisa.terry@exim.gov;* (202) 565–3290.

SUPPLEMENTARY INFORMATION:

I. Background

EXIM is proposing revisions to its regulations under the FOIA, 5 U.S.C. 552. The revisions incorporate changes in law under the FOIA Improvement Act of 2016, developments in case law, and changes in Federal and EXIM policies. While incorporating these changes, EXIM has also sought to simplify and clarify its regulations. Due to the scope of the proposed revisions, the proposed rule would replace EXIM's current FOIA regulations in their entirety (12 CFR 404.1 through 404.11).

II. Discussion of Changes in Proposed Rule

The numbered paragraphs immediately below provide an overview of the proposed changes to the regulations. At the conclusion of this preamble, the new proposed regulations are set forth in their entirety.

1. Amended: Authority

The authority citation for part 404 would be amended to include additional cites to EXIM's statutory charter (12 U.S.C. 635(a)(1)) and the rulemaking provisions of the Administrative Procedures Act (5 U.S.C. 553). Citations to Executive orders imposing administrative requirements on EXIM would be removed. The amended general authority would be 12 U.S.C. 635(a)(1); 5 U.S.C. 552, 5 U.S.C. 552(a), 5 U.S.C. 553.

2. Redesignate §§ 404.24 Through 404.36

Old section	New section
404.24	404.26
404.25	404.27
404.26	404.28
404.27	404.29
404.28	404.30
404.29	404.31
404.30	404.32
404.31	404.33
404.32	404.34
404.33	404.35
404.34	404.36
404.35	404.37
404.36	404.38

3. Redesignate §§ 404.12 Through 404.23

Old section	New section
404.12	404.14
404.13	404.15
404.14	404.16
404.15	404.17
404.16	404.18
404.17	404.19
404.18	404.20
404.19	404.21
404.20	404.22
404.21	404.23
404.22	404.24
404.23	404.25

4. Amended: § 404.1, General Provisions

This section would be amended to clarify the purpose and scope of the FOIA regulations and to remove the current paragraph (b) setting forth EXIM policy. EXIM policies comply with the FOIA and related guidance, as set forth in the remainder of the regulations, and the current (un-amended) paragraph (b) is either duplicative or could cause confusion.

Current paragraphs (d) and (e) describe EXIM's proactive disclosures and provide EXIM's internet address and mailing address. This information would be amended and moved to proposed §§ 404.2, Proactive disclosures, and 404.3, Request requirements.

5. Removed: Current § 404.2, Definitions

This section would be eliminated, with most of the definitions relocated to the sections in which the defined terms are used. The majority of the relocated

definitions pertain to current § 404.16, Schedule of fees. The definitions of ''Confidential business information'' and ''Submitter'' would be relocated to the section currently labelled ''Confidential business information.'' The proposed regulations would change the phrase ''confidential business information'' to ''confidential commercial information'' for greater consistency with the statutory language, related case law, and applicable guidance. ''Working days'' was relocated to the section addressing time for processing, previously at § 404.5.

Several other definitions would be eliminated as unnecessary due to their being common usage, duplicative of information contained elsewhere, or otherwise sufficiently clear in meaning from the context in which they are used. These terms would be eliminated for purposes of brevity and clarity. This includes the definitions of appeal, final determination, initial determination, person, redaction, request, and requester.

The current definition of ''trade secrets'' would be eliminated as legally incorrect.

6. Amended: Proposed § 404.2, Proactive Disclosures

This section would be renumbered from current § 404.3 to § 404.2 and renamed ''Proactive disclosures.'' The current wording describes procedures for accessing a physical reading room at EXIM's headquarters, while the proposed revision would include the online reading room now required by the FOIA. The amended section would also state that EXIM's FOIA Liaison is available to help requesters locate information online. In addition, the amended section would newly describe the data that EXIM posts at *data.exim.gov* on EXIM's transactions.

7. Amended: Proposed § 404.3, Request Requirements

This section would be renumbered from current § 404.4 to § 404.3. This section would encourage potential requesters to review the information publicly available on the EXIM website before submitting a request. EXIM believes it is in requesters' best interest to review the significant amount of information available online before submitting a request.

This section also would newly state the electronic means for submitting a request, including by email to *foia@exim.gov* and through the online portal at *www.exim.gov/about/foia.* The current requirement that requesters sign their request would be eliminated as inconsistent with the FOIA and EXIM's past practice of accepting unsigned electronic submissions. Requesters would instead need to provide contact information.

In the proposed regulations, the current statement that a general request to pay applicable fees is deemed a request to pay up to $50.00 would be eliminated. This statement is viewed as potentially inconsistent with the Office of Management and Budget's (OMB's) FOIA Fee Guidelines, which requires agencies to notify requesters of fees exceeding $25.00.

This section would also clarify and update the language that sets forth the process for obtaining records by the requester him or herself (or a third party), and the need for a request to provide an adequate description of the records. The section would also provide for FOIA Public Liaison assistance in reformulating a request.

8. Added: Proposed § 404.5, Responsibility for Responding to Requests

This newly added section would provide the Freedom of Information and Privacy Office the authority to respond to requests, establish a ''cut off'' date for searches at the time the search is conducted, address classified information, and describe EXIM's procedures for working with other agencies in the processing of requests—including through consultations, referrals, and other types of coordination.

9. Amended: Proposed § 404.6, Time for Processing

This section would be renumbered from current § 404.5 to § 404.6. It would newly incorporate the statutory definition of ''unusual circumstances'' and ''working days.'' This section would also newly provide for multitrack processing, with the following tracks: Expedited, simple, and complex. This section would also seek to clarify the current language and add additional detail to the expedited processing provisions.

10. Amended: Proposed § 404.7, Release of Records

This section would be renumbered from current § 404.6 to § 404.7 and renamed. It would newly include the foreseeable harm requirement for discretionary exemptions, added by the FOIA Improvement Act of 2016.

The current paragraph (a), addressing the ''creation of records,'' would be eliminated as both inconsistent with the FOIA and unnecessary. Even if this subsection is eliminated, EXIM would retain the authority to create appropriate records.

As indicated above, the current paragraph (d) addressing the ''cut off'' date for searches would be amended and relocated to § 404.5.

11. Amended: Proposed § 404.8, Responses to Requests

Section 404.8, Initial determination, would be renamed for purposes of clarity and greater consistency with other agency FOIA regulations. The section would also newly provide for communication with requesters by email and EXIM's online portal, newly provide for the acknowledgement of requests, and more fully describe EXIM obligations when there is either a full grant of the requested records or an adverse determination of some kind. This section would also newly address FOIA exclusions under 5 U.S.C. 552(c).

As required by the FOIA Improvement Act of 2016, this section would also require EXIM to notify requesters of the services provided by the Office of Government Information Services (OGIS).

12. Amended: Proposed § 404.9, Confidential Commercial Information

This section would be renumbered from current § 404.7, Confidential business information, to § 404.9 and renamed. The title ''confidential business information'' would be changed to ''confidential commercial information'' to better match the wording of the requirements in Exemption 4, case law, related guidance, and other agency FOIA regulations. The protections and procedures would remain the same and are in accordance with Executive Order 12600, but the proposed amendments here seek to provide additional detail and clarity for requesters based on the legal standards applicable under Exemption 4.

13. Amended: Proposed § 404.10, Schedule of Fees

This section would be renumbered from current § 404.9 to § 404.10. As referenced above, this section would newly incorporate amended versions of the definitions that are currently located in a general definitions section at § 404.2. The amended language would also update and provide additional detail on EXIM's fee practices, consistent with OMB's Fee Guidelines.

The rate for clerical search and review time would be increased from $16.00/hour to $33.00/hour. The rate for professional search and review time would be increased from $32.00/hour to $57.00/hour. This proposal reflects

increased labor rates since the regulations were last updated in 1999.

Notice of anticipated fees would generally be provided when the estimated fees exceed $25.00, unless a requester has already agreed to pay more or has received a waiver. This is lowered from the current $50.00 to better match OMB's Fee Guidelines.

14. Amended: Proposed § 404.11, Fee Waivers or Reductions

This section would be renumbered from current § 404.10 to § 404.11. As with the prior two sections addressed above, this section would be expanded to provide additional guidance and clarity for requesters. The substantive standards for seeking fee waivers are governed by the FOIA and related case law, however, and would remain unchanged. Current paragraph (e), Employee Requests, would be removed because the FOIA is generally not needed for employees or applicants to obtain information related to a complaint of discrimination. Discrimination complaints are governed by procedures established by the Equal Employment Opportunity Commission and, regardless, EXIM would retain the authority to grant discretionary fee waivers and reductions.

15. Amended: Proposed § 404.12, Administrative Appeals

This section would be renumbered from current § 404.11 to § 404.12. The proposed changes would provide for the electronic submission of appeals and notify appellants of the ability to seek assistance from OGIS.

16. Amended: Proposed § 404.13, Preservation of Records

This newly added section would provide for the preservation of all correspondence associated with a request, as well as all requested records, under appropriate records schedules. It would also prohibit the destruction or modification of records while they are subject to a pending request, administrative appeal, or lawsuit.

17. Amended: Subparts B and C

Cross references in subparts B and C are updated to reflect section redesignations in the subparts.

Regulatory Flexibility Act Certification

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA) requires the agency to ''prepare and make available for public comment an initial regulatory flexibility analysis'' which will ''describe the impact of the proposed rule on small entities.'' (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The proposed changes to EXIM's FOIA regulations are predominantly procedural in nature and many incorporate already binding law and policy. While the proposed changes also increase the rates that EXIM uses to charge certain FOIA requesters the direct costs of responding to a request, this updated fee schedule reflects current EXIM costs and EXIM remains only able to charge its direct costs of searching for, reviewing, and duplicating the records processed for requesters. There are a number of possible exceptions and waivers that reduce the number of requesters and small entities that may be affected by the proposed fee changes and, even when charged, these fees are typically small. When needed, EXIM is able to work with requesters to modify their request to reduce the chargeable fees while still obtaining the core information they seek.

As a result, the proposed changes are unlikely to have an economic impact on requesters regardless of their size and resources. Accordingly, EXIM hereby certifies that these proposed amendments to the FOIA regulations, if adopted, would not have a significant economic impact on a substantial number of small entities. EXIM requests comment from members of the public regarding the appropriateness and accuracy of this analysis and certification.

Executive Order 12866

This proposed rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

Executive Order 13771

This proposed rule is not a regulatory action under Section 2 of Executive Order 13771 because it is not significant under Executive Order 12866 and does not constitute a significant guidance document.

Paperwork Reduction Act

This regulation does not contain a ''collection of information'' as defined by the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

List of Subjects in 17 CFR Part 404

Administrative procedures, Freedom of information.

Text of Proposed Amendments

For the reasons stated in the preamble, EXIM proposes to amend 12 CFR part 404 as follows:

PART 404—INFORMATION DISCLOSURE

■ 1. The authority citation for part 404 is revised to read as follows:

Authority: 12 U.S.C. 635(a)(1); 5 U.S.C. 552, 5 U.S.C. 552(a), 5 U.S.C. 553.

Section 404.7 also issued under E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Section 404.21 also issued under 5 U.S.C. 552a note.

Subpart C also issued under 5 U.S.C. 301, 12 U.S.C. 635.

§§ 404.24 through 404.36 [Redesignated as §§ 404.26 through 404.38]

■ 2. Redesignate §§ 404.24 through 404.36 as §§ 404.26 through 404.38.

§§ 404.12 through 404.23 [Redesignated as §§ 404.14 through 404.25]

■ 3. Redesignate §§ 404.12 through 404.23 as §§ 404.14 through 404.25.

■ 4. Revise subpart A to read as follows:

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.

§ 404.1 General provisions.

(a) *Purpose.* This subpart contains the rules that the Export-Import Bank of the United States (EXIM) follows in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. This subpart should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (OMB Guidelines).

(b) *Scope.* Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed in accordance with EXIM's Privacy Act regulations in subpart B of this part as well as under this subpart.

(c) *Delegation.* Any action or determination in this subpart which is

the responsibility of a specific EXIM employee may be delegated.

§ 404.2 Proactive disclosures.

(a) Records that the FOIA requires agencies to make available for public inspection in an electronic format may be accessed through the EXIM internet site at *https://www.exim.gov/about/foia/frequently-requested-records-and-proactive-disclosures* and *https://data.exim.gov/.* EXIM is responsible for determining which records must be made publicly available, for identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. EXIM must ensure that its website of posted records and indices is reviewed and updated on an ongoing basis. EXIM's FOIA Public Liaison can assist individuals in locating records particular to the agency. The contact information for the Public Liaison is available at *https://www.exim.gov/about/foia,* along with other FOIA resources.

(b) EXIM proactively discloses information at *data.exim.gov* on applications and transactions, whether denied or authorized, including: Unique identifiers EXIM assigns; approval and declination decisions; the expiration date for a guarantee or insurance policy; whether an insurance policy was brokered or not; whether an approved transaction was cancelled after approval; the country where the credit risk is; the financing program or product that was applied for, including the type of any insurance; the primary export product; a product description; the length of financing on a deal; the principal applicant; the principal lender; the principal exporter; the city and state of the primary exporter; the company name of the principal borrower; the primary source of repayment; the amount of financing approved or declined; the amount of the loan or guarantee that has been disbursed or the amount that has been shipped on an insurance policy; the undisbursed exposure amount; the portion of the disbursed/shipped amount that has not been repaid; the portion of an approved amount that assisted a small business; the portion of an approved company that assisted a woman owned company; the portion of an approved amount that assisted a minority owned company; the interest rate being applied to a direct loan; and whether a working capital amount is pursuant to an extension of a previously approved working capital facility.

§ 404.3 Request requirements.

(a) Before submitting a FOIA request, potential requesters are encouraged to review the information publicly available at *https://www.exim.gov/about/foia/frequently-requested-records-and-proactive-disclosures* and *https://data.exim.gov/.* The material you seek may be immediately available at no cost.

(b)(1)(i) A request for records must be made directly to EXIM in writing. Requests may be submitted to the EXIM FOIA Office:

(A) By email to *foia@exim.gov*;

(B) Using the online form available at *https://www.exim.gov/about/foia*;

(C) Using the online FOIAXpress PAL Portal available at *https://palprod.eximefoia.com/*; and

(D) By mail addressed to the Freedom of Information and Privacy Office, 811 Vermont Ave. NW, Washington, DC 20571.

(ii) Additional resources and contact information are available at *https://www.exim.gov/about/foia.*

(2) A requester who is making a request for records about himself or herself must comply with the verification of identity requirements as set forth at § 404.16(d). This requires your request and signature to be notarized. You may instead submit a statement under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization.

(3) Where a request for records pertains to another individual, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual is deceased (*e.g.,* a copy of a death certificate or an obituary). As an exercise of administrative discretion, EXIM can require a requester to supply additional information if necessary, in order to verify that a particular individual has consented to disclosure.

(c)(1) Each request must describe the records sought in sufficient detail to enable EXIM personnel to locate the record with a reasonable amount of effort. To the extent possible, requesters should include specific information that may help EXIM identify the requested records, such as relevant dates, format, subject matter, title, transaction or reference number, and the name of any person to whom the record is known to relate. For assistance in drafting a records request, requesters can contact EXIM's FOIA Public Liaison.

(2) If after receiving a request EXIM determines that it does not reasonably describe the records sought, EXIM must inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with EXIM's FOIA contact or FOIA Public Liaison. If EXIM is unable to clarify the timeframe for which a particular request seeks records, EXIM may deem the request to be a request for records created within the preceding twelve months.

(d) Requests may specify the preferred form or format (including electronic formats) for the records you seek. EXIM will accommodate your request if the record is readily reproducible in that form or format.

(e) Requesters must provide contact information, such as their phone number, email, and mailing address, to assist EXIM in communicating with them and providing released records.

(f) A request must state the requester's willingness to pay any applicable fees or contain a request for a fee waiver. A requester may set a maximum amount the requester is willing to pay. The fee schedule and related provisions are provided in § 404.10. The ability to request fee waivers is set forth at § 404.11. EXIM will not process your request while clarifying fee issues.

§ 404.5 Responsibility for responding to requests.

(a) *In general.* In determining which records are responsive to a request, EXIM ordinarily will only include records that qualify as agency records under the FOIA on the date EXIM begins its search. If any other date is used, EXIM must inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), is not considered responsive to a request.

(b) *Authority to grant or deny requests.* The Freedom of Information and Privacy Office is authorized to grant or deny any requests for records. This is the initial determination that can be appealed. The Freedom of Information and Privacy Office is also responsible for coordinating the search for responsive records and other matters concerning the processing of the request.

(c) *Consultation, referral, and coordination.* When reviewing records located by EXIM in response to a request, EXIM will determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. With any

such record, EXIM must proceed in one of the following ways:

(1) *Consultation.* When records originated with EXIM, but contain within them information of interest to another agency or Federal Government office, EXIM will typically consult with that other entity prior to making a release determination.

(2) *Referral.* (i) When EXIM determines that a different agency is best able to determine whether to disclose the record, EXIM will typically refer the responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. However, if the agency processing the request and the originating agency jointly agree that the agency processing the request is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever EXIM refers any part of the responsibility for responding to a request to another agency, it must document the referral, maintain a copy of the record that it refers, and notify the requester of the referral, informing the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure in paragraph (c)(2) of this section is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption under FOIA, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if an agency locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, EXIM will typically coordinate with the originating agency to seek its views on the releasability of the record. Subsequently, EXIM will convey the release determination for the record that is the subject of the coordination to the requester.

(d) *Classified information.* On receipt of any request involving classified information, EXIM must determine whether the information is currently and properly classified in accordance with applicable laws. When a request involves a record containing information that has been classified or may be appropriate for classification by another agency under an applicable Executive order, EXIM must refer the request for response to the agency that classified the information, or should consider the information for classification. Whenever an agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), EXIM must refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals received by EXIM will be handled according to the date that the first agency received the FOIA request.

(f) *Agreements regarding consultations and referrals.* EXIM may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

§ 404.6 Time for processing response to requests.

(a) *In general.* EXIM is obligated to respond to requests within 20 working days of the date of receipt of the request unless unusual circumstances exist. EXIM ordinarily processes requests according to their order of receipt.

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

(1) *Unusual circumstances* means, only to the extent reasonably necessary to the proper process of requests:

(i) The need to search for and collect requested records from facilities that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation with another agency that has a substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein. EXIM shall conduct any such consultations with all practicable speed.

(2) *Working days* means all calendar days excluding Saturdays, Sundays, and Federal Government holidays.

(c) *Date of receipt.* A request will be deemed to have been received on the date that the request is received in the Freedom of Information and Privacy Office, provided that the requester has met all the mandatory requirements of § 404.4. EXIM will notify the requester of the date on which a request was officially received in the acknowledgment correspondence.

(d) *Order of processing.* EXIM will ordinarily process requests in order of receipt within their processing track.

(e) *Multitrack processing.* EXIM has designated processing tracks that distinguish between expedited, simple, and complex requests based on the estimated amount of work or time needed to process the request. Among the factors EXIM considers are the number of offices involved, the number of pages involved in processing the request and the need for consultation or referrals. EXIM will advise requesters of the track into which their request falls and, when appropriate, EXIM may offer the requester an opportunity to narrow or modify their request so that it can be placed in a different processing track.

(f) *Unusual circumstances.* When EXIM cannot meet the statutory time limit for processing a request because of ''unusual circumstances,'' as defined in the FOIA, and extends the time limit on that basis, EXIM must, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which EXIM estimates processing of the request will be completed. Where the extension exceeds 10 working days, EXIM must provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. EXIM's FOIA contact or Public Liaison is available for this purpose. EXIM will also alert requesters to the availability of the Office of Government Information Services (OGIS) to provide dispute resolution services.

(g) *Aggregating request.* To satisfy unusual circumstances under the FOIA, EXIM may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. EXIM cannot aggregate multiple requests that involve unrelated matters.

(h) *Expedited processing.* (1) EXIM must process requests and appeals on an

expedited basis when EXIM determines that the requester or appellant has demonstrated:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) In the case of a requester who is primarily engaged in disseminating information, an urgency to inform the public concerning actual or alleged Federal Government activity. A requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the Government activity involved in the request—one that extends beyond the public's right to know about Government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ''urgency to inform'' the public on the topic.

(2) A request for expedited processing may be made at any time. When making a request for expedited processing of an administrative appeal, the request should be submitted to the EXIM's Assistant General Counsel for Administrative Law and Board Support.

(3) A request for expedited processing and other submissions in support of the request must be accompanied by a statement certified by the requester to be true and correct to the best of his or her knowledge and belief. EXIM may waive this formal certification requirement as a matter of discretion. The statement must be in the form prescribed by 28 U.S.C. 1746:

(i) If executed within the United States: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date]. (signature).''

(ii) If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

(i) *Determination.* Upon receipt of a request for expedited processing, EXIM will consider the request and notify the requester of its determination within 10 calendar days of receipt of the request. If a request for expedited treatment is granted, the request will be given priority and will be placed in a processing track for expedited requests and processed as soon as practicable.

(j) *Appeal.* A requester may file an administrative appeal, as set forth at § 404.12, based on a denial of a request for expedited processing. EXIM will grant expeditious consideration to any such appeal. The appeal should be clearly marked ''Appeal for Expedited Processing.''

§ 404.7 Release of records.

(a) *Discretionary release.* As required by the FOIA, EXIM will disclose material unless it reasonably foresees that disclosure would harm an interest protected by an exemption or disclosure is prohibited by law.

(b) *Segregable records.* Whenever it is determined that a portion of a record is exempt from disclosure, any reasonably segregable portion of the record will be provided to the requester after redaction of the exempt material.

§ 404.8 Responses to requests.

(a) *General.* EXIM, to the extent practicable, will communicate with requesters having access to the internet electronically through email or web portal available at *https://www.exim.gov/about/foia.*

(b) *Acknowledgment of request.* EXIM must acknowledge all FOIA requests in writing and assign a request number for reference and tracking the status of the request online. EXIM must also include in the acknowledgment a brief description of the records sought to allow requesters to more easily keep track of their request.

(c) *Estimated dates of completion and interim responses.* Upon request, EXIM will provide an estimated date by which EXIM expects to provide a response to the requester. If a request involves a voluminous amount of material or searches in multiple locations, EXIM may provide interim responses, releasing the records on a rolling basis.

(d) *Grants of request.* Once EXIM has made a determination to grant a request in whole or in part, it will notify the requester in writing. EXIM also will inform the requester of any fees charged under § 404.10 and will disclose the requested records to the requester promptly upon payment of any applicable fees. EXIM's FOIA Public Liaison is available to offer assistance.

(e) *Adverse determination.* EXIM will notify the requester in writing if it makes an adverse determination denying a request in any respect. Adverse determination or denials of request may include decisions that: the requested records are exempt in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested records do not exist, cannot be located or have been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing. Whenever EXIM makes an adverse determination, the denial notice will be signed by the Chief FOIA Officer or other appropriate executive or designee and include:

(1) The name and title or position of the person responsible for the denial.

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied in denying the request.

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption.

(4) A statement that the denial may be appealed under § 404.12(a) and a description of the requirements of § 404.12(a).

(5) A statement notifying the requester of the assistance available from FOIA Public Liaison and the dispute resolution services offered by the Office of Government Information Services (OGIS).

(f) *Markings on released documents.* Markings on released documents must be clearly visible to the requester. Records disclosed in part will be marked to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption.

(g) *Use of record exclusions.* (1) In the event that EXIM identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), EXIM must confer with the Department of Justice (DOJ) Office of Information Privacy (OIP) to obtain approval to apply the exclusion.

(2) When invoking an exclusion EXIM will maintain an administrative record of the process of invocation and approval of the exclusion by OIP.

§ 404.9 Confidential commercial information.

(a) *Definitions*—As used in this section:

(1) *Confidential commercial information.* Trade secrets and commercial or financial information obtained by EXIM from a submitter that

may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter.* Any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly to the Federal Government.

(b) *Submitter designation.* All submitters of confidential commercial information must use good faith efforts to designate, by appropriate markings, at the time of submission, any portion of their submissions that they consider to be exempt from disclosure under Exemption 4. This obligation continues after submission, such that a submitter should inform EXIM if it later identifies submitted information that was not marked or newly considers submitted information to be protected by Exemption 4.

(c) *Pre-disclosure notice to the submitter.* EXIM must provide prompt written notice to the submitter of information that is potentially confidential commercial information whenever records containing such information are requested under the FOIA if EXIM determines that it may be required to disclose the records and:

(1) The requested information has been designated by the submitter as information considered protected from disclosure under Exemption 4; or

(2) EXIM has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure.

(d) *Notice requirements.* The notice must either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, EXIM may post or publish a notice in a place or manner reasonably likely to inform the submitters of the proposed disclosure, instead of sending individual notifications.

(e) *When notice is not required.* EXIM does not need to send the notice called for by paragraph (c) of this section if:

(1) EXIM determines that the information is exempt under the FOIA, and therefore will not be disclosed;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous. In such case, EXIM must give the submitter written notice of any final decision to disclose the information within a reasonable number of days prior to a specified disclosure date, as specified in paragraph (g) of this section for disclosures made over a submitter's objection.

(f) *Opportunity to object to disclosure*—(1) *Timeline for a response.* (i) A submitter located within the United States will have 10 working days from and including the date of the notification letter to respond to an EXIM notice sent under paragraph (c) of this section, unless another time period is specified in EXIM's notice.

(ii) A submitter located outside the United States will have 20 working from and including the date of the notification letter to respond to an EXIM notice sent under paragraph (c) of this section, unless another time period is specified in EXIM's notice.

(iii) EXIM may extend the time for objection upon timely request from the submitter and for good cause shown.

(2) *Content of submitter's response.* (i) If a submitter has any objections to EXIM's disclosure of the information identified in the notice, the submitter should specify all grounds for EXIM to withhold the particular information under the FOIA.

(ii) In order to rely on Exemption 4 as a basis for EXIM withholding any of the information as confidential commercial information, the submitter must provide a specific and detailed written explanation of why the information constitutes a trade secret or commercial or financial information that is confidential. A submitter invoking Exemption 4 in its response should consider including or addressing the following:

(A) Why the information qualifies as a trade secret; or

(B) Why the information is privileged or confidential commercial or financial information, including all of the following that apply:

(*1*) Whether the submission was voluntary or required. Information that a person must submit to apply for an EXIM product will generally be deemed a required submission.

(*2*) If voluntarily submitted, whether the information is of a kind that the submitter does not customarily release to the public.

(*3*) If a required submission, whether EXIM's disclosure would likely cause substantial harm to the submitter's competitive position.

(*4*) In all cases, how EXIM's disclosure could impair the Government's ability to obtain similar information in the future.

(*5*) Any other relevant governmental or private interests that could be impacted by releasing the information.

(*6*) A certification that the information has not been disclosed to the public by the submitter and is not routinely available to the public from other sources.

(iii) A submitter who fails to respond within the time period specified will be considered to have no objection to disclosure of the information. EXIM is not required to consider any information received after the date of any disclosure decision.

(iv) Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA and should be appropriately marked if confidential.

(g) *Notices to the requester.* EXIM will notify the requester in writing whenever EXIM provides a submitter the opportunity to object to disclosure of records pursuant to paragraph (b) of this section; whenever EXIM notifies the submitter of EXIM's intent to disclose information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

(h) *Consideration of a submitter's response.* EXIM must consider a submitter's timely response prior to making its disclosure decision, including all objections and specific grounds for nondisclosure under the FOIA.

(i) *Notice of intent to disclose.* Whenever EXIM decides to disclose information over the objection of a submitter, EXIM must notify the submitter, in writing, of EXIM's determination. EXIM must include in this notice:

(1) The reasons for the disclosure decision, including a response to each of the submitter's disclosure objections; and

(2) A description of the information to be disclosed or copies of the records as EXIM intends to release them; and

(3) A specified disclosure date, which must provide the submitter a reasonable time after the notice to file suit to prevent the disclosure. This time period will be at least 10 working days from EXIM's mailing of the notice of intent to disclose.

(j) *Appeals by requesters.* In response to a requester's administrative appeal of a withholding under Exemption 4, EXIM will comply with the provisions of this section before disclosing any such information.

(k) *Notice of requester's FOIA lawsuit.* EXIM must promptly notify the submitter whenever a requester brings suit against EXIM seeking to compel the disclosure of confidential commercial information.

(l) *Publicly available information.* EXIM may, upon request or on its own initiative, publicly disclose the information contained at *exim.data.gov,* listed at § 404.2, including the parties to transactions for which EXIM approves support, the amount of such support, the identity of any primary participants involved, a general description of the related U.S. exports, and the country to which such exports are destined.

§ 404.10 Schedule of fees.

(a) *In general.* EXIM will charge fees to recover the full allowable direct costs it incurs in processing requests under the FOIA in accordance with the provisions of this section and OMB Guidelines. OMB Guidelines are accessible at *https://www.justice.gov/oip/foia-resources.* Requesters may seek a fee waiver. EXIM will consider requests for fee waiver in accordance with the requirements in § 404.11. To resolve any fee issues that arise under this section, EXIM may contact a requester for additional information. EXIM will attempt to conduct searches in the most efficient manner to minimize costs. EXIM ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States, or another method EXIM determines.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request.* A request for a use or purpose that furthers the commercial, trade or profit interest of the requester, which can include furthering those interests through litigation.

(2) *Direct costs.* Expenditures EXIM incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in response to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, including locality pay adjustment, plus 16 percent of that rate to cover benefits), fees associated with the return of records stored offsite, the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication.* Is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution.* Any school that operates a program of scholarly research. A requester in the fee category in this paragraph (b)(4) must show that the request is made in connection with his or her role at the education institution. EXIM may seek verification from the requester that the request is in furtherance of scholarly research and will advise requesters of their placement in this category.

(i) *Example 1.* A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the Department of Geology, would be presumed to be from an educational institution.

(ii) *Example 2.* A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationery.

(iii) *Example 3.* A student who makes a request in furtherance of their coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(5) *Non-commercial scientific institution.* An institution that is not operated on a ''commercial'' basis, as defined in paragraph (b)(1) of this section for purposes of a ''commercial use request,'' and is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in the fee category in this paragraph (b)(5) must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for commercial use. EXIM will advise requesters of their placement in this category.

(6) *Representative of the news media.* Any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester will not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity will be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however EXIM can also consider a requester's past publication record in making this determination. EXIM will advise requesters of their placement in the fee category in this paragraph (b)(6).

(7) *Review.* The process of examining a record in response to a request to determine whether any portion is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by confidential commercial information submitter under § 404.9, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search.* The process of looking for, identifying, and collecting records responsive to a request. For fee purposes, this refers to all time spent looking for materials that is responsive to a request. Searches may be conducted manually or by electronic means. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Categories of requesters.* Fees will be assessed depending on the category of the requester. The specific schedule of fees for each requester category is prescribed as follows:

(1) *Commercial use requesters.* EXIM will charge the full costs for search, review, and duplication.

(2) *Educational, non-commercial scientific institution, and representatives of the news media requesters.* When the records are not sought for commercial use, EXIM will charge only for the cost of duplication

in excess of 100 pages and no fee will be charged for search or review.

(3) *All other requesters.* For requesters who are not covered by paragraphs (c)(1) and (2) of this section, EXIM will charge for the cost of search and duplication, except that the first 100 pages of duplication (or the cost equivalent of other media) and two hours of search time will be furnished without charge.

(d) *Search and review fees.* Subject to the restrictions in paragraph (i) of this section and in accordance with the applicable requester categories in paragraph (c) of this section, EXIM will charge the following fees for search and review, based on:

(1) *Clerical.* Hourly rate—$33.00.

(2) *Professional.* Hourly rate—$57.00.

(3) *Computer searches.* Hourly rate—based upon the salary of the employee performing (base salary, including locality pay adjustment, and 16 percent for benefits).

(4) *Direct cost.* Hourly rate—based upon the salary of the employee performing (base salary, including locality pay adjustment, and 16 percent for benefits). May also include fees for the return of records stored offsite, the cost of operating computers and other electronic equipment.

(5) *Quarter-hour period.* No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(6) *No fee.* No fee will be charged when the total fee, after deducting the 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than $25.

(e) *Search.* (1) Subject to the restrictions in paragraph (i) of this section EXIM will charge search fees.

(2) EXIM may properly charge for time spent searching even if EXIM does not locate any responsive records or if EXIM determines that the records are entirely exempt from disclosure.

(3) EXIM will charge the direct cost associated with conducting any search that requires the creation of a new computer program to locate the requested records. EXIM must notify the requester of the cost associated with creating such a program, and the requester must agree to pay the associated cost before the costs may be incurred.

(4) For requests that require the retrieval of records stored by EXIM at a records storage facility, including a Federal records center operated by the National Archives and Records Administration (NARA), EXIM will charge additional costs in accordance with the Transactional Billing Rate Schedule established by NARA.

(f) *Duplication.* EXIM will charge duplication fees to all requesters, subject to the restrictions of paragraph (b) of this section. EXIM must honor a requester's preference for receiving a record in a particular form or format where EXIM can readily produce it in the form or format requested. Where photocopies are supplied, EXIM will provide one copy per request at the cost of $.10 per page. For copies of records produced on disk or other media, EXIM will charge the direct cost of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester must also pay the direct costs associated with scanning those materials. For other forms of duplication, EXIM will charge the direct costs. EXIM may also offer the requester the opportunity to alter the request in order to reduce duplication costs.

(g) *Review.* EXIM will charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.,* the review conducted by EXIM to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with EXIM's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (e) of this section.

(h) *Special services charges.* Complying with requests for special services such as those listed in this paragraph (h) is entirely at the discretion of EXIM. EXIM will recover the full costs of providing such services to the extent that it elects to provide them.

(1) *Certifications.* EXIM will charge $25.00 to certify the authenticity of any EXIM record or any copy of such record.

(2) *Special shipping.* EXIM may ship by special means (*e.g.,* express mail) if the requester so desires, provided that the requester has paid or has expressly undertaken to pay all costs of such special services. EXIM will not charge for ordinary packaging and mailing.

(i) *Restrictions on charging fees.* (1) When EXIM determines that a requester is an educational institution, non-commercial scientific institution, or representative of the news media, and the records are not sought for commercial use, it will not charge search fees.

(2) If EXIM fails to comply with the FOIA's time limits in which to respond to a request:

(i) It will not charge search fees, or, in the instance of request from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as follows in paragraphs (d)(2)(ii) through (iv) of this section.

(ii) If EXIM has determined that unusual circumstances, as defined by the FOIA, apply and EXIM provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 calendar days.

(iii) If EXIM has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, EXIM may charge search fees, or in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees, if the following steps are taken. EXIM must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and EXIM must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance 5 U.S.C. 552(a)(6)(B)(ii). If the exception in this paragraph (d)(2)(iii) is satisfied, EXIM may charge all applicable fees incurred in the processing of the request.

(iv) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(j) *Notice of anticipated fees in excess of $25.00.* (1) When EXIM determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, EXIM must notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review, or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fees can be estimated readily, EXIM will advise the requester accordingly. If the request is not for noncommercial use, the notice will specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and will advise the requester

whether those entitlements have been provided.

(2) If EXIM notifies the requester that the actual or estimated fees are in excess of $25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay actual or estimated total fees, or designates some amount of fees the requester is willing to pay, or in the case of a non-commercial use requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. EXIM will not accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but EXIM estimates that the total fee will exceed that amount, EXIM will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. EXIM will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of notifications.

(4) EXIM's FOIA Public Liaison or another FOIA professional is available to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(k) *Charging interest.* EXIM may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided by 31 U.S.C. 3717 and will accrue from the billing date until payment is received by EXIM. EXIM follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat.1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(l) *Aggregating requests for fee purposes.* When EXIM reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, EXIM may aggregate those requests and charge accordingly. EXIM may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, EXIM will aggregate them only where there is a reasonable basis for determining that aggregation is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters cannot be aggregated.

(m) *Advance payments.* (1) For requests other than those described in paragraph (n)(2) or (3) of this section, EXIM cannot require the requester to make an advance payment before work is commenced or continues on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to the request) is not an advance payment.

(2) When EXIM determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. EXIM may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any agency within 30 calendar days of the billing date, EXIM may require that the requester pay the full amount due, plus any applicable interest on that prior request, and EXIM may require that the requester make an advance payment of the full amount of any anticipated fee before EXIM begins to process a new request or continues to process a pending request or any pending appeal. Where EXIM has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which EXIM requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after the date of EXIM's fee determination, the request will be closed.

(n) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, EXIM must inform the requester of the contact information for that program.

§ 404.11 Fee waivers or reductions.

(a) *General.* Upon request, EXIM will consider a discretionary fee waiver or reduction of the fees chargeable under § 404.10. Requesters may seek a waiver of fees by submitting a written request demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(b) *Form of request for fee waiver.* EXIM must furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (b)(1) through (3) of this section are satisfied:

(1) Disclosure of the requester information would shed light on the operations or activities of the Government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(2) Disclosure of the requested information is likely to contribute to the public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(i) Disclosure of the requested records must be meaningfully informative about Government operations or activities. The disclosure of information that already is in the public domain, in either the same or substantially identical for, would not be meaningfully informative if nothing new would be added to the public understanding.

(ii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered.

(3) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, EXIM will consider the following criteria:

(i) EXIM must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(ii) If there is an identified commercial interest EXIM must determine whether that is the primary interest furthered by the request.

(4) A waiver or reduction of fees is justified when the requirements of paragraphs (b)(1) and (2) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. EXIM ordinarily will presume that when a news media requester has satisfied paragraphs (b)(1) and (2), the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(5) Where only some of the records to be released satisfy the requirements for a waiver of fees under this section, a waiver must be granted for those records.

(6) Requests for a waiver or reduction of fees should be made when the request is first submitted to EXIM and should address the criteria referenced in paragraphs (b)(1) through (5) of this section. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

(7) In all cases, the requester has the burden of presenting sufficient evidence or information to justify the fee waiver or reduction. The requester may use the procedures set forth in § 404.12 to appeal a denial of a fee waiver request.

§ 404.12 Administrative appeals.

(a) *General requirements for making an appeal.* A requester may appeal any adverse determination to the EXIM's Assistant General Counsel for Administrative Law and Board Support. Requesters can submit appeals by mail or via email at *FOIA.Appeals@exim.gov* in accordance with the following requirements: Appeals must be made in writing and contain the appellant's contact information, such as return address, email, or telephone number. To be timely it must be postmarked, or in the case of electronic submissions, transmitted within 90 calendar days after the date of the final response. The appeal should clearly identify the EXIM determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal.''

(b) *Adjudication of appeals.* (1) The Assistant General Counsel for Administrative Law and Board Support or designee will act on behalf of EXIM's Chief FOIA officer on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of litigation.

(3) On receipt of any appeal involving classified information, EXIM must take appropriate action to ensure compliance with applicable classification laws.

(c) *Decisions on appeals.* EXIM must provide its decision on an appeal in writing within 20 working days of the date of receipt of the appeal. A decision that upholds an agency's determination, in whole or in part, must contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision must provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Service (OGIS) of National Archives and Records Administration as a non-exclusive alternative to litigation. If EXIM's initial determination is remanded or modified on appeal, EXIM will notify the requester of that determination in writing. EXIM will then further process the request in accordance with that appeal determination and will respond directly to the requester.

(d) *Engaging in dispute resolution services provided by OGIS.* Mediation is a voluntary process. If EXIM agrees to participate in the mediation services provided by OGIS, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(e) *When appeal is required.* Before seeking review by a court of an adverse determination, a requester generally must submit a timely administrative appeal.

§ 404.13 Preservation of records.

EXIM will preserve all correspondence pertaining to the request that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. EXIM will not dispose or destroy records while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

§ 404.14 [Amended]

■ 5. Amend newly redesignated § 404.14 in paragraph (b) by removing ''§ 404.13'' and adding ''§ 404.15'' in its place.

§ 404.16 [Amended]

■ 6. Amend newly redesignated § 404.16 as follows:

■ a. In paragraph (a), removing ''§ 404.12(e)'' and adding ''§ 404.14(e)'' in its place; and

■ b. In paragraph (c) introductory text, removing ''§ 404.16(d)'' and adding ''§ 404.18(d)'' in its place.

§ 404.17 [Amended]

■ 7. Amend newly redesignated § 404.17 in paragraph (b)(2)(iii) by removing ''§ 404.17'' and adding ''§ 404.19'' in its place.

§ 404.19 [Ameded]

■ 8. Amend newly redesignated § 404.19 in paragraph (a) introductory text by removing ''§ 404.12(e)'' and adding ''§ 404.14(e)'' in its place.

§ 404.20 [Amended]

■ 9. Amend newly redesignated § 404.20 as follows:

■ a. In paragraph (a), removing ''§ 404.12(e)'' and ''§ 404.14(d) and (e)'' and adding ''§ 404.14(e)'' and ''§ 404.16(d) and (e)'' in their places, respectively.

■ b. In paragraphs (c) introductory text and (e), removing ''§ 404.12(e)'' and adding ''§ 404.14(e)'' in its place.

§ 404.21 [Amended]

■ 10. Amend newly redesignated § 404.21 in paragraph (b) by removing ''§ 404.14(d) and (e)'' and ''§ 404.12(e)'' and adding ''§ 404.16(d) and (e)'' and ''§ 404.14(e)'' in their places, respectively.

§ 404.35 [Amended]

■ 11. Amend newly redesignated § 404.35 by removing ''§ 404.32'' and adding ''§ 404.34'' in its place.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2022–05322 Filed 3–21–22; 8:45 am]

BILLING CODE 6690–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0285; Project Identifier MCAI–2021–01448–A]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Operations) Limited and British Aerospace Regional Aircraft Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all British Aerospace (Operations) Limited Model Jetstream Model 3101 and British Aerospace Regional Aircraft Model Jetstream Model 3201 airplanes. This proposed AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as stress corrosion cracking of the primary flight control cable terminals. This proposed AD would require repetitively inspecting the turnbuckle type control cable terminals in the rudder and elevator primary flight control circuits for corrosion, pitting, and cracking and, depending on the inspection results, replacing an affected cable assembly. 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 May 6, 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 BAE Systems (Operations) Ltd., Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; phone: +44 3300 488727; fax: +44 1292 675704; email: *RApublications@baesystems.com;* website: *https://www.baesystems.com/businesses/regionalaircraft/.* 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–2022–0285; 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, FAA, 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–2022–0285; Project Identifier MCAI–2021–01448–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 this 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 NPRM.

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, General Aviation & Rotorcraft Section, International Validation Branch, FAA, 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 Civil Aviation Authority (CAA), which is the aviation authority for the United Kingdom, has issued CAA AD G–2021–0017, dated December 21, 2021 (referred to after this as ''the MCAI''), to address an unsafe condition on all BAE Systems (Operations) Limited Model Jetstream Series 3100 and Series 3200 airplanes. The MCAI states:

> There were reports of cable terminal failures on a variety of civil aircraft types (which did not include the Jetstream 3100 & 3200 series aircraft). These reports were initially made in the USA, Australia & New Zealand.
>
> Subsequent investigations identified that the failed terminals were made from the same material specification; MS21260, which calls up materials SAE303Se or SAE304 stainless steel. It is understood that these corrosion resistant steels are susceptible to Stress Corrosion Cracking (SCC) in service when subject to contamination.
>
> BAE Systems (Operations) Ltd recognises that SAE 303Se and 304 stainless steels are used in the primary flight control cable terminal of the Jetstream 3100 & 3200 series aircraft.
>
> The Jetstream 3100 & 3200 series aircraft feature a single path for the elevator and rudder primary control cable circuits. For the elevator circuit, a potential unsafe condition exists if an elevator cable terminal fails at any point in the primary elevator system aft of the dual flight controls in the cockpit, because this would result in a loss of primary elevator control. This is only considered unsafe during take-off after V1, where sufficient runway may not be available to brake the aircraft, or during an approach where there is insufficient altitude to recover control of the aircraft using the aircraft's elevator trim controls.
>
> For the rudder circuit, a potential unsafe condition exists if a rudder cable terminal fails at any point in the primary rudder system aft of the dual flight controls in the cockpit, because this would result in a loss of primary rudder control. This is only

considered unsafe when landing in strong crosswinds or after an engine failure during take-off and initial climb, where vertical axis (yaw) control cannot be maintained using rudder trim or asymmetrical power.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0285.

Related Service Information Under 1 CFR Part 51

The FAA reviewed British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 27–JA181040, Original Issue, dated January 17, 2019. This service information specifies procedures for repetitively inspecting all threaded turnbuckle type control cable end terminals on certain part-numbered rudder and elevator primary flight control circuits for signs of corrosion, pitting, and cracking on the terminal fitting, and specifies replacing an affected cable assembly when the inspection results require it. 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 require accomplishing the actions specified in the service information already described.

Differences Between This Proposed AD and the MCAI

The MCAI and service information apply to Model Jetstream Series 3100 and Jetstream Series 3200 airplanes, which are identified on the FAA type certificates as Jetstream Model 3101 and Jetstream Model 3201 airplanes, respectively.

Although the service information specifies reporting inspection results to the manufacturer, this proposed AD would not require that action.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 18 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Inspection	4 work-hours × $85 per hour = $340.	Not applicable	$340 per inspection cycle	$6,120 per inspection cycle.

The FAA estimates the following costs to replace a cable assembly based on the results of the proposed inspection. The FAA has no way of determining the number of airplanes that might need this action:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per airplane
Replacement of cable assembly	10 work-hours × $85 per hour = $850	$5,000	$5,850

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 this 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 adding the following new airworthiness directive:

British Aerospace (Operations) Limited and British Aerospace Regional Aircraft: Docket No. FAA–2022–0285; Project Identifier MCAI–2021–01448–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to British Aerospace (Operations) Limited Model Jetstream Model 3101 and British Aerospace Regional Aircraft Model Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2720, Rudder Control System, and 2730, Elevator Control System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as stress corrosion cracking of the primary flight control cable terminal. The FAA is issuing this AD to detect and correct corrosion, pitting, or cracking in the primary flight control cable terminals. The unsafe condition, if not addressed, could result in failure of the primary flight control cable terminal and loss of airplane control.

(f) Compliance

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

(g) Required Actions

(1) Before any primary rudder or primary elevator flight control circuit cable accumulates 16 years since first installation on an airplane or within 12 months after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 24 months, inspect all threaded turnbuckle type control cable terminals for signs of corrosion, pitting, and cracking by following paragraph (2) in Section 2.B. Part 1 and Section 2.B. Part 2 of the Accomplishment Instructions in British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 27–JA181040, Original Issue, dated January 17, 2019 (SB 27–JA181040). If the age of any primary rudder or primary elevator flight control circuit cable is unknown, do the inspection within 12 months after the effective date of this AD and thereafter at intervals not to exceed 24 months.

(2) If, during any inspection required by paragraph (g)(1) of this AD, there is pitting or cracking or corrosion that exceeds minimum damage limits, before further flight, replace the affected cable assembly with a new (zero hours time-in-service) cable assembly.

(3) Replacing a cable assembly does not terminate the inspections required by this AD. After replacing a cable assembly, do the inspection in paragraph (g)(1) of this AD before the cable assembly accumulates 15 years since first installation on an airplane and thereafter at intervals not to exceed 24 months.

(h) 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 (i)(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.

(i) Related Information

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

(2) Refer to Civil Aviation Authority (CAA) AD G–2021–0017, dated December 21, 2021, for more information. You may examine the CAA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0285.

(3) For service information identified in this AD, contact BAE Systems (Operations) Ltd., Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; phone: +44 3300 488727; fax: +44 1292 675704; email: *RApublications@baesystems.com;* website: *https://www.baesystems.com/businesses/regionalaircraft/.* 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 11, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05673 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0281; Project Identifier MCAI–2021–01315–R]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Leonardo S.p.a. Model A109S and AW109SP helicopters. This proposed AD was prompted by a report of a protective sheath, installed around a fixed flight control rod, which should have been removed during assembly. This proposed AD would require borescope inspecting certain parts, and removing any foreign object if detected, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 May 6, 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 EASA material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* You may view this material 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. This material is

also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0281.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0281; 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 EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@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–2022–0281; Project Identifier MCAI–2021–01315–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 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 NPRM.

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 Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0255, dated November 15, 2021, and corrected November 24, 2021 (EASA AD 2021–0255), to correct an unsafe condition for Leonardo S.p.A. Helicopters Model A109S helicopters, serial number (S/N) 22735, 22736, and 22737, and equipped with Trekker Kit; and Model AW109SP helicopters, S/N 22407, 22408, 22409, 22412, 22414 to 22427 inclusive, and 22429.

This proposed AD was prompted by a report of a protective sheath, installed around a fixed flight control rod, which should have been removed during assembly. The FAA is proposing this AD to detect any foreign object contamination, which if not addressed, could affect the free movement of the flight controls and result in subsequent reduced control of the helicopter. See EASA AD 2021–0255 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0255 specifies procedures for borescope inspecting certain part-numbered parts installed on the control rods and levers of the rotors flight controls, and removing any foreign object if detected.

This material 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.

Other Related Service Information

The FAA reviewed Leonardo Helicopters Alert Service Bulletin No. 109SP–148, dated October 26, 2021 (ASB 109SP–148). This service information specifies instructions for borescope inspecting certain part-numbered parts installed on the control rods and levers of the rotors flight controls of the left-hand and right-hand forward struts and removing foreign objects.

The FAA also reviewed Leonardo Helicopters Alert Service Bulletin No.109S–104, dated October 26, 2021, which specifies the same instructions as ASB 109SP–148 but only applies to Model A109S helicopters with certain Trekker Kits installed.

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0255, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0255 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0255 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0255 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0255. Service information referenced in EASA

AD 2021–0255 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0281 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1 helicopter 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 proposed AD.

Borescope inspecting the control rods and levers of the rotor flight controls for any foreign object would take about 4 work-hours for an estimated cost of $340 per inspection and $340 for the U.S. fleet.

The FAA estimates the following costs to do any necessary on-condition corrective actions that would be required based on the results of the inspection:

If required, removing any foreign object would take a minimal amount of time with a minimal parts cost.

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 this 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 adding the following new airworthiness directive:

Leonardo S.p.a.: Docket No. FAA–2022–0281; Project Identifier MCAI–2021–01315–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model A109S helicopters, serial number (S/N) 22735, 22736, and 22737, and equipped with Trekker Kit; and Model AW109SP helicopters S/N 22407, 22408, 22409, 22412, 22414 through 22427 inclusive, and 22429, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6700, rotorcraft Flight Control.

(e) Unsafe Condition

This AD was prompted by a report of a protective sheath, installed around a fixed flight control rod, which should have been removed during assembly. The FAA is issuing this AD to detect any foreign object contamination, which if not addressed, could affect the free movement of the flight controls and result in subsequent reduced control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0255, dated November 15, 2021, and corrected November 24, 2021 (EASA AD 2021–0255).

(h) Exceptions to EASA AD 2021–0255

(1) Where EASA AD 2021–0255 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2021–0255 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (1) of EASA AD 2021–0255 specifies ''inspect each affected part in accordance with the instructions of the applicable ASB,'' for this AD replace ''in accordance with the instructions of the applicable ASB'' with ''in accordance with the Accomplishment Instructions, Section 3, paragraph 5. of the applicable ASB.''

(4) Where paragraph (2) of EASA AD 2021–0255 specifies ''if, during the inspection as required by paragraph (1) this AD, any foreign object is found on an affected part, before next flight, remove that foreign object in accordance with the applicable ASB,'' this AD requires if any foreign object is found, before further flight, remove the foreign object. The instructions in the ''applicable ASB'' are for reference only and are not required for the actions in paragraph (2) of EASA AD 2021–0255.

(5) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0255.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199, provided no passengers are onboard.

(j) 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 International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed 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.

(k) Related Information

(1) For EASA AD 2021–0255, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may view this material 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. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0281.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

Issued on March 10, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05606 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0284; Project Identifier MCAI–2021–01369–A]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as binding of the rod end bearing connecting the lower fuel control unit (FCU) push rod assembly to the FCU power lever. This proposed AD would require performing tests, inspections, and lubrication of the FCU push rod assemblies, and replacing them with improved parts as necessary. 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 May 6, 2022.

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

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

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

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0284; 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: Elizabeth Dowling, Aviation Safety Engineer, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7300; email: *elizabeth.m.dowling@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 the **ADDRESSES** section. Include ''Docket No. FAA–2022–0284; Project Identifier MCAI–2021–01369–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 this 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 NPRM.

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 Elizabeth Dowling, Aviation Safety Engineer, New York ACO Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada, which is the aviation authority for Canada, has issued Transport Canada AD CF–2021–42, dated November 26, 2021 (referred to after this as ''the MCAI''), to address an unsafe condition on certain serial-numbered Viking Air Limited Model DHC–6 series 1, DHC–6 series 100, DHC–6 series 110, DHC–6 series 200, DHC–6 series 210, DHC–6 series 300, DHC–6 series 310, DHC–6 series 320, and DHC–6 series 400 airplanes with certain part-numbered FCU push rod assemblies installed. The MCAI states:

> There have been in-service reports of binding of [part number] P/N VSC30–3A rod end bearings used in the linkage for the lower FCU push rod assembly P/N C6CE1398–7. The lower FCU push rod assembly is connected to the FCU power lever and contains a rod end bearing at each end. P/N VSC30–3A rod end bearings, fabricated with a metal inner race and a dry film lubricant, have been incorporated on FCU push rod assemblies introduced through Viking Air Ltd (Viking) MOD 6/2347. P/N VSC30–3A rod end bearings may have also been installed in-service as a replacement part in lower FCU push rod assembly P/N C6CE1398–3. In one instance, binding of the lower FCU push rod bearing resulted in one engine failing to return to a lower power setting from a higher power setting when

commanded, which subsequently resulted in the need to perform an in-flight engine shutdown during final approach. An investigation also revealed that binding of P/N VSC30–3A rod end bearings can occur after a period of non-utilization of the aeroplane.

This condition, if not detected and corrected, may lead to the inability to reduce power on the affected engine, resulting in the need to perform an in-flight engine shutdown, and consequently leading to reduced control of the aeroplane and increased pilot workload during this critical phase of flight.

To address this unsafe condition, this [Transport Canada] AD mandates initial and repetitive functional checks, special detailed inspection (SDI) and lubrication of the affected FCU push rod assembly, and its replacement, as required, with a redesigned FCU push rod assembly with improved reliability (MOD 6/2484), in accordance with Viking Service Bulletin (SB) V6/0063. This [Transport Canada] AD also prohibits the installation of an affected FCU push rod assembly as a replacement part on applicable aeroplanes.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0284.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following:

- Viking DHC–6 Twin Otter Service Bulletin (SB) No. V6/0063, Revision A, dated February 1, 2021 (Viking SB V6/0063, Revision A), which specifies procedures for performing tests, inspections, and lubrication of the FCU push rod assemblies; and
- Viking DHC–6 Twin Otter Technical Bulletin No. V6/00155, Revision NC, dated September 14, 2020, which specifies procedures for replacing the FCU push rod assemblies with improved parts.

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.

Other Related Service Information

The FAA also reviewed Viking DHC–6 Twin Otter SB No. V6/0063, Revision NC, dated June 7, 2019 (Viking SB V6/0063, Revision NC), which specifies procedures for performing tests, inspections, and lubrication of the FCU push rod assemblies. Viking revised this service information and issued Viking SB V6/0063 Revision A to extend the lubrication requirement of Mod 6/2347 rod ends to all operating environments, add repeat inspections, and introduce a test and lubrication for airplanes that have not been in operation after a period of time before re-entry into service.

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 in other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information described previously.

Differences Between This Proposed AD and the MCAI

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

The MCAI requires reporting information to the manufacturer, and this proposed AD would not.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 34 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per airplane	Cost on U.S. operators
Test, inspect, and lubricate the FCU push rod assemblies.	1 work-hour × $85 per hour = $85.	N/A	$85 per inspection cycle	$2,890 per inspection cycle.

The FAA estimates the following costs to replace the FCU push rod assemblies. The agency has no way of determining the number of airplanes that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per airplane
Replace both FCU push rod assemblies	3 work-hours × $85 per hour = $255	$60	$315

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 this proposed regulation:

(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 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 adding the following new airworthiness directive:

Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland, Inc.): Docket No. FAA–2022–0284; Project Identifier MCAI–2021–01369–A.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by May 6, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland, Inc.) Model DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300, and DHC–6–400 airplanes, serial numbers 001 through 989, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 7600, Engine Controls.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as binding of the rod end bearing connecting the lower fuel control unit (FCU) push rod assembly to the FCU power lever. The unsafe condition, if not addressed, could lead to the inability to reduce power on the affected engine, which could result in an in-flight engine shutdown and reduced airplane control.

(f) Definitions

(1) For purposes of this AD, an ''affected FCU pushrod assembly'' is one of the following:

(i) Lower FCU push rod assembly part number (P/N) C6CE1398–7; or

(ii) Lower FCU push rod assembly P/N C6CE1398–3 with P/N VSC30–3A rod end bearing installed.

Note 1 to paragraph (f)(1): P/N C6CE1398–7 may also be referred to as modification (MOD) 6/2347.

(2) For purposes of this AD, a ''serviceable FCU push rod assembly'' is lower FCU push rod assembly P/N C6CE1398–9.

Note 2 to paragraph (f)(2): P/N C6CE1398–9 may also be referred to as MOD 6/2484.

(g) Compliance

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

(h) Required Actions

(1) Within 125 hours time-in-service (TIS) after the effective date of this AD or within 30 days after the effective date of this AD, whichever occurs first, test each affected FCU push rod assembly for binding and restriction in accordance with the Accomplishment Instructions, paragraphs A.1. through A.3., in Viking DHC–6 Twin Otter Service Bulletin No. V6/0063, Revision A, dated February 1, 2021 (Viking SB V6/0063, Revision A).

(i) If there is any binding or restriction, before further flight, remove both affected FCU push rod assemblies from service and install serviceable FCU push rod assemblies in accordance with the Accomplishment Instructions, paragraph A.4., in Viking SB V6/0063, Revision A, and the Accomplishment Instructions, Sections A through C, in Viking DHC–6 Twin Otter Technical Bulletin No. TB V6/00155, Revision NC, dated September 14, 2020 (Viking TB V6/00155, Revision NC).

(ii) If there is no binding and no restriction, before further flight, remove each affected FCU push rod assembly, clean the push rod ends, and inspect each affected FCU push rod assembly for corrosion and condition of the lubricant. Pay particular attention to the bearing ball and race.

(A) If there is no corrosion and the lubricant color and texture is normal, before further flight, lubricate each affected FCU push rod assembly in accordance with the Accomplishment Instructions, Section C, in Viking SB V6/0063, Revision A.

(B) If there is corrosion or if the lubricant is abnormal in color (too dark) or texture (too sticky), before further flight, remove both affected FCU push rod assemblies from service and install serviceable FCU push rod assemblies in accordance with the Accomplishment Instructions, paragraph A.4, in Viking SB V6/0063, Revision A and the Accomplishment Instructions, Sections A through C, in Viking TB V6/00155, Revision NC.

(2) Repeat the requirements of this AD as follows until both affected FCU push rod assemblies are replaced.

(i) *Test and lubrication:* At intervals not to exceed 125 hours TIS or before further flight anytime the airplane has not been operated for a period of 30 days, whichever occurs first.

(ii) *Inspection:* At intervals not to exceed 1,500 hours TIS.

(3) As of the effective date of this AD, do not install an affected FCU push rod assembly on any airplane.

(i) Credit for Previous Actions

You may take credit for the test, inspection, replacement, and lubrication required by paragraphs (h)(1) and (2) of this AD if you performed those actions before the effective date of this AD using Viking DHC–6 Twin Otter Service Bulletin No. V6/0063, Revision NC, dated June 7, 2019.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD.

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

(k) Related Information

(1) For more information about this AD, contact Elizabeth Dowling, Aviation Safety Engineer, New York ACO Branch, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: (516) 228–7300; email: *elizabeth.m.dowling@faa.gov.*

(2) Refer to Transport Canada AD CF–2021–42, dated November 26, 2021, for more information. You may examine the Transport Canada AD in the AD docket at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2022–0284.

(3) For service information identified in this AD, contact Viking Air Ltd., 1959 de Havilland Way, Sidney British Columbia, Canada V8L 5V5; phone: (800) 663–8444; email: *continuing.airworthiness@vikingair.com;* website: *https://www.vikingair.com.* You may review this referenced 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 11, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05668 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket Number USCG–2019–0822]

RIN 1625–AA01

Anchorage Grounds; Atlantic Ocean, Delaware

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to amend the anchorage regulations for the Delaware Bay and River, and adjacent waters, by establishing two new, offshore deep-water anchorages. The purpose of this proposed rule is to improve navigation safety by accommodating recent and anticipated future growth in vessel size and volume of vessel traffic entering the Delaware Bay and River, and to preserve areas traditionally used or needed for anchoring. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 23, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2019–0822 using the Federal eRulemaking 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 Marine Science Technician First Class (MST1) Jennifer Padilla, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271–4889, email *Jennifer.L.Padilla@uscg.mil;* or Mr. Matt Creelman, Fifth Coast Guard District (dpw), U.S. Coast Guard; telephone (757) 398–6230, email *Matthew.K.Creelman2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

ACPARS Atlantic Coast Port Access Route Study
AIS Automatic Identification System
BOEM Bureau of Ocean Energy Management
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NOI Notice of Intent
NPRM Notice of Proposed Rulemaking
OREA Offshore Renewable Energy Area
PARS Port Access Route Study
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

In 2011, the Coast Guard received requests to formally establish anchorages in the Atlantic Ocean offshore from the Delaware coast in response to the Atlantic Coast Port Access Route Study (ACPARS), a multiyear study that included public participation and identified the navigation routes customarily followed by ships engaged in commerce between international and domestic U.S. ports. The ACPARS is available at *https://navcen.uscg.gov/?pageName=PARSReports.* To preserve areas traditionally used for anchoring from offshore development, the Federal Pilots and the Mariners' Advisory Committee for the Bay and River Delaware requested formal anchorage grounds be established to the east and the west of the southeastern approach traffic separation scheme. While these requests were noted in the ACPARS, the Coast Guard took no action in the pursuing years, and the areas to the east and the west of the southeastern approach traffic separation scheme continued to be used as traditional and unregulated anchorage grounds.

On July 12, 2018, and August 21, 2018, the Coast Guard held meetings with maritime stakeholders and waterway users to discuss the impacts to vessel traffic and navigation safety on the Delaware Bay and River due to the expansion of the Panama Canal and the planned deepening of the Delaware River from 40 to 45 feet. Meeting attendees included the Pilots' Association for the Bay and River Delaware, the Mariners' Advisory Committee for the Bay and River Delaware, Interport Pilots Association, and port and terminal representatives. The attendees concluded the increased volume of vessel traffic and the size of vessels calling on the Delaware Bay and River, and planned and potential offshore development, heightened the need to formally establish three new anchorage grounds: Two offshore in the Atlantic Ocean and an additional inshore anchorage located in the Delaware Bay near the Cape Henlopen breakwaters. The participants suggested the anchorages would preserve areas traditionally used for anchoring and provide for the ongoing and future growth of the marine transportation system on the Delaware Bay and River.

On November 29, 2019, the Coast Guard published a Notice of Inquiry (NOI) in the **Federal Register** (81 FR 25854) to formally seek feedback on whether the Coast Guard should consider a proposed rulemaking to establish the three new anchorages. Following the naming convention in 33 CFR 110.157, the anchorages were referred to as Anchorage B—Breakwater, Anchorage C—Cape Henlopen, and Anchorage D—Indian River. We received 42 comments in response to the NOI. Five comments were supportive; twenty eight were opposed to the proposed inshore anchorage, Anchorage B; and fourteen were opposed to the proposed offshore anchorages, Anchorages C and D.

On May 5, 2020, the Coast Guard published a Notice of Study; request for comments entitled ''Port Access Route Study (PARS) for the Seacoast of New Jersey Including Offshore Approaches to the Delaware Bay, Delaware'' in the **Federal Register** (85 FR 26695). The initial comment period closed on July 5, 2020. The Coast Guard conducted two virtual public meetings on October 28, 2020, and November 4, 2020, and the initial comment period was re-opened through November 10, 2020. The study included an in-depth analysis of historical anchoring patterns in the approaches to the Delaware Bay and River. Anchorage related comments received during the study are discussed in Section III, and a full list of comments can be found in the Port Access Route Study ''PARS,'' docket number USCG–2020–0172.[1]

Based on feedback received to date, primary objections to the proposed inshore anchorage are environmental in nature and concern potential impacts on Atlantic Sturgeon, an endangered species under the Endangered Species Act. Primary objections to the proposed offshore anchorages concern potential conflicts between the siting of the anchorage grounds and the need to route electricity transmission export cables to the proposed or future offshore wind developments. Based on the differences and nature of concerns between the anchorages located inshore, in the Delaware River estuary, and the

[1] The docket folder for USCG–2020–0172 is available at: *Regulations.gov.*

anchorages located offshore in the Atlantic Ocean, the Coast Guard intends to move forward with two separate rulemakings, one for the inshore anchorage, and another for the offshore anchorages. With this rulemaking, the Coast Guard proposes the establishment of the anchorages located offshore in the Atlantic Ocean, Anchorage C—Cape Henlopen, and Anchorage D—Indian River.

The purpose of this proposed rule is to improve navigation safety by accommodating recent and anticipated future growth in cargo vessel size and volume of vessel traffic entering the Delaware Bay and River, and to preserve areas traditionally used or needed for anchoring. We invite your comments on this proposed rulemaking.

The legal basis and authorities for this notice of proposed rulemaking are found in 46 U.S.C. 70006, 33 CFR 1.05–1, DHS Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory anchorage grounds.

III. Discussion of Comments on NOI

This section provides a detailed discussion of the public comments on the proposed Delaware Bay Anchorages received during the NOI comment period and during the two virtual public meetings held for the New Jersey PARS study. Also contributing to this rulemaking through the PARS study process, the Coast Guard Navigation Center collected and analyzed vessel historical Automatic Information System (AIS) track line data from all vessels between 2017 and 2019 and created AIS ''heat maps.'' These heat maps show a concentration of vessels and their voyage routes and give insight into their operations and use of the waterways and, most pertinent to this NPRM, the location of vessels when at anchor. A copy of this AIS Anchorage report can be found in the docket.[2]

On the NOI, the Coast Guard received a total of 19 comments concerning proposed Anchorage C—Cape Henlopen and Anchorage D—Indian River, five supportive and 14 opposed. Comments submitted to the online docket aligned into four categories: Environmental concerns, electricity transmission export cable routing safety and security, view shed concerns, and supporters. Copies of the public comments received are available for viewing in the public docket for this rulemaking under docket number USCG–2019–0822. Commenters represented a wide range of individuals and entities, including State and local government officials, port authorities, representatives of affected industries, such as maritime, port, and other facilities, and private citizens. The comments received from these parties helped to inform the proposal in this NPRM.

1. Environmental Concerns

We received eight comments opposing the anchorage locations due to concerns that the presence of anchored ships could disrupt or pollute marine life habitats and behaviors. The Coast Guard has prepared a preliminary Record of Environmental Consideration (REC) for this NPRM, which is available in the NPRMs docket folder, and has made a preliminary determination that the proposed anchorages do not cumulatively or individually have significant effect on the natural or human environment.

We also note there are existing laws and regulations in place to govern behavior of mariners and vessels related to concerns about the release of pollutants. In terms of the discharge of pollutants, our regulations in 33 CFR part 151 and the Act to Prevent Pollution from Ships implement provisions of the International Convention for Prevention of Pollution from Ships and subject violators to penalties.[3] In addition, the Ports and Waterways Safety Act (PWSA) of 1972 (33 U.S.C. 1221, 1223, 1228, 1232 *et seq.*) and PWSA-implementing regulations help us ensure vessel compliance with all applicable standards, operating requirements, conditions for entry into port, and enforcement provisions.

The Coast Guard also notes that this rulemaking will not significantly change the current and historical anchoring habits of vessels in these areas. This is demonstrated in the AIS heat maps for anchored vessels showing a concentration of vessels in or very near to the proposed anchorage areas. The formal regulation of these anchorages would not change the number of vessels that are anchoring and would provide greater oversight and predictability to vessel navigation in the area, which would ultimately lessen the potential for marine accidents and environmental impacts.

2. Electricity Transmission Export Cable Routing and Safety Concerns

There were three comments submitted that pertained to concerns regarding the new anchorages coexisting with potential undersea cable routes to adjacent wind farm leases. Commenters requested mitigating measures and further discussion with wind farm stakeholders to avoid anchors striking or fouling undersea cables. Conversations between the Coast Guard and offshore wind developers have continued, both during and subsequent to the NOI and New Jersey PARS comment periods and virtual meetings. These conversations, among other things, have resulted in the developers choosing to pursue alternate cable routing measures that will avoid the proposed anchorage grounds.

3. Tourism Concerns and View Shed Concerns

Four comments submitted were opposed to the new anchorages stating that anchored vessels would obscure the ocean views from the coast and reduce the tourism appeal of the local areas and harm the local economies. In considering these comments, we note that the approval of the proposed anchorages will not directly change the status quo for vessels anchoring in these areas. AIS tracking data from 2017 to 2019 show vessels consistently anchoring in the same general area as the proposed areas, and that anchoring would continue in these areas regardless of the outcome of this rulemaking. By officially designating these anchorages, the Coast Guard can formally regulate the vessels that anchor in these offshore areas and limit vessels from anchoring elsewhere in the future, further affecting the human environment and local traffic.

4. Anchorage Proponents

There were five comments that stated the anchorages were necessary to preserve areas traditionally used for anchoring from offshore wind development and to provide adequate safe anchorage for vessels calling on the growing ports of the Delaware Bay and River. These comments were supported by AIS vessel data collected by the Coast Guard showing consistent anchorage in the proposed areas between 2017–2019.

5. Comments Received During the PARS Meetings and Anchoring Data

Of the comments received during the New Jersey PARS virtual public meetings, six pertained to the proposed anchorages. One commenter specifically requested that this NPRM be available for at least 60 days for public comment. The remaining comments supported the anchorage proposal but stated concern for conflicts between vessel anchors and electricity transmission export cables. Conversations between the Coast Guard and offshore wind developers have continued, both during and subsequent

[2] The docket folder for USCG–2019–0822 is available at: *Regulations.gov*.

[3] 33 U.S.C. 1901 *et seq.*

to the NOI and New Jersey PARS comment periods and virtual meetings. These conversations, among other things, have resulted in the developers choosing to pursue alternate cable routing measures that will avoid the proposed anchorage grounds.

IV. Discussion of Proposed Rule

The Coast Guard is proposing to establish new anchorage grounds Anchorage C—Cape Henlopen and Anchorage D—Indian River. This proposal reflects our consideration of comments received at public meetings and in the docket, the preliminary Record of Environmental Consideration, and data analysis collected during the New Jersey PARS study.

We believe this proposal will establish new deep-water anchorage grounds for commercial vessels that will support the new and projected growth in maritime commerce vessel traffic throughout the Delaware Bay and River. These anchorages will create predictable navigation patterns greatly improving safety of navigation at sea and limit the impact of anchoring to the sea floor to specific determined areas.

Anchorage C—Cape Henlopen would be located in the Atlantic Ocean approximately 9.4 miles east of the Delaware coast. The proposed Anchorage C would be located in naturally deep water with charted depths between 41 and 85 feet. The boundaries of Anchorage C—Cape Henlopen are presented in § 110.157(a)(19) of the proposed regulatory text at the end of this document.

Anchorage D—Indian River would be located in the Atlantic Ocean beginning approximately 6 miles east of the Delaware coast. The proposed Anchorage D—Indian River will be located in naturally deep water with charted depths between 40 and 85 feet. The proposed location of Anchorage D has historically been used as an unregulated anchorage by vessels entering and exiting the port. The boundaries of Anchorage D—Indian River are presented in § 110.157(a)(20) of the proposed regulatory text at the end of this document.

V. 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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. 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), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the location and size of the proposed anchorage grounds, as well as the vessel traffic and anchoring data provided by the Coast Guard Navigation Center. The regulation would ensure approximately 27 square miles of anchorage grounds are designated to provide necessary commercial deep draft anchorages and enhance the navigational safety of commercial vessels transiting to, from, and within the Delaware Bay and River. The impacts on routine navigation are expected to be minimal because the proposed anchorage areas are located outside of the established traffic separation zones and are consistent with current anchorage habits. When not occupied, vessels would be able to maneuver in, around, and through the anchorages.

B. Impact on Small Entities

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

The number of small entities impacted and the extent of the impact, if any, is expected to be minimal. Proposed Anchorage C—Cape Henlopen and Anchorage D—Indian River are located in an area of the Atlantic Ocean which is not a popular or productive fishing location. Further, the location is not in an area routinely transited by vessels heading to, or returning from, known fishing grounds. Finally, the anchorage is located in an area that is not currently used by small entities, including small vessels, for anchoring due to the depth of water naturally present in the area.

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 contact 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 contact 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 and Commandant Instruction M16475.1D, 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 amending the regulations for Delaware Bay and River anchorage grounds by establishing two new anchorage regulations; Anchorage C—Cape Henlopen and Anchorage D—Indian River. Normally such actions are categorically excluded from further review under paragraph L59(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under **ADDRESSES**. 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 contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

VI. 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–2019–0822 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 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 110 as follows:

PART 110—ANCHORAGE REGULATIONS

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

Authority: 33 U.S.C. 471, 2071; 46 U.S.C. 70034; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.157 by adding paragraphs (a)(18) through (20) to read as follows:

§ 110.157 Delaware Bay and River.

(a) * * *

(18) *Reserved.*

(19) *Anchorage C—Cape Henlopen.* The waters bounded by a line connecting the following points:

Latitude	Longitude
38°40′54.00″ N	74°52′00.00″ W
38°40′56.08″ N	74°48′51.34″ W
38°37′36.00″ N	74°48′30.00″ W

(DATUM: NAD 83)

(20) *Anchorage D—Indian River.* The waters bounded by a line connecting the following points:

Latitude	Longitude
38°34′56.25″ N	74°52′19.12″ W
38°33′40.91″ N	74°54′41.50″ W
38°31′31.08″ N	74°55′27.96″ W
38°29′07.35″ N	74°53′29.25″ W
38°28′56.87″ N	74°50′28.69″ W
38°30′07.37″ N	74°48′08.38″ W

(DATUM: NAD 83)

* * * * *

Dated: March 14, 2022.

L.M. Dickey,

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

[FR Doc. 2022–05806 Filed 3–21–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0184]

RIN 1625–AA00

Safety Zone; Graduate Boat Parade, Sturgeon Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain waters of Sturgeon Bay, WI. This action is necessary to provide for the safety of life on these navigable waters during the boat parade for the Graduates of Sturgeon Bay High School on May 28, 2022. This proposed rulemaking would restrict usage by persons and vessels within the safety zone. At no time during the effective period may non-parade vessels transit the waters of Sturgeon Bay between the Highway 42 Bridge and Michigan Street Bridge. These restrictions would apply to all vessels during the effective period unless authorized by the Captain of the Port Lake Michigan or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 6, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0184 using the Federal eRulemaking 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 Chief Petty Officer Jeromy Sherrill, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414–747–7148, email *Jeromy.N.Sherrill@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On March 9, 2022, the principal of Sturgeon Bay High School notified the Coast Guard that it will be conducting a boat parade for graduates of the Class of 2022 on May 28, 2022 from 11:00 a.m. through 2:00 p.m. The boat parade will begin at Madelyn Marine, NW of Highway 42 bridge, proceed NW to the Michigan Street Bridge, cross the channel towards the Maritime Museum, then proceed SE, crossing back across the channel and ending at Madelyn Marine. The Captain of the Port Sector Lake Michigan (COTP) has determined that potential hazards associated with the boat parade would be a safety concern for anyone within the safety zone that is not participating in the boat parade.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters of Sturgeon Bay between the Highway 42 Bridge and Michigan Street Bridge during the event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 11:00 a.m. through 2:00 p.m. on May 28, 2022. The safety zone would cover all navigable waters of Sturgeon Bay between the Highway 42 Bridge and Michigan Street Bridge. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the boat parade event. No vessels or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. 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 characteristics of the safety zone. The safety zone created by this proposed rule will relatively small and is designed to minimize its impact on navigable waters. This proposed rule will prohibit entry into certain navigable waters of Sturgeon Bay, WI, and it is not anticipated to exceed 2.5 hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions vessels may still transit through the safety zone when permitted by the COTP Lake Michigan.

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 a safety zone lasting 2.5 hours that would prohibit entry within a relatively small portion of Sturgeon Bay. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. 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.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

■ 2. Add § 165.T09–0184 to read as follows:

§ 165.T09–0184 Safety Zone; Graduate Boat Parade, Sturgeon Bay, WI.

(a) *Location.* All navigable waters of Sturgeon Bay between the Highway 42 Bridge and Michigan Street Bridge.

(b) *Enforcement Period.* The safety zone described in paragraph (a) of this section would be effective on May 28, 2022 from 11:00 a.m. through 2:00 p.m.

(c) *Regulations.*

(1) In accordance with the general regulations in section § 165.23, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) The ''designated representative'' of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Persons and vessel operators desiring to enter or operate within the safety zone during the boat parade must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or an on-scene representative.

Dated: March 14, 2022.

D.P. Montoro,

Captain, U.S. Coast Guard, Captain of the Port Lake Michigan.

[FR Doc. 2022–06012 Filed 3–21–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2021–0950, FRL–9395–01–R10]

Air Plan Approval; ID, Incorporation by Reference Updates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve an update to the Idaho State Implementation Plan (SIP) submitted on October 12, 2021. The submission updates the incorporation by reference of the national ambient air quality standards (NAAQS) and other Federal provisions into the Idaho SIP as of July 1, 2020. Idaho undertakes regular updates to ensure State air rules and the SIP remain consistent with Federal air program requirements.

DATES: Comments must be received on or before April 21, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2021–0950, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be

edited or removed from *https://www.regulations.gov.* The EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Kristin Hall, EPA Region 10, 1200 Sixth Avenue, Suite 155, Seattle, WA 98101, at (206) 553–6357 or *hall.kristin@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, the use of ''we'' and ''us'' is intended to refer to the EPA.

Table of Contents

I. Background

Section 110 of the Clean Air Act specifies the general requirements for states to submit SIPs to attain and maintain the NAAQS and the EPA's actions on such submissions. To efficiently adopt and implement the NAAQS and related requirements, Idaho incorporates certain Federal regulations by reference into the Idaho air rules (IDAPA 58.01.01) at IDAPA 58.01.01.107.03 *Incorporation by Reference.* Idaho then submits some of those provisions to the EPA for approval and codification into the Code of Federal Regulations (CFR) at 40 CFR part 52, subpart N (Idaho SIP). When Federal regulations are revised, Idaho updates the date by which the regulations are incorporated by reference and submits the updates to the EPA for approval.

II. Evaluation

The current Idaho SIP incorporates the following regulations by reference, as of July 1, 2019, at IDAPA 58.01.01.107.03, paragraphs a through e:

- National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50;
- Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51, with the exception of certain visibility-related provisions;
- Approval and Promulgation of Implementation Plans, 40 CFR part 52, subparts A and N, and appendices D and E;
- Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and
- Ambient Air Quality Surveillance, 40 CFR part 58.

On October 12, 2021, Idaho submitted updates to the SIP to incorporate these regulations by reference as of July 1, 2020. Between July 1, 2019 and July 1, 2020, most of these incorporated Federal regulations did not change. However, the EPA did revise 40 CFR part 52 subpart N to approve three Idaho SIP revisions. See 84 FR 45918, September 3, 2019; 84 FR 67189, December 9, 2019; and 85 FR 9664, February 20, 2020. In addition, the EPA revised 40 CFR part 58 to delay the implement of revised photochemical assessment monitoring systems. See 85 FR 834, January 8, 2020.

After reviewing the submitted updates, we have made the preliminary determination that the updates are consistent with Clean Air Act requirements.

III. Proposed Action

The EPA proposes to approve and incorporate by reference the updates to the Idaho SIP submitted on October 12, 2021. Upon final approval, the Idaho SIP will include IDAPA 58.01.01.107.03, paragraphs a through e, State effective June 17, 2021, which, as discussed in section II of this preamble, incorporate by reference the specified Federal regulations as of July 1, 2020.

IV. Incorporation by Reference

In this document, the EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in section III of this preamble. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of the requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rulemaking would not apply on any Indian reservation land or in any other area in

Idaho where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule would not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: March 15, 2022.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2022–05847 Filed 3–21–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2022–0161; FRL–9410–11–OCSPP]

Receipt of Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities—February 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notifictions of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before April 21, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the pesticide petition (PP) of interest as shown in the body of this document, through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (202) 566–2427, email address: *BPPDFRNotices@epa.gov;* or Marietta Echeverria, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in 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.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing receipt of pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 or 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), summaries of the petitions that are the subject of this document, prepared by the petitioners, are included in dockets EPA has created for these rulemakings. The dockets for these petitions are available at *https://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further

information on the petitions may be obtained through the petition summaries referenced in this unit.

A. Amended Tolerance Exemptions for Inerts (Except PIPS)

PP IN–11661. (EPA–HQ–OPP–2022–0189). The United States Department of Agriculture, Animal and Plant Health Inspection Service (4700 River Road, Unit 149, Riverdale, MD 20737), requests to amend 40 CFR part 180.930 to add iron oxide (Fe_3O_4) (CAS No. 1317–61–9) as an inert ingredient (colorant) in pesticide formulations at no more than 2,000 parts per million (ppm) (0.2% by weight) in the final formulation when applied to animals. No analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

B. Amended Tolerances for Non-Inerts

1. *PP 1F8929.* (EPA–HQ–OPP–2021–0555). Gowan Company, LLC 370 S Main St., Yuma, AZ 85366, requests to amend the tolerance(s) in 40 CFR 180.416 for residues of the herbicide ethalfluralin in or on 3–07A. Onion, bulb subgroup at 0.01 ppm. The capillary gas chromatography with mass selective detection (GC/MSD) is used to measure and evaluate the chemical ethalfluralin. *Contact:* RD.

2. *PP 1F8940.* (EPA–HQ–OPP–2021–0787). SePRO Corporation, 11550 North Meridian Street, Suite 600, Carmel, IN 46032, requests to amend the tolerances in 40 CFR 180.420(d) by removing the existing tolerances for indirect or inadvertent residues of the herbicide fluridone, including its metabolites and degradates, in or on berry, group 13; fruit, citrus, group 10; fruit, pome, group 11; hop, dried cones; and nut, tree, group 14 at 0.1 ppm and animal feed, nongrass, group 18 and grass, forage at 0.15 ppm. *Contact:* RD.

C. New Tolerance Exemptions for Inerts (Except PIPS)

1. *PP IN–11599.* (EPA–HQ–OPP–2021–0645). Valent BioSciences LLC (1910 Innovation Way, Suite 100, Libertyville, Il. 60048) requests to establish an exemption from the requirement of a tolerance for residues of arbuscular mychorrhizae (*funnelformis mosseae, rhizophagus irregularis, rhizophagus etunicatum, claroideoglomus clarus, claroideoglomus luteum, claroideoglomus claroideum, septoglomus deserticola, gigaspora margarita, paraglomus brasiliensis*) for use as an inert ingredient (biostimulant) in pesticide formulations applied to growing crops pre-harvest under 40 CFR 180.920. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD.

2. *PP IN–11669.* (EPA–HQ–OPP–2022–0188). Spring Regulatory Sciences (6620 Cypresswood Dr., Suite 250, Spring, TX 77379), on behalf Nouryon Chemicals LLC USA (131 S Dearborn, Suite 1000, Chicago, IL 60603–5566), requests to establish an exemption from the requirement of a tolerance for cellulose, ethyl 2-hydroxyethyl ether (CAS Number: 9004–58–4), with a minimum number average molecular weight of 165,000 daltons, when used as a pesticide inert ingredient (thickener carrier) in pesticide formulations under 40 CFR 180.960. The petitioner believes no analytical method is needed because it is not required for an exemption from the requirement of a tolerance. *Contact:* RD

D. New Tolerance Exemptions for Non-Inerts (Except PIPS)

PP IF8923. (EPA–HQ–OPP–2021–0781). Vestaron Corporation 600 Park Offices, Suite 117, Research Triangle, NC 27709, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the insecticide U1–AGTX–Ta1b–QA in or on all food commodities. The petitioner believes no analytical method is needed because an exemption from tolerance without numerical limitations is requested and analytical methods that are normally utilized for detection of compounds in crop plants are incapable of quantifying the negligible levels of U1–AGTX–Ta1b–QA that are predicted to be present in raw or processed agricultural commodities. *Contact:* BPPD.

E. New Tolerance Exemptions for PIPS

PP 1E8948. (EPA–HQ–OPP–2022–0205). State University of New York (SUNY) College of Environmental Science and Forestry, 1 Forestry Dr., Syracuse, NY 13210, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectant (PIP) oxalate oxidase enzyme and the genetic material necessary for its production in or on American Chestnut (*Castanea* spp. and their hybrids). The petitioner believes no analytical method is needed because an analytical method for residues is not applicable as an exemption from the requirement of a tolerance is proposed. *Contact:* BPPD.

F. New Tolerances for Non-Inerts

1. *PP 1F8934.* (EPA–HQ–OPP–2021–0641). Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide isocycloseram in or on almond, hulls at 6 ppm; almond, oil at 1 ppm; almond, roasted at 0.5 ppm; apple, wet pomace at 1 ppm; barley, grain at 0.01 ppm; barley, hay at 0.01 ppm; barley, straw at 0.01 ppm; buckwheat, grain at 0.01 ppm; buckwheat, forage at 0.01 ppm; buckwheat, hay at 0.01 ppm; buckwheat, straw at 0.01 ppm; corn, field, grain at 0.01 ppm; corn, field, forage at 2 ppm; corn, field, stover at 1.5 ppm; corn, pop, grain at 0.01 ppm; corn, pop, stover at 1.5 ppm; cotton, gin byproducts at 10 ppm; cottonseed, subgroup 20C at 0.5 ppm; fruit, citrus, group 10–10 at 0.4 ppm; fruit, pome, group 11–10 at 0.4 ppm; fruit, stone, group 12–12 at 1 ppm; grain, cereal, forage, fodder and straw, group 16 at 0.01 ppm; nut, tree, group 14–12 at 0.15 ppm; oat, grain at 0.01 ppm; oat, forage at 0.01 ppm; oat, hay at 0.01 ppm; oat, straw at 0.01 ppm; onion, bulb, subgroup 3–07A at 0.01 ppm; onion, green, subgroup 3–07B at 0.9 ppm; orange, citrus oil at 190 ppm; orange, dried pulp at 9 ppm; orange, peel at 5 ppm; orange, wet pulp at 3 ppm; peas and bean, dried shelled, except soybean, subgroup 6C at 0.01 ppm; peanut, nutmeat at 0.01 ppm; pearl millet, grain at 0.01 ppm; pearl millet, forage at 0.01 ppm; pearl millet, hay at 0.01 ppm; pearl millet, straw at 0.01 ppm; peas, hay at 0.01 ppm; peas, vine at 0.01 ppm; plum, prunes at 4 ppm; proso millet, grain at 0.01 ppm; proso millet, forage at 0.01 ppm; proso millet, hay at 0.01 ppm; proso millet, straw at 0.01 ppm; rapeseed, subgroup 20A at 0.01 ppm; rye, grain at 0.01 ppm; rye, forage at 0.01 ppm; rye, hay at 0.01 ppm; rye, straw at 0.01 ppm; soybean, seed at 0.15 ppm; soybean, hulls at 0.5 ppm; teosinte, grain at 0.01 ppm; teosinte, forage at 0.01 ppm; teosinte, hay at 0.01 ppm; teosinte, straw at 0.01 ppm; tomato, dried pomace at 35 ppm; tomato, sun-dried at 3 ppm; tomato, wet pomace at 10 ppm; triticale, grain at 0.01 ppm; triticale, forage at 0.01 ppm; triticale, straw at 0.01 ppm; vegetables, *brassica,* head and stem, group 5–16 at 4 ppm; vegetables, cucurbit, group 9 at 0.1 ppm; vegetables, fruiting, subgroup 8–10A at 0.5 ppm; vegetables, fruiting, subgroup 8–10B at 0.6 ppm; vegetables, leafy, group 4–16 at 9 ppm; vegetables, tuberous and corm, subgroup 1C at 0.01 ppm; wheat, grain at 0.01 ppm; wheat, forage at 0.01 ppm; wheat, hay at 0.01

ppm; wheat, straw at 0.01 ppm; cattle, fat at 0.03 ppm; cattle, kidney at 0.03 ppm; cattle, liver at 0.05 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts at 0.05 ppm; milk at 0.01 ppm; milk, cream at 0.01 ppm; goat, fat at 0.03 ppm; goat, kidney at 0.03 ppm; goat, liver at 0.05 ppm; goat, meat at 0.01 ppm; goat, meat byproducts at 0.05 ppm; horse, fat at 0.03 ppm; horse, kidney at 0.03 ppm; horse, liver at 0.05 ppm; horse, meat at 0.01 ppm; horse, meat byproducts at 0.05 ppm; sheep, fat at 0.03 ppm; sheep, kidney at 0.03 ppm; sheep, liver at 0.05 ppm; sheep, meat at 0.01 ppm; sheep, meat byproducts at 0.05 ppm; poultry (muscle, fat, offal) at 0.01 ppm; birds' egg at 0.01 ppm. *For Analytical Method Food:* QuEChERS multi-residue method has been validated and independently validated for post-registration monitoring of SYN547407 for compliance with MRLs and import tolerances in plant commodities at an LOQ of 0.01 mg/kg. *For Analytical Method Livestock:* QuEChERS multi-residue method (EN 15662:2008) has been validated and independently validated for post-registration monitoring of SYN547407 in all animal commodities (and SYN549436 and SYN549544 in ruminant liver and kidney) for compliance with MRLs and import tolerances for animal commodities at an LOQ of 0.01 mg/kg. *Contact:* RD.

2. *PP 1E8910.* (EPA–HQ–OPP–2022–0139). Dow AgroSciences LLC, 9330 Zionsville Rd., Indianapolis, IN 46268, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide methoxyfenozide in or on coffee at 0.15 ppm and sugarcane at 0.03 ppm. The Liquid Chromatography with Tandem Mass Spectrometry Detection (Method GRM 02.25) is used to measure and evaluate the methoxyfenozide residues. *Contact:* RD.

3. *PP 1F8940.* (EPA–HQ–OPP–2021–0787). SePRO Corporation, 11550 North Meridian Street, Suite 600, Carmel, IN 46032, requests to establish tolerances in 40 CFR 180.420(a)(2) for residues of the herbicide fluridone, 1-methyl-3-phenyl-5-[3-(trifluoromethyl)phenyl]-4(1H)-pyridinone, including its metabolites and degradates, in or on the raw agricultural commodities of berry and small fruit, group 13–07; fruit, citrus, group 10–10; fruit, pome, group 11–10; tropical and subtropical, small fruit, edible peel subgroup 23A; tropical and subtropical, medium to large fruit, smooth, inedible peel subgroup 24B; hop, dried cones; nut, tree, group 14–12; and rice, grain at 0.1 ppm and animal feed, nongrass, group 18 and grass, forage, fodder and hay, group 17 at 0.15 ppm. The enzyme-linked immunosorbant assay (ELISA), high performance liquid chromatography with ultraviolet detection (HLPC/UV), liquid chromatography with tandem mass spectroscopy (LC–MSMS) and QuEChERS are used to measure and evaluate the chemical residues. *Contact:* RD.

4. *PP 1F8950.* (EPA–HQ–OPP–2021–0788). Nippon Soda Co., Ltd., Shin-Ohtemachi Bldg., 2–1, 2-Chome Ohtemachi, Chiyoda-ku, Tokyo, 100–8165, Japan, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide, cyflufenamid, in or on sugar beets at 0.07 ppm. Solvent extraction and analysis by LC/MS/MS are used to measure and evaluate the chemical Cyflufenamid. *Contact:* RD.

5. *PP 1F8972.* (EPA–HQ–OPP–2022–0134). Tessenderlo Kerley, Inc./NovaSource, 2910 N 44th Street, Suite 100, Phoenix, AZ 85018 USA, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide linuron in or on alfalfa, forage at 1.0 ppm and alfalfa, hay at 3.0 ppm. The HPLC–MS/MS residue analytical method is used to measure and evaluate the chemical linuron. *Contact:* RD.

6. *PP 1F8978.* (EPA–HQ–OPP–2022–0257). Belchim Crop Protection US Corporation, 2751 Centreville Road, Suit 100, Wilmington, Delaware 19808, requests to establish a tolerance in 40 CFR part 180 for residues of the herbicide pyridate in or on dry peas and soybeans at 0.05 ppm. The HPLC–MS/MS residue analytical method is used to measure and evaluate the chemical pyridate and the herbicidal active principle, CL 9673. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: March 14, 2022.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–06046 Filed 3–21–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1990–0010, EPA–HQ–1994–0001; EPA–HQ–SFUND–2002–0008, EPA–HQ–SFUND–2003–0010, EPA–HQ–OLEM–2021–0797, EPA–HQ–OLEM–2021–0798, –EPA–HQ–OLEM–2021–0815; EPA–HQ–OLEM–2021–0922, EPA–HQ–OLEM–2021–0934, EPA–HQ–OLEM–2021–0935, EPA–HQ–OLEM–2022–0111; FRL–9172–01–OLEM]

Proposed Deletion From the National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) is issuing a Notice of Intent to delete five sites and partially delete six sites from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the state, through its designated state agency, have determined that all appropriate response actions under CERCLA, other than operations and maintenance of the remedy, monitoring and five-year reviews, where applicable, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments regarding this proposed action must be submitted on or before April 21, 2022.

ADDRESSES: EPA has established a docket for this action under the Docket Identification number included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. Submit your comments, identified by the appropriate Docket ID number, by one of the following methods:

- *https://www.regulations.gov.* Follow 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 or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

• *Email:* Table 2 in the **SUPPLEMENTARY INFORMATION** section of this document provides an email address to submit public comments for the proposed deletion action.

Instructions: Direct your comments to the Docket Identification number included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://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 *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. 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, any form of encryption, and be free of any defects or viruses.

Docket: EPA has established a docket for this action under the Docket Identification included in Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *https://www.regulations.gov* or in hard copy at the corresponding Regional Records Center. Location, address, and phone number of the Regional Records Centers follows.

Regional Records Center:

• Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Superfund Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109–3912; 617/918–1413.

• Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mail code 3SD42, Philadelphia, PA 19103; 215/814–3024.

• Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street SW, Mail code 9T25, Atlanta, GA 30303; 404/562–8637.

• Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA Superfund Division Records Manager, Mail code SRC–7J, Metcalfe Federal Building, 7th Floor South, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–4465.

• Region 7 (IA, KS, MO, NE), U.S. EPA, 11201 Renner Blvd., Mail code SUPRSTAR, Lenexa, KS 66219; 913/551–7956.

• Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 1595 Wynkoop Street, Mail code Records Center, Denver, CO 80202–1129; 303/312–7273.

The EPA is temporarily suspending Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. Information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID.

FOR FURTHER INFORMATION CONTACT:

• Robert Lim, U.S. EPA Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, *lim.robert@epa.gov,* 617/918–1392.

• Andrew Hass, U.S. EPA Region 3 (DE, DC, MD, PA, VA, WV), *hass.andrew@epa.gov,* 215/814–2049.

• Leigh Lattimore or Brian Farrier, U.S. EPA Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), *lattimore.leigh@epa.gov* or *farrier.brian@epa.gov,* 404/562–8768 or 404/562–8952.

• Karen Cibulskis, U.S. EPA Region 5 (IL, IN, MI, MN, OH, WI), *cibulskis.karen@epa.gov,* 312/886–1843.

• David Wennerstrom, U.S. EPA Region 7 (IA, KS, MO, NE), *wennerstrom.david@epa.gov,* 913/551–7996.

• Linda Kiefer, U.S. EPA Region 8 (CO, MT, ND, SD, UT, WY), *kiefer.linda@epa.gov,* 303/312–6689.

• Chuck Sands, U.S. EPA Headquarters, *sands.charles@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

EPA is issuing a Notice of Intent to delete five sites and partially delete six sites from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the NCP, which EPA created under section 105 of the CERCLA statute of 1980, as amended. EPA maintains the NPL as those sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). These partial deletions are proposed in accordance with 40 CFR 300.425(e) and is consistent with the ''Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List.'' 60 FR 55466, (November 1, 1995). As described in 40 CFR 300.425(e)(3) of the NCP, a site or portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

EPA will accept comments on the proposal to delete or partially delete these sites for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III of this document discusses procedures that EPA is using for this action. Section IV of this document discusses the site or portion of the site proposed for deletion and demonstrates how it meets the deletion criteria, including reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to the deletion or partial deletion of the sites in this proposed rule:

(1) EPA consulted with the respective state before developing this Notice of Intent for deletion.

(2) EPA has provided the state 30 working days for review of site deletion documents prior to publication of this Notice of Intent to Delete in the **Federal Register**.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The state, through their designated state agency, has concurred with the proposed deletion action.

(5) Concurrently, with the publication of this Notice of Intent for deletion in the **Federal Register**, a notice is being published in a major local newspaper of general circulation near the site. The newspaper announces the 30-day public comment period concerning the Notice of Intent for deletion.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket, made these items available for public inspection, and copying at the Regional Records Center identified above.

If comments are received within the 30-day comment period on this document, EPA will evaluate and respond accordingly to the comments before making a final decision to delete or partially delete the site. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete or partially delete the site, the EPA will publish a final Notice of Deletion or Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

Deletion of a site or a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site or a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Full Site or Partial Site Deletion

The site to be deleted or partially deleted from the NPL, the location of the site, and docket number with information including reference documents with the rationale and data principally relied upon by the EPA to determine that the Superfund response is complete are specified in Table 1. The NCP permits activities to occur at a deleted site or that media or parcel of a partially deleted site, including operation and maintenance of the remedy, monitoring, and five-year reviews. These activities for the site are entered in Table 1, if applicable, under Footnote such that; 1= site has continued operation and maintenance of the remedy, 2= site receives continued monitoring, and 3= site five-year reviews are conducted.

TABLE 1

Site name	City/county, state	Type	Docket number	Footnote
McKin Co	Gray, ME	Full	EPA–HQ–OLEM–2021–0922	1, 2, 3
Tybouts Corner Landfill	New Castle County, DE	Partial	EPA–HQ–OLEM–2021–0797	1, 2, 3
C&R Battery Co., Inc	Chesterfield County, VA	Full	EPA–HQ–OLEM–2021–0798	1, 3
Chem-Solv, Inc	Cheswold, DE	Full	EPA–HQ–OLEM–2021–0934	1, 3
Koppers Co., Inc (Charleston Plant)	Charleston, SC	Partial	EPA–HQ–SFUND–1994–0001	1, 3
Brantley Landfill	Island, KY	Full	EPA–HQ–OLEM–2022–0111	1, 2, 3
Summit National	Deerfield Township, OH	Partial	EPA–HQ–OLEM–2021–0815	1, 3
Himco Dump	Elkhart, IN	Partial	EPA–HQ–SFUND–1990–0010	1, 3
Bee Cee Manufacturing Co	Malden, MO	Full	EPA–HQ–OLEM–2021–0935	1, 3
Omaha Lead	Omaha, NE	Partial	EPA–HQ–SFUND–2003–0010	1, 3
Libby Asbestos	Libby, MT	Partial	EPA–HQ–SFUND–2002–0008	1, 3

Table 2 includes information concerning whether the full site is proposed for deletion from the NPL or a description of the area, media or Operable Units (OUs) of the NPL site proposed for partial deletion from the NPL, and an email address to which public comments may be submitted if the commenter does not comment using *https://www.regulations.gov.*

TABLE 2

Site name	Full site deletion (full) or media/parcels/ description for partial deletion	Email address for public comments
McKin Co	Full	*bryant.john@epa.gov*.
Tybouts Corner Landfill	2 parcels soil and groundwater approx. 78 acres.	*hinkle.chris@epa.gov*, *vallone.chris@epa.gov*.
C&R Battery Co., Inc	Full	*guerroero.karla@epa.gov*.
Chem-Solv, Inc	Full	*hinkle.chris@epa.gov*, *vallone.chris@epa.gov*.
Koppers Co., Inc (Charleston Plant)	98 acres of soils, sediments and tidal marsh ..	*zellar.craig@epa.gov*.
Brantley Landfill	Full	*jackson.brad@epa.gov*.
Summit National	Land/soil portion of landfill, adjacent removal areas, and 45 down gradient parcels.	*Deletions@usepa.onmicrosoft.com*.
Himco Dump	11.5-acre land/soil portion of the site plus adjacent soils.	*Deletions@usepa.onmicrosoft.com*.
Bee Cee Manufacturing Co	Full	*wennerstrom.david@epa.gov*.
Omaha Lead	23 residential parcels	*wennerstrom.david@epa.gov*.
Libby Asbestos	OU 6 including 42 miles of railroad right of way between and in the towns of Libby and Troy, MT.	*zinner.dania@epa.gov*.

EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Deletion from the NPL does not preclude further remedial action. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system. Deletion of a site from the NPL does not affect responsible party liability in the unlikely event that future conditions warrant further actions.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: March 10, 2022.

Dana Stalcup,

Acting Office Director, Office of Superfund Remediation and Technology Innovation.

[FR Doc. 2022–05555 Filed 3–21–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

41 CFR Parts 60–1, 60–2, 60–4, 60–20, 60–30, 60–40, 60–50, 60–300, and 60–741

RIN 1250–AA14

Pre-Enforcement Notice and Conciliation Procedures

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: To promote the efficient and effective enforcement of laws and regulations applicable to Federal contractors and subcontractors, the Office of Federal Contract Compliance Programs (OFCCP) proposes to modify regulations that delineate procedures and standards the agency follows when issuing pre-enforcement notices and securing compliance through conciliation. This proposal would support OFCCP in fulfilling its mission to ensure equal employment opportunity.

DATES: To be assured of consideration, comments must be received on or before April 21, 2022.

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1250–AA14, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 693–1304 (for comments of six pages or less).
- *Mail:* Tina T. Williams, Director, Division of Policy and Program Development, OFCCP, Room C–3325, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Please submit only one copy of your comments by only one method. Commenters submitting file attachments on *http://www.regulations.gov* are advised that uploading text-recognized documents, *i.e.,* documents in a native file format or documents that have undergone optical character recognition (OCR), enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration. Please be advised that comments received will become a matter of public record and will be posted without change to *http://www.regulations.gov,* including any personal information provided. Commenters submitting comments by mail should transmit comments early to ensure timely receipt prior to the close of the comment period, as the Department continues to experience delays in the receipt of mail.

Docket: For access to the docket to read background documents or comments, go to the Federal eRulemaking Portal at *http://www.regulations.gov.* Copies of this notice of proposed rulemaking will be made available, upon request, in the following formats: Large print, Braille, audiotape, and disc. To obtain this notice of proposed rulemaking in an alternate format, contact OFCCP at the telephone numbers or address listed below.

FOR FURTHER INFORMATION CONTACT: Tina T. Williams, Director, Division of Policy and Program Development, OFCCP, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: (202) 693–0103.

SUPPLEMENTARY INFORMATION:

Overview

OFCCP administers and enforces Executive Order 11246, as amended (E.O. 11246); Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 (Section 503); and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212 (VEVRAA); and their implementing regulations, 41 CFR chapter 60. Collectively, these laws require Federal contractors and subcontractors [1] to take affirmative action to ensure equal employment opportunity, and not discriminate on the basis of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or status as a protected veteran. Additionally, E.O. 11246 prohibits a contractor from discharging or otherwise discriminating against applicants or employees who inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations.

In November 2020, OFCCP published a final rule, ''Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures to Resolve Potential Employment Discrimination'' (the ''2020 rule''),[2] amending its regulations to codify the required use of two notification procedures, the Predetermination Notice and the Notice of Violation. The 2020 rule requires OFCCP to issue a Predetermination Notice that provides contractors with an initial written notice of preliminary indicators of discrimination and requests that contractors respond. If after providing contractors an opportunity to respond, OFCCP finds a violation of an equal opportunity clause,[3] OFCCP will issue a Notice of Violation to the contractor requiring corrective action and inviting conciliation through a written agreement. The contractor then has an additional opportunity to respond and resolve the matter. Where OFCCP and the contractor have been unable to resolve these findings, and OFCCP has reasonable cause to believe that a contractor has violated an equal opportunity clause, the Director may issue a Show Cause Notice requiring the contractor to show cause for why monitoring, enforcement proceedings, or other appropriate action to ensure compliance should not be instituted. The 2020 rule also provided for an early conciliation option for contractors that wish to bypass these notice procedures and resolve preliminary indicators of discrimination directly through a conciliation agreement.

In addition to requiring the use of the Predetermination Notice and Notice of Violation, the 2020 rule established enforcement standards that, as explained in the preamble to the final rule, were not ''compelled. . . by [Title VII of the Civil Rights Act of 1964] and OFCCP case law'' but rather were promulgated ''as an exercise of [OFCCP's] enforcement discretion to focus OFCCP's resources on those cases with the strongest evidence,'' ''increase the number of contractors the agency evaluates,'' and to provide ''guardrails on the agency's issuance of pre-enforcement notices.'' [4]

Upon further review and assessment of the impact of the 2020 rule on OFCCP enforcement, OFCCP believes that the 2020 rule's inflexible evidentiary requirements mandate overly particularized and confusing evidentiary definitions that impede OFCCP's ability to tailor the pre-enforcement process to the specific facts and circumstances of each case, delay information exchange with contractors, and create obstacles to remedying discrimination. The 2020 rule's rigid requirements for issuing a Predetermination Notice and Notice of Violation in some instances exceed what courts have required for proof at trial and run counter to the general principle that the evidentiary standard pursuant to Title VII of the Civil Rights Act of 1964 (''Title VII'') is a flexible one dependent on the unique facts at issue. These heightened and overly formulaic evidentiary standards are particularly unsuitable at the Predetermination Notice stage of a compliance evaluation, where OFCCP provides contractors with *preliminary* notice of indicators of discrimination so that contractors may provide a response to clarify and resolve areas of dispute.

In addition, mandating the same heightened and inflexible evidentiary requirements for both the Predetermination Notice and the Notice of Violation creates inefficient and duplicative processes, which hinders OFCCP's ability to provide contractors with early notification of indicators of discrimination found by the agency. Moreover, the 2020 rule attempted to codify complex evidentiary issues, many of which are inherently open to debate, thus encouraging contractors to raise collateral challenges to OFCCP's pre-enforcement notice procedures, rather than providing a substantive response to the indicators and findings of discrimination.

Further, the 2020 rule requires that OFCCP disclose to the contractor at the pre-enforcement stage the quantitative and qualitative evidence relied upon by OFCCP to support indicators or findings of discriminatory intent ''in sufficient detail to allow contractors to investigate allegations and meaningfully respond.'' [5] While the 2020 rule provided that OFCCP may withhold personally identifiable information in certain circumstances, the disclosure of qualitative evidence creates a risk that an employer will uncover identities of those who experience or report discrimination at this investigatory stage of the proceeding, which may have a chilling effect on the willingness of victims and witnesses to participate in OFCCP's investigation and also potentially lead to retaliation against those who report discrimination. Upon careful consideration, OFCCP believes that the 2020 regulations negatively impact America's workers by delaying the resolution of discrimination findings and constraining OFCCP's ability to effectively enforce the full scope of the protections that the President and Congress have entrusted to the agency.

In this rulemaking, OFCCP proposes to modify the 2020 rule to rescind the rigid evidentiary standards and definitions, while retaining and refining the required pre-enforcement procedures for issuing the Predetermination Notice and the Notice of Violation. OFCCP's regulations have included use of the Show Cause Notice since the agency's inception.[6] This proposal will clarify OFCCP's use of the Predetermination Notice and the Notice of Violation as pre-enforcement procedures, similar to the Show Cause Notice regulation, which has never

[1] Hereinafter, the term ''contractor'' is used to refer collectively to Federal contractors and subcontractors that fall under OFCCP's authority, unless otherwise expressly stated. This approach is consistent with OFCCP's regulations, which define ''contract'' to include subcontracts and ''contractor'' to include subcontractors.

[2] *Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures to Resolve Potential Employment Discrimination,* 85 FR 71553 (Nov. 10, 2020). The final rule, which took effect on December 10, 2020, was published after OFCCP considered comments it received on a notice of proposed rulemaking, *Nondiscrimination Obligations of Federal Contractors and Subcontractors: Procedures To Resolve Potential Employment Discrimination,* 84 FR 71875 (Dec. 30, 2019).

[3] *See* 41 CFR 60–1.4, 60–4.3, 60–300.5, 60–741.5.

[4] 85 FR 71553, 71554.

[5] The 2020 rule also requires OFCCP to demonstrate that the unexplained disparity is practically significant and, for disparate impact cases, OFCCP must identify the specific policy or practice of the contractor causing the adverse impact, unless OFCCP can demonstrate that the elements of the contractor's selection procedures are incapable of separation for analysis. *See* 41 CFR 60–1.33.

[6] 41 CFR 60–1.28; *see also Compliance Responsibility for Equal Employment Opportunity,* 43 FR 49240, 49247 (Oct. 20, 1978); *Revision of Chapter,* 33 FR 7804, 7810 (May 28, 1968).

included the specific type of evidentiary standards the 2020 rule introduced. The proposed modifications would allow OFCCP to tailor the pre-enforcement process to the specific facts and circumstances of each case, consistent with judicial interpretations of the applicable legal authorities, which will in turn allow OFCCP to more effectively redress unlawful discrimination.

In addition, to promote greater efficiency in resolving cases, OFCCP proposes to modify the 2020 rule's provision that required a contractor to provide a response within 30 calendar days of receiving a Predetermination Notice.[7] The proposal returns the Predetermination Notice response period to the 15 calendar day period in effect prior to the 2020 rule (which OFCCP may extend for good cause).[8] In the proposal, OFCCP also clarifies this provision to state that any response must be *received by* OFCCP within 15 calendar days (absent a deadline extension).

OFCCP also proposes to retain the regulatory language regarding early resolution, which provides that contractors may waive these notice procedures if they enter directly into a conciliation agreement. Finally, the proposal would delete the severability clause that applied just to certain sections of OFCCP's regulations and replace it with severability clauses covering the entirety of each part of OFCCP's regulatory scheme.

The 2020 final rule was the first time OFCCP sought to codify the specific forms of evidence that the agency must rely upon during its pre-enforcement process. Through this proposal, OFCCP would promote consistency by codifying the required use of the Predetermination Notice and Notice of Violation when the agency identifies preliminary indicators or findings of discrimination, while allowing the agency the flexibility to issue appropriate guidance to field staff on the use of the procedures. OFCCP would continue to ensure transparency by sharing this guidance with the public.

This proposed rulemaking aims to create a streamlined, efficient, and flexible pre-enforcement and conciliation process to ensure OFCCP utilizes its resources strategically to advance the agency's mission through effective enforcement. OFCCP remains committed to providing contractors notice when the agency sees preliminary indicators of discrimination during a compliance evaluation, as such notice is mutually beneficial for OFCCP and the contractor under review because it provides the contractor an opportunity to respond and work to resolve the issues.

Purpose of the 2020 Rule

In its 2020 final rule, OFCCP stated an intent to increase clarity and transparency for Federal contractors, establish clear parameters for OFCCP enforcement proceedings, and enhance the efficient enforcement of the law. The 2020 rule identified two primary objectives: (1) Increase the number of contractors the agency evaluates and (2) focus on resolving stronger cases through the strategic allocation of limited agency resources.[9] As detailed further below in this proposed rulemaking, OFCCP reconsidered the 2020 rule and assessed its impact on OFCCP enforcement processes and has found that the 2020 rule's formulaic and inflexible evidentiary standards for pre-enforcement notices neither assist the agency in strategically allocating its limited resources nor enable the agency to evaluate more contractors. Instead, the 2020 rule's evidentiary mandates diminish OFCCP's ability to provide contractors with early notification of indicators of discrimination and unnecessarily divert agency and contractor resources away from addressing discrimination by spawning time-consuming collateral disputes about the implementation of these heightened evidentiary standards. This decreases rather than increases the number of contractors that OFCCP can evaluate for compliance with equal opportunity laws. OFCCP thus proposes to modify the 2020 rule to ensure that OFCCP utilizes its resources strategically to provide contractors with an early opportunity to understand and resolve indicators or findings of discrimination and to enable the agency to protect America's workers by enforcing the full scope of the equal opportunity authorities with which it has been entrusted.

Pre-Enforcement Notices

Historically, OFCCP has issued pre-enforcement notices in compliance evaluations (*i.e.,* the Predetermination Notice, Notice of Violation, and Show Cause Notice) when the agency is seeking to remedy findings of discrimination.[10] Prior to 2018, the use of the Predetermination Notice varied by region and by the type of case. In 2018, OFCCP issued a directive, requiring the consistent issuance of Predetermination Notices for preliminary discrimination findings identified during the course of compliance evaluations.[11]

A stated goal of the 2020 rule was to provide contractors with greater certainty by codifying the historical, then-existing procedures for issuing the Predetermination Notice and the Notice of Violation.[12] The preamble to the 2020 rule stated that the Predetermination Notice is intended to encourage communication with contractors and provide them an opportunity to respond to preliminary indicators of discrimination prior to OFCCP deciding to issue a Notice of Violation. As set forth in the 2020 rule, if the contractor did not respond to the Predetermination Notice or sufficiently rebut the preliminary indicators in the Predetermination Notice, OFCCP would issue the Notice of Violation to inform the contractor that the agency found violations of one or more of the laws it enforces. The Notice of Violation also informed the contractor that corrective action would be required and invited conciliation through a written agreement.[13]

Rather than simply codify OFCCP's then-existing procedures for issuing the Predetermination Notice and Notice of Violation, the 2020 rule instead exercised the agency's enforcement discretion to adopt rigid standards that the agency had not historically followed for issuing these two notices, necessitating that OFCCP alter the content of the Predetermination Notice and Notice of Violation from what had previously been included in the notices. As detailed further below, this rulemaking proposes to retain the

[7] 85 FR 71553, 71571–71574, codified at 41 CFR 60–1.33(a)(5), 60–300.62(a)(5), 60–741.62(a)(5).

[8] *See* Directive 2018–01, Use of Predetermination Notices (Feb. 27, 2018), available at *https://www.dol.gov/agencies/ofccp/directives/2018-01* (last accessed Dec. 5, 2021).

[9] 85 FR 71553, 71554.

[10] The notices are used at different pre-enforcement stages. *See* FCCM, Chapter 8, Resolution of Noncompliance (last updated Jan. 7, 2021), available at *https://www.dol.gov/agencies/ofccp/manual/fccm/chapter-8-resolution-noncompliance* (last accessed Dec. 3, 2021). OFCCP also uses the Notice of Violation and Show Cause Notice to identify other types of potential violations of law, such as denial of access or other types of nondiscrimination violations like recordkeeping deficiencies.

[11] *See* Directive 2018–01, Use of Predetermination Notices (Feb. 27, 2018), available at *https://www.dol.gov/agencies/ofccp/directives/2018-01* (last accessed Dec. 5, 2021).

[12] *See* 84 FR 71875. Show Cause Notices were already codified in OFCCP's regulations prior to the 2020 rule, at 41 CFR 60–1.28, 60–300.64, 60–741.64.

[13] Conciliation agreements were also already codified in OFCCP's regulations prior to the 2020 rule, at 41 CFR 60–1.33, 60–300.62, and 60–741.62—the same sections that the 2020 rule amended to include the Predetermination Notice, the Notice of Violation, the early conciliation option, and a severability clause specific only to that section.

agency's consistent use of the two pre-enforcement notices while rescinding the 2020 rule's rigid evidentiary mandates.

Prior to the issuance of the 2020 final rule, OFCCP had issued subregulatory guidance and internal procedures on the use of the Predetermination Notice, as well as the Notice of Violation, through the Federal Contract Compliance Manual (FCCM) and agency directives. The agency has utilized this guidance to promote transparency and consistency, while ensuring the agency has the flexibility to update these guidance documents to improve procedures and align with OFCCP's strategic enforcement measures. The 2020 rule also codified a new pre-enforcement procedure available for OFCCP and contractors to expedite conciliation by bypassing the Predetermination Notice and Notice of Violation procedures and entering directly into a conciliation agreement. In this rulemaking, OFCCP retains this expedited conciliation process and only proposes changes to that subsection of the 2020 rule to clarify the agency's role in pursuing the expedited conciliation option.

Evidentiary Standards

The 2020 rule codified evidentiary standards that OFCCP must meet in order to issue a Predetermination Notice and a Notice of Violation. Under the 2020 rule, OFCCP's authority to issue a Predetermination Notice or Notice of Violation for discrimination cases is limited to those situations where OFCCP demonstrates that it has specific forms of evidence conforming to the regulatory thresholds requiring quantitative (*i.e.,* statistical or other numerical) evidence, practical significance, and qualitative evidence of discrimination.[14] The 2020 rule differentiates the procedures followed for disparate treatment and disparate impact theories of discrimination and provides the evidentiary standards OFCCP must meet to issue pre-enforcement notices under each legal theory.[15] The 2020 rule mandates that, upon the contractor's request, OFCCP must provide the model and variables used in the agency's statistical analysis and an explanation for any variable that was excluded from the statistical analysis. The 2020 rule also requires OFCCP to explain in detail the basis for its findings in pre-enforcement notices.[16] For the reasons discussed below, this rulemaking proposes to rescind these formal evidentiary standards and disclosure requirements in the 2020 rule.

Definitions

Finally, the 2020 rule added definitions for ''quantitative evidence'' and ''qualitative evidence'' to OFCCP's regulations purporting to add greater clarity and certainty as to the types of evidence the agency uses to support the issuance of pre-enforcement notices.[17] The term ''qualitative evidence'' is defined to include the various types of documents, testimony, and interview statements that OFCCP collects during its compliance evaluations relevant to a finding of discrimination, and clarified the purposes for which it will be used. The term ''quantitative evidence'' establishes the support needed for OFCCP to determine that there is a statistically significant disparity in a contractor's employment selection or compensation outcomes affecting a group protected under OFCCP's laws. The definition sets a standard for what OFCCP considers statistically significant.[18] The definition also includes quantitative analyses, such as cohort analyses, which are comparisons of similarly situated individuals or small groups of applicants or employees that are numerical in nature but do not use hypothesis testing techniques. Pursuant to the 2020 rule, the term ''qualitative evidence'' gives an affirmative, descriptive label to the types of evidence that fall into that category while the term ''quantitative evidence'' better encapsulates OFCCP's analytical evidence given the agency's use of descriptive statistics and non-parametric and cohort analyses, in addition to a variety of statistical tests based on hypothesis testing.[19] OFCCP declined to add a specific definition for practical significance in the 2020 rule because it concluded there is not a settled definition in relevant academic literature and a variety of measures may be appropriate to use in any given case, instead describing the common types of practical significance measures and explaining the metrics the agency would customarily use.[20] In this proposed rulemaking, OFCCP proposes to eliminate the definitions for the reasons discussed below.

Modifications To Promote Effective Enforcement

Rescinding Evidentiary Standards Codified by the 2020 Rule

The 2020 rule codifies specific evidentiary standards that OFCCP must meet in order to issue a Predetermination Notice and a Notice of Violation. The preamble to the 2020 rule concedes, however, that these standards, applicable to both the Predetermination Notice and the Notice of Violation, are not compelled by Title VII or OFCCP case law. Indeed, as discussed below, the 2020 rule places certain obligations on OFCCP that go beyond what is required by E.O. 11246 to state or prove a claim of discrimination or by Title VII for proof of discrimination after the completion of the discovery process upon a full evidentiary record in litigation.

The pre-enforcement notice process is intended to place the employer on notice of OFCCP's concerns of discrimination. The information available to OFCCP during the pre-enforcement notice stage of a compliance evaluation is necessarily limited compared to a full evidentiary record available to support proof of a violation at trial. Thus, imposing proof standards for the agency's initial pre-enforcement proceedings that essentially require the agency to be trial ready—and, as discussed in more detail below, are even more onerous than are required in court to prove a violation under Title VII—is incompatible with the investigatory stage of a compliance evaluation.[21] As set forth in OFCCP's

[14] 85 FR 71553, 71562–71565.

[15] For all cases proceeding under a disparate treatment theory, subject to certain enumerated exceptions, the 2020 rule establishes that OFCCP is required to provide qualitative evidence supporting a finding of discriminatory intent. For all cases proceeding under a disparate impact theory, the 2020 rule requires OFCCP to identify the policy or practice of the contractor causing the adverse impact with factual support demonstrating why such policy or practice has a discriminatory effect. 85 FR 71553, 71562–71565.

[16] 85 FR 71553, 71562.

[17] 85 FR 71553, 71555. The definitions are now codified at 41 CFR 60–1.3, 60–300.2(t)–(u), and 60–741.2(s)–(t).

[18] The definition of quantitative evidence includes this standard for statistical significance: ''. . . a disparity in employment selection rates or rates of compensation is statistically significant by reference to any one of these statements: (1) The disparity is two or more times larger than its standard error (*i.e.,* a standard deviation of two or more); (2) The Z statistic has a value greater than two; or (3) The probability value is less than 0.05. It also includes numerical analysis of similarly situated individuals, small groups, or other characteristics, demographics or outcomes where hypothesis-testing techniques are not used.'' 41 CFR 60–1.3, 60–300.2(t)–(u), 60–741.2(s)–(t); *see also* 85 FR 71553, 71571–71574.

[19] 85 FR 71553, 71556.

[20] *Id.* at 71559–71560.

[21] *See OFCCP* v. *Oracle,* 2017–OFC–00006, 19 (Order Denying Cross Motions for Summary Judgment Granting in Part Defendant's Alternative Motion for Partial Summary Judgment & Order for Additional Briefing on Show Cause Notice & Conciliation, Nov. 25, 2019) (''Reasonable cause' is something that the [Director of OFCCP] is given the discretion to determine[.]''); *see also OFCCP* v. *Oracle,* 2017–OFC–00006, 8 (Order Granting OFCCP Summary Judgment as to Oracle's Affirmative Defenses Related to the Show Cause

Continued

longstanding regulations in effect since OFCCP's inception, the agency will issue a Show Cause Notice to proceed with an enforcement action where it has *reasonable cause* to believe discrimination occurred based on the information available through its investigation.[22] This means that, based upon the evidence obtained in the investigation, the agency believes discrimination did occur.[23] This does not require developing a full evidentiary record to support proof at trial, but rather providing notice of the agency's findings supporting its belief that violations occurred and giving the contractor the opportunity to show why agency action to ensure compliance should not be instituted.[24] Thus, even this final stage in the pre-enforcement process does not impose specific evidentiary regulations or trial-level proof prior to the institution of an enforcement action.

The Predetermination Notice is the initial written notice in a multi-stage notification and information exchange process provided to contractors to promote a mutual understanding of the issues and facilitate voluntary resolution. Prior to the 2020 regulation, the Predetermination Notice served to foster communication with contractors about *preliminary* indicators of discrimination, providing the contractor with an early opportunity to understand and respond to OFCCP's preliminary findings. This process enables the sharing of additional information that may assist OFCCP in resolving the preliminary findings or conducting a more refined analysis of the data before determining whether to issue a Notice of Violation.

In order to issue a Predetermination Notice under the 2020 rule, OFCCP must meet the same evidentiary standards as required to issue a Notice of Violation. As a result, the 2020 rule has created inefficiencies and delay in OFCCP's pre-enforcement process. In addition, the 2020 rule has in certain respects created higher evidentiary requirements for E.O. 11246 matters than Title VII matters, which unduly circumscribes OFCCP's ability to prosecute discriminatory practices and is contrary to the approach generally followed by OFCCP and recognized in relevant case law.[25]

While the 2020 rule purported to ''focus OFCCP's resources on those cases with the strongest evidence,'' [26] upon further reconsideration OFCCP believes the rule hindered the agency's ability to focus on those cases with the strongest evidence by adopting a formulaic approach to evidentiary standards rather than viewing the strength of the evidence in light of the particular facts and circumstances at issue in each case. OFCCP has concluded that rigid evidentiary standards are unnecessary and unduly constrain the agency's broad enforcement discretion as to the cases it decides to litigate and those it does not.[27] OFCCP has been diligent in managing its limited resources for decades to focus on the strongest cases without the need for blanket evidentiary standards. To promote more effective enforcement, OFCCP proposes to return to its long-standing practice of focusing agency resources without imposing blanket evidentiary standards, pursuing those cases supported by strong evidence tailored to the facts of each case. Further, OFCCP believes that the 2020 rule has failed to meet its objectives of providing clarity and promoting efficiency. As described in more detail below, these strict evidentiary standards have instead led to delays in resolutions by increasing disagreements between OFCCP and contractors about the requirements for Predetermination Notices.

With this proposal, OFCCP would apply Title VII standards to the facts and circumstances of each compliance evaluation to provide contractors with notice of the nature of OFCCP's concerns.[28] OFCCP proposes to adopt this approach to advance a policy of promoting consistency between Title VII and E.O. 11246 and to remove unnecessary constraints on the agency's ability to pursue meritorious cases. Taking this approach will help OFCCP advance the overriding policy goal of promoting nondiscrimination by strengthening the enforcement of federal protections under E.O. 11246. OFCCP also would promote transparency and consistency by continuing to codify the required use of the Predetermination Notice when the agency identifies preliminary indicators of discrimination.

1. ''Quantitative'' and ''Qualitative'' Evidence

The 2020 rule requires that OFCCP, with only narrow exceptions, provide both ''quantitative'' and ''qualitative'' evidence before issuing a Predetermination Notice or a Notice of Violation, and provides definitions for what constitutes ''quantitative'' and ''qualitative'' evidence.[29] These provisions of the 2020 rule depart from traditional Title VII standards in two respects. First, Title VII does not prescribe the different and specific forms of evidence described in the 2020 rule in order to establish a *prima facie* case of discrimination, much less investigatory findings of violation.[30] Interpretive Title VII case law demonstrates that there are multiple ways to establish a *prima facie* case of discrimination, including through statistical evidence alone, as long as the

Notice & Conciliation, Dec. 3, 2019) (denying Oracle's argument that if OFCCP did not meet the reasonable cause standard for issuing the show cause notice, then all of the evidence gathered was gathered in violation of the Fourth Amendment stating ''[this argument] presumes that the Show Cause Notice has a much more important place than can be fairly read into the regulatory scheme'').

[22] 41 CFR 60–1.28, 60–300.64, 60–741.64.

[23] *See, e.g.,* 42 U.S.C. 2000e–5(b); *cf. OFCCP* v. *Honeywell,* 77–OFC–3, 8–9 (Sec'y of Labor Dec. & Order on Mediation, June 2, 1993) (comparing the show cause procedure to the reasonable cause determination made by the Equal Employment Opportunity Commission (EEOC), the ALJ found that the government letter explaining the deficiencies found and recommended remedial actions was comparable to a reasonable cause determination); U.S. Equal Employment Opportunity Commission, ''Definition of Terms,'' available at *https://www.eeoc.gov/statistics/definitions-terms* (last visited Nov. 8, 2021).

[24] 41 CFR 60–1.28, 60–300.64, 60–741.64; c*f EEOC* v. *Keco Indus., Inc.,* 748 F.2d 1097, 1100 (6th Cir. 1984) (EEOC's cause determination ''does not adjudicate rights and liabilities; it merely places the defendant on notice of the charges'') (citing *EEOC* v. *E.I. Dupont de Nemours & Co.,* 373 F. Supp. 1321, 1338 (D. Del. 1974)).

[25] *Cf. OFCCP* v. *Greenwood Mills, Inc.,* Nos. 00–044, 01–089, 2002 WL 31932547, at *4 (ARB Final Decision & Order Dec. 20, 2002) (''The legal standards developed under Title VII of the Civil Rights Act of 1964 apply to cases brought under [E.O. 11246].'').

[26] 85 FR 71553, 7155.

[27] *See generally Heckler* v. *Chaney,* 470 U.S. 821 (1985); *Andrews* v. *Consolidated Rail Corporation,* 831 F.2d 678, 684 (3rd Cir. 1987) (applying *Chaney* to OFCCP decision to decline enforcement under Section 503); *Clementson* v. *Brock,* 806 F.2d 1402, 1404 (9th Cir. 1986) (applying *Chaney* to OFCCP decision to decline enforcement under VEVRAA).

[28] Similarly, for claims related to disability discrimination, OFCCP would continue to apply the nondiscrimination standards of the Americans with Disabilities Act of 1990 (ADA), as amended, to compliance evaluations pertaining to Section 503. *See, e.g.,* 41 CFR 60–741.1(c)(1), 60–742.4.

[29] The 2020 rule definitions are codified at 41 CFR 60–1.3, 60–300.2(t)–(u), 60–741.2(s)–(t).

[30] *See Int'l Bhd. of Teamsters* v. *United States,* 431 U.S. 324, 358 (1977) (''[T]he facts necessarily will vary in Title VII cases, and the specification . . . of the *prima facie* proof required from (a plaintiff) is not necessarily applicable in every respect to differing factual situations.'' (alterations omitted) (quoting *McDonnell Douglas Corp.* v. *Green,* 411 U.S. 792, 802 n. 13(1973)); *Adams* v. *Ameritech Servs., Inc.,* 231 F.3d 414, 425 (7th Cir. 2000) (''No one piece of evidence has to prove every element of the plaintiff's case[.]'') (internal citations omitted); *Anderson* v. *Douglas & Lomason Co., Inc.,* 26 F.3d 1277, 1285 (5th Cir. 1994) (''If statistical evidence is insufficient to establish discriminatory intent, the plaintiffs may bolster their case by introducing historical, individual, or circumstantial evidence.'') (citing *Bernard* v. *Gulf Oil Corp.,* 841 F.2d 547, 568 (5th Cir. 1988)).

plaintiff ultimately satisfies its burden of proof.[31]

As the U.S. Supreme Court and lower courts have long recognized, Title VII requires a case-by-case evaluation of the facts and circumstances.[32] There is no one-size-fits-all blanket formula for establishing discrimination. Yet, the 2020 rule circumscribes OFCCP's authority to pursue only those cases that meet bright line statistical thresholds or rely on specific types of evidence. To be sure, OFCCP recognizes the utility of anecdotal evidence in support of discrimination cases generally and will continue to make efforts to gather such evidence during its compliance evaluations.[33] However, to require as a baseline rule that the agency proffer evidence falling within multiple and different categories regardless of the factual circumstances of a case—especially at the investigative stage—goes beyond well-established Title VII principles. In addition, a number of the regulatory requirements impose a standard that is inherently fact specific, open to dispute, and ultimately unnecessary to adjudicate at this initial stage of the proceeding, including the requirement that OFCCP provide ''qualitative evidence supporting *a finding of discriminatory intent* for all cases proceeding under a disparate treatment theory'' (emphasis added), subject to certain enumerated exceptions. Such disputes created protracted delays in remedying violations of the law. Moreover, the 2020 rule requires that OFCCP disclose to the contractor at this preliminary stage the quantitative and qualitative evidence relied upon by OFCCP to support findings of discriminatory intent ''in sufficient detail to allow contractors to investigate allegations and meaningfully respond.'' [34] Mandating the disclosure of anecdotal evidence at this pre-determination stage may have a chilling effect on the willingness of victims and witnesses to participate in OFCCP's investigation due to concerns that an employer may uncover their identities, which could lead to retaliation. The preamble to the 2020 rule acknowledges that OFCCP may withhold ''personal identifying information from the description of the qualitative evidence if the information is protected from disclosure under recognized governmental privileges, or if providing that information would otherwise violate confidentiality or privacy protections afforded by law;'' yet, even in those circumstances where OFCCP may withhold an individual's identity, witnesses may remain concerned about the employer's ability to ascertain their identity from the anecdotal information provided at this pre-determination stage.

As such, OFCCP proposes to rescind the 2020 rule requirement to provide both ''quantitative'' and ''qualitative'' evidence before issuing a Predetermination Notice or Notice of Violation. As described above, disputes over this requirement resulted in protracted delays for remedying violations. Eliminating this unnecessary, rigid requirement allows the agency more flexibility, better ensures prompt resolutions, and strengthens its ability to protect workers and enforce the law. Eliminating this requirement also allows OFCCP to better align its enforcement with Title VII evidentiary standards.

Because OFCCP is proposing to rescind this requirement, the definitions of ''quantitative evidence'' and ''qualitative evidence'' included in the 2020 rule to support the evidentiary scheme would no longer be necessary. Even when evaluated outside of the 2020 rule's evidentiary framework, upon further consideration, OFCCP now believes these definitions, and particularly the definition for ''qualitative evidence,'' to be confusing, overly particularized, and inconsistent with the general principle that the Title VII evidentiary standard is a flexible one dependent on the unique facts at issue.[35] First, the 2020 rule's definition of ''qualitative evidence'' begins with a series of lengthy, highly specific examples that may not be present in many systemic discrimination cases. Although the 2020 rule stated that qualitative evidence ''includes but is not limited to'' these examples, some contractors now assert that OFCCP must present evidence of these highly specific examples in its cases, creating delays to OFCCP's pre-enforcement conciliation procedures. However, the 2020 rule's first example—''biased statements, remarks, attitudes, or acts based upon membership in a protected class, particularly when made by a decision maker involved in the action under investigation''—includes the sort of direct, ''smoking gun'' evidence that, while certainly probative of discrimination, is ''rarely found in today's sophisticated employment world.'' [36] The next example—evidence about ''misleading or contradictory information'' given by an employer to an employee or applicant ''in circumstances suggesting discriminatory treatment''—also describes narrow factual scenarios that may not be present in many cases, substantially limiting the utility of the definition. The ''qualitative evidence'' definition is also overly focused on evidence of discriminatory intent in disparate treatment cases. Even though it includes one example related to disparate impact cases—evidence related to ''the business necessity (or lack thereof) of a challenged policy or practice''—that example is problematic because it is: (1) A category of evidence that is the *employer's* burden to demonstrate, after the agency establishes a *prima facie* case; [37] and (2) not the only sort of ''qualitative'' evidence that plaintiffs typically introduce or rely upon in the course of a disparate impact case.[38]

[31] *See Bazemore* v. *Friday,* 478 U.S. 385, 400 (1986) (''Whether . . . [statistics] . . . carry the plaintiffs' ultimate burden will depend in a given case on the factual context of each case in light of all the evidence presented by both the plaintiff and the defendant.''); *Int'l Bhd. of Teamsters,* 431 U.S. at 339 (finding that statistics may be used to establish a prima facie case, but cautioning that the ''usefulness [of statistics] depends on all of the surrounding facts and circumstances'') (internal citations omitted); *see also Isabel* v. *City of Memphis,* 404 F.3d 404, 412 (6th Cir. 2005) (''[W]hen the Supreme Court stated that a plaintiff may rely solely on statistical evidence to establish a prima facie case of disparate impact . . . it did not say what kind of statistical evidence should be relied on. Neither the Supreme Court nor this Court has ever limited a plaintiff's choices in Title VII cases involving statistical analysis in any way.'') (citing *Wards Cove Packing Co.* v. *Atonio,* 490 U.S. 642, 656–57 (1989)).

[32] *See Watson* v. *Fort Worth Bank & Trust,* 487 U.S. 977, 995 n.3 (1988) (noting that the Supreme Court has ''not suggested that any particular number of 'standard deviations' can determine whether a plaintiff has made out a prima facie case in the complex area of employment discrimination''); *Gay* v. *Waiters' & Dairy Lunchmen's Union, Local No. 30,* 694 F.2d 531, 551 (9th Cir. 1982) (''It would be improper to posit a quantitative threshold above which statistical evidence of disparate racial impact is sufficient as a matter of law to infer discriminatory intent, and below which it is insufficient as a matter of law.'').

[33] *See* FCCM, Chapter 2E00, Types of Evidence, available at *https://www.dol.gov/agencies/ofccp/manual/fccm/2e-collecting-information-analysis/2e00-types-evidence* (last accessed Dec. 3, 2021) (explaining that during its compliance evaluations, OFCCP seeks a variety of other types of nonstatistical evidence, including anecdotal evidence).

[34] 85 FR 71564.

[35] *Int'l Bhd. of Teamsters,* 431 U.S. at 358.

[36] *Thomas* v. *Eastman Kodak Co.,* 183 F. 3d 38, 58 n.12 (1st Cir. 1999) (citing *Hodgens* v. *Gen. Dynamics Corp.,* 144 F.3d 151, 171 n. 13 (1st Cir. 1998)).

[37] 42 U.S.C. 2000e–2(k)(1)(A)(i); *see also Ricci* v. *DeStefano,* 557 U.S. 557, 578 (2009) (''An employer may defend against liability [for disparate impact discrimination] by demonstrating that the practice is 'job-related for the position in question and consistent with business necessity.' ''); *Wards Cove Packing Co.,* 490 U.S. at 659 (''[T]he employer carries the burden of producing evidence of a business justification for his employment practice.'').

[38] By way of example, because a plaintiff in disparate impact cases must, where possible, identify the particular employment practice that is causing the adverse impact, *see* 42 U.S.C. 2000e–

Continued

Finally, the definition includes ''whether the contractor has otherwise complied with its non-discrimination obligations'' as a type of permissible qualitative evidence. Upon reconsideration, OFCCP has concerns that this provision could easily be misinterpreted to mean that when a contractor complies with *some* of its nondiscrimination obligations, it somehow lessens the weight of evidence of noncompliance with *other* nondiscrimination obligations. Accordingly, OFCCP proposes to remove the two definitions added in the 2020 rule. OFCCP will continue to evaluate its cases in line with well-established Title VII evidentiary standards and will continue to provide compliance assistance and other guidance materials on these standards as appropriate.[39]

2. Practical Significance

Practical significance refers to whether an observed disparity in employment opportunities or outcomes reflects meaningful harm to the disfavored group, focusing on the contextual impact or importance of the disparity rather than its likelihood of occurring by chance.[40] For allegations included in a Predetermination Notice and Notice of Violation, the 2020 rule requires that OFCCP demonstrate practical significance, and the preamble includes quantitative ranges for various measures indicating whether it is ''likely'' or ''unlikely'' that practical significance is present.[41]

Whether Title VII specifically requires a finding of practical significance is an unsettled question. The text of Title VII contains no specific requirement that practical significance must be demonstrated.[42] Of the circuit courts that have expressly addressed the issue, three have concluded that Title VII does not require a showing of practical significance.[43] For example, in *Jones* v. *City of Boston,* the First Circuit explicitly held that a plaintiff's failure to demonstrate practical significance could not preclude that plaintiff from relying on evidence of statistical significance to establish a *prima facie* case of disparate impact.[44] In doing so, the Court noted that the requirements a plaintiff must otherwise meet under Title VII ''secure most of the advantages that might be gained'' from a test of practical significance.[45] First, the ''need to show statistical significance will eliminate small impacts as fodder for litigation . . . because proving that a small impact is statistically significant generally requires large samples sizes, which are often unavailable.'' [46] Second, the subsequent steps required for a plaintiff to successfully recover under Title VII provide an additional safeguard in that the employer may rebut the *prima facie* case.[47] Similarly, in *Stagi* v. *National Railroad Passenger Corp.,* the Third Circuit explicitly declined to require a showing of practical significance, and instead required only that the plaintiffs meet the well-established thresholds for statistical significance in order to meet their *prima facie* case.[48]

Other circuit courts have considered measures of practical significance in determining whether a plaintiff in a disparate impact case has satisfied a *prima facie* case.[49] These cases have generally adopted a holistic approach to the evidence required in a given case depending on the facts at issue.[50] However, unlike with statistical significance, courts have not similarly coalesced around uniform quantitative measures for what constitutes sufficient practical significance. Consequently, the 2020 rule did not specify which measure of many available options OFCCP should utilize as a threshold for practical significance during its compliance evaluations of selection and compensation procedures. As OFCCP has stated in its Frequently Asked Questions published even prior to the 2020 rule, the agency utilizes a variety of measures for evaluating practical significance as appropriate to the employment issue under review and the specific facts of each case.[51]

As part of its enforcement discretion, OFCCP has historically utilized practical significance measures where appropriate in compliance evaluations based on the specific facts of the case without the need for regulations. In addition, the particular ranges that were discussed in the preamble of the 2020 rule may not be appropriate in all cases depending on the other evidence that exists. It also remains unsettled whether Title VII requires a finding of practical significance, and, if so, what level of practical significance is sufficient and appropriate to the process under review. Accordingly, OFCCP believes it is not advisable to attempt to regulate the standards for practical significance, and proposes to remove the requirement to demonstrate practical significance before issuing a Predetermination Notice or Notice of Violation. Moving forward, however, OFCCP would still consider practical significance measures where appropriate as part of a holistic evaluation of the cases it investigates along with statistical significance and all other evidence gathered in the course of the investigation.

Addressing Barriers to Enforcement Created by the 2020 Rule

OFCCP believes that rescinding the inflexible evidentiary standards would also advance OFCCP's policy goal of alleviating duplicative and inefficient processes created by the 2020 rule that undermine effective enforcement of equal employment opportunity laws. For instance, the Predetermination Notice originally served to foster communication with contractors about *preliminary* indicators of discrimination. However, at the preliminary stage, these rigid evidentiary standards also invite

2(k)(1)(B)(i), it is commonplace for a plaintiff to introduce testimony or interview statements from expert witnesses or company officials regarding its selection or compensation system that would provide necessary context and help to identify the particular employment practice at issue. Similarly, evidence regarding less discriminatory alternative employment practices is a common feature in disparate impact cases. 42 U.S.C. 2000e–2(k)(1)(A)(ii).

[39] OFCCP applies ADA standards to compliance evaluations pertaining to Section 503. *See supra* at n. 28.

[40] Practical Significance in EEO Analysis Frequently Asked Questions, Question #1 (last updated Jan. 15, 2021), available at *www.dol.gov/agencies/ofccp/faqs/practicalsignificance* (last accessed Dec. 5. 2021). *See also* 85 FR 71553, 71559.

[41] 85 FR 71556.

[42] *See* Elliot Ko, Big Enough to Matter: Whether Statistical Significance or Practical Significance Should Be the Test for Title VII Disparate Impact Claims, 101 Minn. L.R. 869, 889 (2016) (''Title VII does not require plaintiffs to prove that an employment practice had a 'large' impact on a protected class. Title VII just requires plaintiffs to prove that 'a particular employment practice' had a disparate impact on a protected class.... Title VII only requires proof of a 'disparate impact,' not proof of a 'very' disparate impact that is large enough to warrant societal or moral condemnation.'').

[43] *Jones* v. *City of Boston,* 752 F.3d 38 (1st Cir. 2014); *Apsley* v. *Boeing Co.,* 691 F.3d 1184 (10th Cir. 2012); *Stagi* v. *Nat'l R.R. Passenger Corp.,* 2010 WL 3273173 (3d Cir. Aug. 16, 2010).

[44] *Jones,* 752 F.3d at 53.

[45] *Id.*

[46] *Id.* (internal citations omitted).

[47] *Id.* (internal citations omitted).

[48] *Stagi,* 2010 WL 3273173 at *5 (citing *Castaneda* v. *Partida,* 430 U.S. 482, 496 n.17 (1977)); *see also Meditz* v. *City of Newark,* 658 F.3d 364, 372 (3d Cir. 2011) (using only a measure of statistical significance to determine whether plaintiff established a *prima facie* case of disparate impact).

[49] *Brown* v. *Nucor Corp.,* 785 F.3d 895, 908, 935 (4th Cir. 2015); *Isabel* v. *City of Memphis,* 404 F.3d 404, 412, 418 (6th Cir. 2005); *Ensley Branch of NAACP* v. *Seibels,* 31 F.3d 1548, 1555 (11th Cir. 1994); *Waisome* v. *Port Auth. of N.Y. & N.J.,* 948 F.2d 1370, 1376 (2d Cir. 1991); *Clady* v. *County of Los Angeles,* 770 F.2d 1421, 1428–29 (9th Cir. 1985); *Fisher* v. *Procter & Gamble Mfg. Co.,* 613 F.2d 527, 545 (5th Cir. 1980).

[50] Ko, *supra* n. 42, at 881–84.

[51] *See* Practical Significance in EEO Analysis Frequently Asked Questions (last updated Jan. 15, 2021), at *https://www.dol.gov/agencies/ofccp/faqs/practical-significance* (last accessed Dec. 5, 2021).

additional delay by engendering disputes about the scope of evidence contractors must provide and whether OFCCP has satisfied the rule's heightened requirements. The 2020 rule's regulatory standards thus serve to prevent OFCCP from providing early communication of preliminary indicators of discrimination and delays the prompt resolution of these preliminary indicators and the exchange of more information to perform additional analysis. Pursuant to the 2020 rule, to issue the Predetermination Notice, OFCCP must meet the same evidentiary standards that the agency must meet to issue a Notice of Violation. As a result, the 2020 rule conflates a notice that is intended to convey preliminary indicators of discrimination (the Predetermination Notice) with a notice intended to inform the contractor that corrective action is *required* and to invite conciliation through a written agreement (the Notice of Violation). OFCCP believes that conflating these two notices by requiring duplicative evidentiary standards unnecessarily consumes resources and delays OFCCP's ability to timely raise preliminary indicators of discrimination. As the two notices were originally meant to serve separate, unique purposes, this rulemaking proposes to restore the function of the Predetermination Notice to convey *preliminary* indicators of discrimination and foster the exchange of information and communication toward efficient resolution.

To retain the Predetermination Notice and distinguish it from the Notice of Violation, OFCCP proposes to modify the 2020 rule to enable the agency to streamline the compliance evaluation process and issue the Predetermination Notice earlier where appropriate. OFCCP will issue a Predetermination Notice describing the preliminary indicators of discrimination and any other potential violations OFCCP has identified, asking the contractor to respond. In some circumstances, this may be after the agency has completed the desk audit and prior to the on-site review,[52] while in other cases, depending on the facts and circumstances, the agency will issue the Predetermination Notice after OFCCP has begun an on-site review and obtained the information necessary to identify preliminary indicators of discrimination.

To promote greater efficiency in resolving cases, OFCCP proposes to modify the 2020 rule's provision which required a contractor to provide a response within 30 calendar days of receiving a Predetermination Notice. The proposal will return the Predetermination Notice response period to the 15-calendar-day period in effect prior to the 2020 rule (which OFCCP may extend for good cause).[53] In the proposal, OFCCP also clarifies this provision to state that any response must be *received by* OFCCP within 15 calendar days (absent a deadline extension).

After OFCCP issues a Predetermination Notice, where the contractor does not sufficiently rebut the preliminary indicators of discrimination, and OFCCP finds a violation of one or more of its equal opportunity clauses,[54] OFCCP will issue a Notice of Violation to the contractor identifying the violations, describing the recommended corrective actions, and inviting conciliation through a written agreement. OFCCP proposes changes to the Notice of Violation regulation similar to the changes proposed for the Predetermination Notice, to remove barriers to resolution. For the Notice of Violation regulatory provision, the proposed changes make clear that OFCCP can include additional violations in a subsequent Show Cause Notice without amendment to the Notice of Violation to prevent enforcement delays. The proposed changes to the Notice of Violation regulation also clearly state that OFCCP will provide contractors an opportunity to conciliate additional violations identified in the Show Cause Notice. The proposal contains similar changes in the Predetermination Notice provision, allowing OFCCP to add additional violations in a subsequent Notice of Violation or Show Cause Notice without amending the Predetermination Notice. The proposed changes provide that OFCCP may issue a Show Cause Notice where OFCCP has reasonable cause to believe that a contractor has violated the equal opportunity clause. The proposed changes also clarify that the agency may issue a Show Cause Notice without first issuing a Predetermination Notice or Notice of Violation when the contractor has failed to provide access to its premises for an on-site review, or refuses to provide access to witnesses, records, or other information.

These proposed changes stem from OFCCP's experience implementing the 2020 rule as well as its policy judgment on how OFCCP can strengthen enforcement of its requirements and promote consistency with Title VII. The 2020 rule stated that key objectives included promoting more effective enforcement, increasing the number of contractors that the agency evaluates, and increasing fairness for contractors by providing more transparency and certainty on the agency's resolution procedures.[55] However, the 2020 rule has not met these objectives. The 2020 rule instead resulted in time-consuming disputes with contractors over the application of the new requirements. For example, upon receipt of the Predetermination Notice, contractors have disputed the application of the 2020 rule's evidentiary requirements, causing additional delay that diverts resources from the central issue of resolving indicators and findings of discrimination. Additionally, several contractors have argued that the anecdotal evidence that OFCCP shared to support its case failed to meet the ''qualitative evidence'' definition included in the 2020 rule. Other contractors have argued that the qualitative evidence that OFCCP provided was insufficient because the agency failed to disclose the identity of the interviewees who provided relevant statements at the Predetermination Notice stage. Contractors have also disputed whether OFCCP met the required threshold for practical significance under the 2020 rule, arguing that the agency has failed to meet the threshold or even disagreeing with the 2020 rule's standard altogether. In each of these cases, the disputes raised by contractors have delayed OFCCP's completion of compliance evaluations. These delays would not have occurred but for the 2020 rule and its rigid evidentiary requirements for a Predetermination Notice that are prone to dispute and in some respects go beyond what is required for proof of discrimination under Title VII. OFCCP proposes modifications to these pre-enforcement notice and conciliation procedures to streamline the issuance of these notices by removing inefficiency and delay caused by the 2020 rule.

Restoring Flexibility to OFCCP's Procedures

This proposed rulemaking also seeks to restore flexibility to OFCCP's pre-enforcement notice and conciliation

[52] OFCCP compliance reviews proceed in three stages: Desk audit, on-site review, and off-site analysis. *See* 41 CFR 60–1.20(a)(1), 60–300.60(a), 60–741.60(a).

[53] *See* Directive 2018–01, Use of Predetermination Notices (Feb. 27, 2018), available at *https://www.dol.gov/agencies/ofccp/directives/2018-01* (last accessed Dec. 5, 2021).

[54] 41 CFR 60–1.4, 60–4.3, 60–300.5, 60–741.5.

[55] 85 FR 71553, 71554–71569.

procedures. OFCCP needs flexibility in its investigatory and conciliation procedures to effectively resolve employment discrimination. In January of 2021, the Equal Employment Opportunity Commission (EEOC) published a final rule concerning its conciliation procedures.[56] The U.S. Congress subsequently passed a law [57] to disapprove and annul the EEOC rule, based on concerns similar to those underlying this proposed rulemaking, such as the increase in employer litigation about the process, the delay of resolution of discrimination claims, and mandated disclosures unfairly weighting the process in favor of employers and subjecting workers to heightened risk of retaliation, as reflected in the Congressional Record.[58] The Congressional Record also includes a statement from President Biden's administration [59] and a letter submitted by the Leadership Conference on Civil and Human Rights signed by 24 civil rights organizations.[60] The supportive statements and letter all cited to a unanimous decision by the Supreme Court in *Mach Mining, LLC* v. *EEOC* that described the wide latitude that Title VII gives EEOC to conciliate in pursuit of voluntary compliance with the law.[61] EEOC's experience with the conciliation process is instructive. Before the Court's decision in *Mach Mining,* employers routinely raised time-consuming challenges to whether EEOC satisfied its discretionary conciliation requirements. For example, the workers in *Mach Mining*—women alleged to have been excluded from coal mining jobs on the basis of sex—were forced to wait nine years after the first charge was filed for relief after years of litigation over procedural challenges to the conciliation process. EEOC's now-rescinded January 2021 conciliation rulemaking sought to codify rigid standards that would enable employers to shift the focus away from the core issue of whether discrimination occurred and instead attempt to avoid liability by pursuing resource intensive satellite proceedings over whether discretionary conciliation processes had been satisfied. As stated by Representative Scott in support of overturning this EEOC rule, EEOC ''must have discretion to use whatever informal means of settlement are appropriate'' instead of applying a rigid conciliation process ''across the board, one-size-fits-all, in every case of workplace discrimination.'' [62] This authority to have administrative discretion in conciliation was directly granted to EEOC by Congress,[63] confirmed by a unanimous opinion from the U.S. Supreme Court,[64] re-affirmed by Congress through the annulment of EEOC's conciliation procedures rule,[65] and recognized by the current President of the United States.[66]

OFCCP has similar discretion to conciliate compliance under E.O. 11246, Section 503, and VEVRAA [67]—to right the wrong of employment discrimination. When OFCCP determines that a Federal contractor is deficient in its compliance with E.O. 11246, Section 503, or VEVRAA, OFCCP must make ''reasonable efforts'' to secure compliance through conciliation and persuasion,[68] under the procedures set forth in Chapter 60 of the U.S. Code of Federal Regulations,[69] the FCCM,[70] and subregulatory guidance.[71] OFCCP views the Title VII flexibility principle cited by Congress as similarly vital to OFCCP's work in securing compliance with E.O. 11246, Section 503, and VEVRAA. As such, OFCCP proposes to clarify that the ''reasonable efforts'' standard it must satisfy when attempting to secure compliance with its laws should be interpreted consistently with the Title VII language requiring EEOC to ''endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion,'' to ensure OFCCP has the same flexibility in the administration of its laws as that recognized under Title VII by Congress and the U.S. Supreme Court for EEOC.

The 2020 rule's codification of OFCCP's resolution procedures [72] imposes hurdles to the effective exercise of OFCCP's enforcement discretion. With this proposed rule, OFCCP seeks to restore the flexibility it had prior to December 10, 2020, applying Title VII standards to the facts and circumstances of each compliance evaluation, while preserving certainty and transparency for Federal contractors by requiring the

[56] *Update of Commission's Conciliation Procedures,* 86 FR 2974 (Jan. 14, 2021), *annulled.* Before it was annulled, the rule amended the EEOC's procedures governing its conciliation process for charges alleging violations of Title VII, the ADA, the Genetic Information Nondiscrimination Act, and/or the Age Discrimination in Employment Act. The EEOC rule implemented requirements regarding the information EEOC must provide in preparation for and during conciliation about the factual and legal bases for the Commission's position and findings for charges where it has found reasonable cause.

[57] President Biden signed the joint resolution of Congress into law on June 30, 2021. *See* Commission's Conciliation Procedures, Public Law 117–22, June 30, 2021, 135 Stat 294.

[58] *See* 167 Cong. Rec. H3110–H3111 (daily ed. June 24, 2021). (''[T]he rule incentivizes employers to focus litigation on whether the EEOC failed to satisfy the rule's new requirements instead of whether the employer engaged in unlawful discrimination'' (statement of Rep. Scott); also, the ''. . . [EEOC rule] threatens to delay or potentially deny justice for individuals who face workplace discrimination'' (statement of Rep. Bonamici).

[59] 167 Cong. Rec. H3110, 3111 (daily ed. June 24, 2021) (noting that repealing the conciliation rule would, *inter alia,* remove ''onerous and rigid new procedures;'' nullify ''unnecessary and burdensome standards that would likely result in increased charge backlogs, and lengthier charge investigation, resolution and litigation times;'' give EEOC ''the flexibility to tailor settlements to the facts and circumstances of each case;'' and ''ensure that justice for workers subject to discrimination is not delayed, or potentially denied, due to costly and time-consuming collateral litigation'') (Statement of Administration Policy).

[60] 167 Cong. Rec. H3110, 3112 (daily ed. June 24, 2021) (''Instead of ensuring that discrimination charges are resolved fairly, the EEOC's final rule imposes several new obligations and disclosures that: significantly weight the conciliation process in favor of employers; delay justice and increase the likelihood of harm to working people; divert scarce EEOC staff time and resources away from investigating discrimination; and contravene controlling U.S. Supreme Court precedent.'') (Letter from the Leadership Conference on Civil and Human Rights).

[61] *Mach Mining, LLC* v. *EEOC,* 575 U.S. 480, 492 (2015) (''Every aspect of Title VII's conciliation provision smacks of flexibility. To begin with, the EEOC need only 'endeavor' to conciliate a claim, without having to devote a set amount of time or resources to that project. [42 U.S.C.] § 2000e–5(b). Further, the attempt need not involve any specific steps or measures; rather, the Commission may use in each case whatever 'informal' means of 'conference, conciliation, and persuasion' it deems appropriate.'').

[62] *See* 167 Cong. Rec. H3110–H3111 (daily ed. June 24, 2021) (statement of Rep. Scott).

[63] 42 U.S.C. 2000e-5(b) (''If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.'').

[64] *Mach Mining, LLC,* 575 U.S. at 480.

[65] Joint Resolution Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by the Equal Employment Opportunity Commission relating to ''Update of Commission's Conciliation Procedures''. COMMISSION'S CONCILIATION PROCEDURES, PL 117–22, June 30, 2021, 135 Stat 294.

[66] 167 Cong. Rec. H3110, 3111 (daily ed. June 24, 2021) (Statement of Administration Policy).

[67] 41 CFR 60–1.20(b) (noting that if ''deficiencies are found to exist, OFCCP shall make reasonable efforts to secure compliance through conciliation and persuasion''). OFCCP has identical discretion under VEVRAA and Section 503. *See* 41 CFR 60–300.60(b), 60–741.60(b).

[68] *See* 41 CFR 60–1.20(b), 60–300.60(b), 60–741.60(b).

[69] 41 CFR 60–1.33, 60–300.62, 60–741.62.

[70] *See* FCCM, Chapter 8, Resolution of Noncompliance, available at *https://www.dol.gov/agencies/ofccp/manual/fccm/chapter-8-resolution-noncompliance* (last accessed Dec. 3, 2021).

[71] *See, e.g.,* Directive 2018–01, Use of Predetermination Notices, (Feb. 27, 2018), available at *https://www.dol.gov/agencies/ofccp/directives/2018-01* (last accessed Dec. 5, 2021); ''Practical Significance in EEO Analysis Frequently Asked Questions'' (last updated Jan. 15, 2021), available at *https://www.dol.gov/agencies/ofccp/faqs/practical-significance* (last accessed Dec. 5, 2021).

[72] 41 CFR 60–1.33, 60–300.62, 60–741.62.

use of a Predetermination Notice and Notice of Violation.[73]

Statement of Legal Authority

Issued in 1965, and amended several times in the intervening years, E.O. 11246 has two principal purposes. First, it prohibits covered Federal contractors and subcontractors from discriminating against employees and applicants because of race, color, religion, sex, sexual orientation, gender identity, national origin, or because they inquire about, discuss, or disclose their compensation or that of others, subject to certain limitations. Second, it requires covered Federal contractors and subcontractors to take affirmative action to ensure equal employment opportunity.

The requirements in E.O. 11246 generally apply to any business or organization that (1) holds a single Federal contract, subcontract, or federally assisted construction contract in excess of $10,000; (2) has Federal contracts or subcontracts that combined total in excess of $10,000 in any 12-month period; or (3) holds Government bills of lading, serves as a depository of Federal funds, or is an issuing and paying agency for U.S. savings bonds and notes in any amount. Supply and service contractors with 50 or more employees and a single Federal contract or subcontract of $50,000 or more also must develop and maintain an affirmative action program that complies with 41 CFR part 60–2. Construction contractors have different affirmative action requirements under E.O. 11246 at 41 CFR part 60–4.

Enacted in 1973, and amended since, the purpose of Section 503 of the Rehabilitation Act of 1973 is twofold. First, Section 503 prohibits employment discrimination on the basis of disability by Federal contractors. Second, it requires each covered Federal contractor to take affirmative action to employ and advance in employment qualified individuals with disabilities. The requirements in Section 503 generally apply to any business or organization that holds a single Federal contract or subcontract in excess of $15,000.[74] Contractors with 50 or more employees and a single Federal contract or subcontract of $50,000 or more also must develop and maintain an affirmative action program that complies with 41 CFR part 60–741, subpart C.

Enacted in 1974 and amended in the intervening years, VEVRAA prohibits Federal contractors and subcontractors from discriminating against employees and applicants because of status as a protected veteran (defined by the statute to include disabled veterans, recently separated veterans, Armed Forces Service Medal Veterans, and active duty wartime or campaign badge veterans). It also requires each covered Federal contractor and subcontractor to take affirmative action to employ and advance in employment these veterans. The requirements in VEVRAA generally apply to any business or organization that holds a single Federal contract or subcontract in excess of $150,000.[75] Contractors with 50 or more employees and a single Federal contract or subcontract of $150,000 or more also must develop and maintain an affirmative action program that complies with 41 CFR part 60–300, subpart C.

Pursuant to these laws, receiving a Federal contract comes with a number of responsibilities. Contractors are required to comply with all provisions of these laws as well as the rules, regulations, and relevant orders of the Secretary of Labor. Where OFCCP finds noncompliance under any of the three laws or their implementing regulations, it utilizes established procedures to either facilitate resolution or proceed to administrative enforcement as necessary to secure compliance. A contractor found in violation who fails to correct violations of OFCCP's regulations may, after the opportunity for a hearing, have its contracts canceled, terminated, or suspended and/or may be subject to debarment.

Proposed Revisions

This rulemaking proposes to amend 41 CFR parts 60–1, 60–300, and 60–741 by removing unnecessary and confusing evidentiary standards and definitions that the 2020 rule requires, while retaining and refining the pre-enforcement procedures for issuing the Predetermination Notice and the Notice of Violation. The proposed revisions would enable OFCCP to apply Title VII standards to the facts and circumstances of each compliance evaluation and clarify that OFCCP's conciliation standards align with the flexibility and enforcement discretion afforded under Title VII for endeavoring to secure compliance through conciliation. The rulemaking would also amend each part's regulatory provision on Show Cause Notices, relocating the provision to the same section as the other codified pre-enforcement notices and codifying when OFCCP will amend the Show Cause Notice consistent with current practice.

The rulemaking further proposes to amend 41 CFR parts 60–1, 60–2, 60–4, 60–20, 60–30, 60–40, 60–50, 60–300, and 60–741. The 2020 rule added the first severability clause to OFCCP's regulations, but it only applies to the resolution procedures sections for each of OFCCP's legal authorities (*i.e.,* 41 CFR 60–1.33, 60–300.62, and 60–741.42).[76] OFCCP has determined that, if there is a severability clause in any part of its regulations, it should apply to all of its regulations, rather than just certain specific sections. Thus, OFCCP proposes to include a severability clause in each part of its regulations, such that if a court of competent jurisdiction found any provision(s) of the part to be invalid, it would not affect any other provision of the part or chapter. The severability clauses currently only applicable to 41 CFR 60–1.33, 60–300.62, and 60–741.42 would be removed.

Revised Sections

41 CFR PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

Subpart A—Preliminary Matters; Equal Opportunity Clause; Compliance Reports

Section 60–1.3 Definitions

The NPRM proposes to amend § 60–1.3 by removing the definitions for ''Qualitative evidence'' and ''Quantitative evidence.'' These definitions operate in tandem with the evidentiary standards that are currently creating hurdles to the effective enforcement of OFCCP laws and would be rendered unnecessary by other proposed changes to this part.

[73] As noted previously, *supra* at n. 28, OFCCP would continue to apply ADA standards to compliance evaluations pertaining to Section 503.

[74] Effective October 1, 2010, the coverage threshold under Section 503 increased from $10,000 to $15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds,* 75 FR 53129 (Aug. 30, 2010).

[75] Effective October 1, 2015, the coverage threshold under VEVRAA increased from $100,000 to $150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds,* 80 FR 38293 (July 2, 2015).

[76] In addition, OFCCP's 2020 final rule relating to the E.O. 11246 religious exemption included a severability clause that applied only to provisions within 41 CFR 60–1.5. *Implementing Legal Requirements Regarding the Equal Opportunity Clause's Religious Exemption,* 85 FR 79324, 79372 (Dec. 9, 2020), codified at 41 CFR 60–1.5(f). OFCCP has proposed to rescind that rule, including the severability clause. 86 FR 62115 (Nov. 9, 2021).

Subpart B—General Enforcement; Compliance Review and Complaint Procedure

Section 1.20 Compliance Evaluations

The NPRM proposes to clarify the ''reasonable efforts'' standard in § 60–1.20(b) that OFCCP must satisfy when attempting to secure compliance through conciliation, to make clear that OFCCP's conciliation standards align with Title VII.

Section 1.28 Show Cause Notices

The NPRM proposes to remove and reserve § 60–1.28, to relocate ''Show cause notices'' to § 60–1.33 with the other pre-enforcement notices in this part.

Section 60–1.33 Resolution Procedures

The NPRM proposes to revise § 60–1.33 by changing the title to ''Pre-enforcement notice and conciliation procedures''; removing unnecessary regulatory standards impeding OFCCP's ability to resolve preliminary indicators and findings of discrimination; incorporating a relocated subsection on Show Cause Notices to improve regulatory organization; clarifying OFCCP's use of the Show Cause Notice including when a contractor denies access to its premises, to witnesses, or to records; making general clarifying edits to improve procedural efficacy including OFCCP's role in the early conciliation option; and removing the severability clause specific to this section.

Subpart C—Ancillary Matters

Section 60–1.48 Severability

The NPRM proposes to add § 60–1.48, a severability clause.

41 CFR PART 60–2—AFFIRMATIVE ACTION PROGRAMS

Subpart C—Miscellaneous

Section 60–2.36 Severability

The NPRM proposes to add § 60–2.36, a severability clause.

41 CFR PART 60–4—CONSTRUCTION CONTRACTORS—AFFIRMATIVE ACTION REQUIREMENTS

Section 60–4.10 Severability

The NPRM proposes to add § 60–4.10, a severability clause.

41 CFR PART 60–20—DISCRIMINATION ON THE BASIS OF SEX

Section 60–20.9 Severability

The NPRM proposes to add § 60–20.9, a severability clause.

41 CFR PART 60–30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

GENERAL PROVISIONS

Section 60–30.38 Severability

The NPRM proposes to add § 60–30.38, a severability clause.

41 CFR PART 60–40—EXAMINATION AND COPYING OF OFCCP DOCUMENTS

Subpart A—General

Section 60–40.9 Severability

The NPRM proposes to add § 60–40.9, a severability clause.

41 CFR PART 60–50—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN

Section 60–50.6 Severability

The NPRM proposes to add § 60–50.6, a severability clause.

41 CFR PART 60–300—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING DISABLED VETERANS, RECENTLY SEPARATED VETERANS, ACTIVE DUTY WARTIME OR CAMPAIGN BADGE VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS

Subpart A—Preliminary Matters; Equal Opportunity Clause

Section 60–300.2 Definitions

The NPRM proposes to amend § 60–300.2 by removing the definitions for ''Qualitative evidence'' and ''Quantitative evidence.'' These definitions would be rendered unnecessary by other proposed changes to this part.

Subpart D—General Enforcement and Complaint Procedures

Section 60–300.60 Compliance Evaluations

The NPRM proposes to clarify the ''reasonable efforts'' standard in § 60–300.60 (b) that OFCCP must satisfy when attempting to secure compliance through conciliation, to make clear that OFCCP's conciliation standards align with Title VII.

Section 60–300.62 Resolution Procedures

The NPRM proposes to revise § 60–300.62 by changing the title to ''Pre-enforcement notice and conciliation procedures''; removing unnecessary regulatory standards impeding OFCCP's ability to resolve preliminary indicators and findings of discrimination; incorporating a relocated subsection on Show Cause Notices to improve regulatory organization; clarifying OFCCP's use of the Show Cause Notice including when a contractor denies access to its premises, to witnesses, or to records; making general clarifying edits to improve procedural efficacy including OFCCP's role in the early conciliation option; and removing the severability clause specific to this section.

Section 60–300.64 Show Cause Notices

The NPRM proposes to remove and reserve § 60–300.64, to relocate ''Show cause notices'' to § 60–300.62 with the other pre-enforcement notices in this part.

Subpart E—Ancillary Matters

Section 60–300.85 Severability

The NPRM proposes to add § 60–300.85, a severability clause.

41 CFR PART 60–741—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING INDIVIDUALS WITH DISABILITIES

Subpart A—Preliminary Matters; Equal Opportunity Clause

Section 60–741.2 Definitions

The NPRM proposes to amend § 60–741.2 by removing the definitions for ''Qualitative evidence'' and ''Quantitative evidence.'' These definitions would be rendered unnecessary by other proposed changes to this part.

Subpart D—General Enforcement and Complaint Procedures

Section 60–741.60 Compliance Evaluations

The NPRM proposes to clarify the ''reasonable efforts'' standard in § 60–741.60 (b) that OFCCP must satisfy when attempting to secure compliance through conciliation, to make clear that OFCCP's conciliation standards align with Title VII.

Section 60–741.62 Resolution Procedures

The NPRM proposes to revise § 60–741.62 by changing the title to ''Pre-enforcement notice and conciliation procedures''; removing unnecessary regulatory standards impeding OFCCP's ability to resolve preliminary indicators and findings of discrimination; incorporating a relocated subsection on

Show Cause Notices to improve regulatory organization; clarifying OFCCP's use of the Show Cause Notice including when a contractor denies access to its premises, to witnesses, or to records; making general clarifying edits to improve procedural efficacy including OFCCP's role in the early conciliation option; and removing the severability clause specific to this section.

Section 60–741.64 Show Cause Notices

The NPRM proposes to remove and reserve § 60–741.64, to relocate ''Show cause notices'' to § 60–741.62 with the other pre-enforcement notices in this part.

Subpart E—Ancillary Matters

Section 60–741.84 Severability

The NPRM proposes to add § 60–741.84, a severability clause.

Regulatory Procedures

Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

Under Executive Order 12866 (E.O. 12866), the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of E.O. 12866 and OMB review. Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. This proposed rulemaking has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of E.O. 12866. OMB has reviewed this proposal.

Executive Order 13563 (E.O. 13563) directs agencies to adopt a regulation only upon a reasoned determination that its benefits justify its costs; tailor the regulation to impose the least burden on society, consistent with obtaining the regulatory objectives; and in choosing among alternative regulatory approaches, select those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

A. Need for Rulemaking

OFCCP believes that the 2020 rule created rigid constraints that are not required by Title VII and/or impede the agency's effective enforcement of E.O. 11246, Section 503, and VEVRAA. This has delayed information exchange with contractors and created obstacles to a timely resolution of preliminary indicators and findings of discrimination and greater compliance. The 2020 rule has also resulted in time-consuming collateral disputes over the implementation of the rule's regulatory standards—diverting limited agency and contractor resources away from resolving concerns of discrimination. This diversion of resources and delay in the pre-enforcement process will reduce rather than increase the number of contractors that OFCCP is able to evaluate for compliance.

This NPRM aims to create a streamlined, efficient, and flexible process to ensure OFCCP utilizes its limited resources as strategically as possible to advance the agency's mission. In a return to prior agency policy, OFCCP will apply Title VII standards to the facts and circumstances of each compliance evaluation, including during the pre-enforcement notice and conciliation stages. Doing so will remove unnecessary constraints that impede effective enforcement by limiting the agency's enforcement discretion, and prevent delays in case resolutions due to the 2020 rule. Removing the blanket regulatory requirements will also allow OFCCP to pursue enforcement in cases that, albeit actionable under Title VII, are more difficult to pursue under the 2020 rule. OFCCP remains committed to providing contractors early notice when the agency identifies preliminary indicators of systemic discrimination during a compliance evaluation. Such notice is mutually beneficial for OFCCP and the contractor under review because it provides the contractor with an earlier opportunity to respond to potential issues before OFCCP makes a determination on violations. Providing earlier notice to contractors can result in the prompt and mutually satisfactory resolution of cases, which minimizes unnecessary burdens on contractors and agency staff. Going forward, OFCCP would provide updated guidance to its compliance officers on the pre-enforcement procedures. This guidance would reflect current case law, provide OFCCP needed flexibility, and be available to the public to promote transparency.

B. Discussion of Impacts

In this section, OFCCP presents a summary of the costs associated with the modifications in this proposed rulemaking. OFCCP utilizes the Employment Information Report (EEO–1) data, which identifies the number of supply and service contractors that could be scheduled for a compliance evaluation and thus impacted by the proposed modification. The EEO–1 Report must be filed by covered Federal contractors who: (1) Have 50 or more employees; (2) are prime contractors or first-tier subcontractors; and (3) have a contract, subcontract, or purchase order amounting to $50,000 or more. OFCCP schedules only contractors who meet those thresholds for compliance evaluations. The number of supply and service contractors possibly impacted by the proposed modification is 24,251.[77]

OFCCP also utilizes USASpending data, which identifies the number of construction contractors that could be scheduled for a compliance evaluation and thus impacted by the proposed modification. The USASpending data accounts for all construction contractors with contracts greater than $10,000 who meet the thresholds for compliance evaluations. The number of construction contractors possibly impacted by the proposed modification is 12,362.[78]

While OFCCP acknowledges that all Federal contractors may learn their EEO requirements in order to comply with the laws that OFCCP enforces, only those contractors scheduled for a compliance evaluation are directly impacted by the proposed modification.

[77] OFCCP obtained the total number of supply and service contractors from the most recent EEO–1 Report data available, which is from fiscal year (FY) 2018.

[78] OFCCP obtained the total number of construction establishments (12,609) from FY 2019 USASpending data, available at *https://www.usaspending.gov/#/download_center/award_data_archive* (last accessed Dec. 8, 2021). The agency then used the ratio of contractor establishments to contractor firms (1.02) from US Census Bureau data, available at *https://www.census.gov/data/tables/2017/econ/economic-census/naics-sector-23.html* (last accessed Dec. 8, 2021). 12,609/1.02 = 12,362 construction contractors.

Scheduled contractors are likely to have a need to know the pre-enforcement procedures because they may need to interact with OFCCP. The total number of contractors possibly impacted by the proposed modification is 36,613.[79]

OFCCP has determined that either a Human Resources Manager (SOC 11–3121) or a Lawyer (SOC 23–1011) would review the proposed modification. OFCCP estimates that 50 percent of the reviewers would be human resources managers and 50 percent would be in-house counsel. Thus, the mean hourly wage rate reflects a 50/50 split between human resources managers and lawyers. The mean hourly wage of a human resources manager is $64.70 and the mean hourly wage of a lawyer is $71.59.[80] Therefore, the average hourly wage rate is $68.15 (($64.70 + $71.59)/2). OFCCP adjusted this wage rate to reflect fringe benefits such as health insurance and retirement benefits, as well as overhead costs such as rent, utilities, and office equipment. OFCCP uses a fringe benefits rate of 46 percent[81] and an overhead rate of 17 percent,[82] resulting in a fully loaded hourly compensation rate of $111.08 ($68.15 + ($68.15 × 46 percent) + ($68.15 × 17 percent)). The estimated labor cost to contractors is reflected in Table 1, below.

TABLE 1—LABOR COST

Major occupational groups	Average hourly wage rate	Fringe benefit rate	Overhead rate	Fully loaded hourly compensation
Human Resources Managers and Lawyers	$68.15	46%	17%	$111.08

1. Cost of Rule Familiarization

OFCCP acknowledges that 5 CFR 1320.3(b)(1)(i) requires agencies to include in the burden analysis for a proposed rulemaking the estimated time it takes for contractors to review and understand the instructions for compliance. To minimize the burden, OFCCP will publish compliance assistance materials regarding the proposed rule, once final.

OFCCP believes that a human resources manager or lawyer will take a minimum of 30 minutes (½ hour) to read the proposed rule or read the compliance assistance materials provided by OFCCP. Consequently, the estimated burden for rule familiarization is 18,307 hours (36,613 contractor firms × ½ hour). OFCCP calculates the total estimated cost of rule familiarization as $2,033,542 (18,307 hours × $111.08/hour) in the first year, which amounts to a 10-year annualized cost of $231,450 at a discount rate of 3 percent (which is $6.32 per contractor firm) or $270,589 at a discount rate of 7 percent (which is $7.39 per contractor firm). Table 2, below, reflects the estimated regulatory familiarization costs for the proposed rule.

TABLE 2—REGULATORY FAMILIARIZATION COST

Total number of contractors	36,613.
Time to review rule	30 minutes.
Human Resources Managers fully loaded hourly compensation	$111.08.
Regulatory familiarization cost in the first year	$2,033,542.
Annualized cost with 3 percent discounting	$231,450.
Annualized cost per contractor with 3 percent discounting	$6.32.
Annualized cost with 7 percent discounting	$270,589.
Annualized cost per contractor with 7 percent discounting	$7.39.

2. Benefits

E.O. 13563 recognizes that some rules have benefits that are difficult to quantify or monetize but are nevertheless important and states that agencies may consider such benefits. This proposed rule has equity and fairness benefits, which are explicitly recognized in E.O. 13563. The proposal is designed to achieve these benefits by:

- Supporting more effective enforcement of OFCCP's equal opportunity laws by eliminating procedural inefficiencies and heightened evidentiary standards created by the 2020 rule;
- Facilitating earlier and more efficient resolutions;
- Ensuring greater certainty and consistency in case resolutions by maintaining adherence to Title VII and OFCCP case law standards;
- Promoting transparency by codifying the required use of the Predetermination Notice when the agency identifies preliminary indicators of discrimination;
- Allowing OFCCP to tailor the pre-enforcement process to the specific facts and circumstances of each case, consistent with judicial interpretations of the applicable legal authorities, which will in turn allow OFCCP to more effectively redress unlawful discrimination;
- Advancing a policy of promoting consistency between Title VII and E.O. 11246 and removing unnecessary constraints on the agency's ability to pursue meritorious cases. This approach will help OFCCP advance the overriding policy goal of promoting nondiscrimination by strengthening the enforcement of federal protections under E.O. 11246;

[79] 24,251 supply and service contractors + 12,362 construction contractors = 36,613 contractors.

[80] BLS, Occupational Employment Statistics, Occupational Employment and Wages, May 2020, available at *www.bls.gov/oes/current/oes_nat.htm* (last accessed Dec. 8, 2021).

[81] BLS, Employer Costs for Employee Compensation, available at *www.bls.gov/ncs/data.htm* (last accessed Dec. 8, 2021). Wages and salaries averaged $26.53 per hour worked in December 2020, while benefit costs averaged $12.07, which is a benefits rate of 46 percent.

[82] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' (June 10, 2002), available at *www.regulations.gov/document?D=EPA–HQ–OPPT–2014–0650–0005* (last accessed Dec. 8, 2021).

• Reducing time-consuming disputes over unnecessary standards; and
• Furthering the strategic allocation of agency resources.

C. Alternatives

In addition to the approach proposed, OFCCP also considered alternative approaches. OFCCP considered modifying the 2020 rule to rescind the entirety of the rule except the correction to OFCCP's agency head title. OFCCP also considered modifying the 2020 rule by eliminating the Predetermination Notice entirely since it currently functions as a procedural redundancy. However, OFCCP determined that retaining both pre-enforcement notices in the regulatory text while rescinding the inflexible evidentiary requirements for the Predetermination Notice and Notice of Violation allows the contractor and OFCCP to engage in earlier discussions that can lead to more efficient resolutions.

OFCCP also considered maintaining the current regulations established in the 2020 rule. However, as discussed earlier in this preamble, OFCCP determined that creating a rigid regulatory process to govern its pre-enforcement compliance evaluation process is incompatible with the flexibility needed for effective enforcement. Moreover, the 2020 rule places certain obligations on OFCCP at this preliminary stage that go beyond the substantive legal requirements that E.O. 11246, Title VII, and interpretive case law require to state a claim and prove discrimination at a much later stage, upon a full evidentiary record. OFCCP has determined that imposing such rigid and heightened standards early in its pre-enforcement proceedings unduly constrains its ability to pursue claims of discrimination. The 2020 rule also created an inefficient process where OFCCP's Predetermination Notice (intended to convey preliminary indicators of discrimination) and the Notice of Violation (intended to inform the contractor that corrective action is required and to invite conciliation through a written agreement) were largely duplicative. Further, the mandating of regulatory requirements for making inherently fact specific determinations, invites time-consuming disputes over the application of the rule's requirements. Modifying the 2020 regulations would help restore the enforcement discretion and flexibility OFCCP needs to facilitate compliance through conciliation by providing pre-enforcement notice of preliminary discrimination indicators and findings, and applying Title VII to the facts and circumstances of each compliance evaluation. OFCCP is proposing modification of the regulatory text to create a more streamlined and effective process for the agency to communicate preliminary indicators to contractors, provide contractors an opportunity to respond, notify contractors of violations, and ultimately facilitate greater understanding to obtain resolution through conciliation.

Regulatory Flexibility Act and Executive Order 13272 (Consideration of Small Entities)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation.'' Public Law 96–354, 2(b). The RFA requires agencies to consider the impact of a regulatory action on a wide range of small entities, including small businesses, nonprofit organizations, and small governmental jurisdictions.

Agencies must review whether a regulatory action would have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603. If the regulatory action would, then the agency must prepare a regulatory flexibility analysis as described in the RFA. *See id.* However, if the agency determines that the regulatory action would not be expected to have a significant economic impact on a substantial number of small entities, then the head of the agency may so certify and the RFA does not require a regulatory flexibility analysis. *See* 5 U.S.C. 605. The certification must provide the factual basis for this determination.

The proposed rule will not have a significant economic impact on a substantial number of small entities. The first year cost for small entities at a discount rate of 7 percent for rule familiarization is $51.91 per entity which is far less than 1 percent of the annual revenue of the smallest of the small entities affected by the proposal. Accordingly, OFCCP certifies that the proposed modification will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 requires that OFCCP consider the impact of paperwork and other information collection burdens imposed on the public. *See* 44 U.S.C. 3507(d). An agency may not collect or sponsor the collection of information or impose an information collection requirement unless the information collection instrument displays a currently valid OMB control number. *See* 5 CFR 1320.5(b)(1).

OFCCP has determined that there would be no new requirement for information collection associated with this proposed rulemaking. The information collections contained in the existing E.O. 11246, Section 503, and VEVRAA regulations are currently approved under OMB Control Number 1250–0001 (Construction Recordkeeping and Reporting Requirements), OMB Control Number 1250–0003 (Recordkeeping and Reporting Requirements—Supply and Service), OMB Control Number 1250–0004 (Office of Federal Contract Compliance Programs Recordkeeping and Reporting Requirements Under the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as Amended), and OMB Control Number 1250–0005 (Office of Federal Contract Compliance Programs Recordkeeping and Reporting Requirements Under Rehabilitation Act of 1973, as Amended Section 503). Consequently, this proposal does not require review by OMB under the authority of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, this proposed rule would not include any federal mandate that may result in excess of $100 million in expenditures by state, local, and tribal governments in the aggregate or by the private sector.

Executive Order 13132 (Federalism)

OFCCP has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism and has determined that it would not have ''federalism implications.'' The proposed regulatory action would not ''have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This proposed rule would not have tribal implications under Executive Order 13175 that would require a tribal summary impact statement. The proposal would not ''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.''

List of Subjects

41 CFR Part 60–1

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Investigations, Labor, Reporting and recordkeeping requirements.

41 CFR Part 60–2

Equal employment opportunity, Government procurement, Reporting and recordkeeping requirements.

41 CFR Part 60–4

Construction industry, Equal employment opportunity, Government procurement, Reporting and recordkeeping requirements.

41 CFR Part 60–20

Civil rights, Equal employment opportunity, Government procurement, Labor, Sex discrimination, Women.

41 CFR Part 60–30

Administrative practice and procedure, Civil rights, Equal employment opportunity, Government contracts, Government procurement, Government property management, Individuals with Disabilities, Reporting and recordkeeping requirements, Veterans.

41 CFR Part 60–40

Freedom of information, Reporting and recordkeeping requirements.

41 CFR Part 60–50

Equal employment opportunity, Government procurement, Religious discrimination, Reporting and recordkeeping requirements.

41 CFR Parts 60–300 and 60–741

Administrative practice and procedure, Civil rights, Employment, Equal employment opportunity, Government contracts, Government procurement, Individuals with disabilities, Investigations, Labor, Reporting and recordkeeping requirements, Veterans.

Jenny R. Yang,

Director, Office of Federal Contract Compliance Programs.

For the reasons stated in the preamble, the OFCCP proposes to amend 41 CFR parts 60–1, 60–2, 60–4, 60–20, 60–30, 60–40, 60–50, 60–300, and 60–741 as follows:

PART 60–1—OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

■ 1. The authority citation for part 60–1 continues to read as follows:

Authority: Sec. 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339, as amended by E.O. 11375, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, E.O. 12086, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258 and E.O. 13672, 79 FR 42971.

§ 60–1.3 [Amended]

■ 2. Amend § 60–1.3 by removing the definitions for ''Qualitative evidence'' and ''Quantitative evidence''.

■ 3. Amend § 60–1.20 by revising paragraph (b) to read as follows:

§ 60–1.20 Compliance evaluations.

* * * * *

(b) Where deficiencies are found to exist, OFCCP will make reasonable efforts to secure compliance through conciliation and persuasion, pursuant to § 60–1.33. The ''reasonable efforts'' standard shall be interpreted consistently with title VII of the Civil Rights Act of 1964 and its requirement that the Equal Employment Opportunity Commission ''endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.'' Before the contractor can be found to be in compliance with the order, it must make a specific commitment, in writing, to correct any such deficiencies. The commitment must include the precise action to be taken and dates for completion. The time period allotted shall be no longer than the minimum period necessary to effect such changes. Upon approval of the commitment, the contractor may be considered in compliance, on condition that the commitments are faithfully kept. The contractor shall be notified that making such commitments does not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

* * * * *

§ 60–1.28 [Removed and Reserved]

■ 4. Remove and reserve § 60–1.28.

■ 5. Revise § 60–1.33 to read as follows:

§ 60–1.33 Pre-enforcement notice and conciliation procedures.

(a) *Predetermination Notice.* If a compliance evaluation by OFCCP indicates preliminary indicators of discrimination, OFCCP will issue a Predetermination Notice describing the indicators and providing the contractor an opportunity to respond. The Predetermination Notice may also include other potential violations that OFCCP has identified at that stage of the review. After OFCCP issues the Predetermination Notice, the agency may identify additional violations and include them in a subsequent Notice of Violation or Show Cause Notice without amending the Predetermination Notice. OFCCP will provide the contractor an opportunity to conciliate additional violations identified in the Notice of Violation or Show Cause Notice. Any response to a Predetermination Notice must be received by OFCCP within 15 calendar days of receipt of the Notice, which deadline OFCCP may extend for good cause. If the contractor does not respond or OFCCP determines that the contractor's response did not resolve the indicators of discrimination in the Predetermination Notice, OFCCP will proceed with the review.

(b) *Notice of Violation.* If a compliance evaluation by OFCCP indicates a violation of the equal opportunity clause, OFCCP will issue a Notice of Violation to the contractor requiring corrective action and inviting conciliation through a written agreement. The Notice of Violation will identify the violations and describe the recommended corrective actions. After the Notice of Violation is issued, OFCCP may include additional violations in a subsequent Show Cause Notice without amendment to the Notice of Violation. OFCCP will provide the contractor an opportunity to conciliate additional violations identified in the Show Cause Notice.

(c) *Conciliation agreement.* If a compliance review, complaint investigation, or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and:

(1) If the contractor, subcontractor, or bidder is willing to correct the violations and/or deficiencies; and

(2) If OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies identified, including, where appropriate (but not limited to), remedies such as back pay, salary adjustments, and retroactive seniority.

(d) *Show cause notices.* When the Director has reasonable cause to believe that a contractor has violated the equal opportunity clause the Director may

issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings, or other appropriate action to ensure compliance should not be instituted. OFCCP may issue a Show Cause Notice without first issuing a Predetermination Notice or Notice of Violation when the contractor has failed to provide access to its premises for an on-site review or refused to provide access to witnesses, records, or other information. The Show Cause Notice will include each violation that OFCCP has identified at the time of issuance. Where OFCCP identifies additional violations after issuing a Show Cause Notice, OFCCP will modify or amend the Show Cause Notice.

(e) *Expedited conciliation option.* OFCCP may agree to waive the procedures set forth in paragraphs (a) and/or (b) of this section to enter directly into a conciliation agreement with a contractor. OFCCP may offer the contractor this expedited conciliation option, but may not require or insist that the contractor avail itself of the expedited conciliation option.

■ 6. Add § 60–1.48 to read as follows:

§ 60–1.48 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–2—AFFIRMATIVE ACTION PROGRAMS

■ 7. The authority citation for part 60–2 continues to read as follows:

Authority: Sec. 201, E.O. 11246, 30 FR 12319, E.O. 11375, 32 FR 14303, as amended by E.O. 12086, 43 FR 46501, and E.O. 13672, 79 FR 42971.

■ 8. Add § 60–2.36 to read as follows:

§ 60–2.36 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–4—CONSTRUCTION CONTRACTORS—AFFIRMATIVE ACTION REQUIREMENTS

■ 9. The authority citation for part 60–4 continues to read as follows:

Authority: Secs. 201, 202, 205, 211, 301, 302, and 303 of E.O. 11246, as amended, 30 FR 12319; 32 FR 14303, as amended by E.O. 12086; and E.O. 13672, 79 FR 42971.

■ 10. Add § 60–4.10 to read as follows:

§ 60–4.10 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–20—DISCRIMINATION ON THE BASIS OF SEX

■ 11. The authority citation for part 60–20 continues to read as follows:

Authority: Sec. 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 339 as amended by E.O. 11375, 32 FR 14303, 3 CFR 1966–1970 Comp., p. 684; E.O. 12086, 43 FR 46501, 3 CFR 1978 Comp., p. 230; E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258; and E.O. 13672, 79 FR 42971.

■ 12. Add § 60–20.9 to read as follows:

§ 60–20.9 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–30—RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS TO ENFORCE EQUAL OPPORTUNITY UNDER EXECUTIVE ORDER 11246

■ 13. The authority citation for part 60–30 continues to read as follows:

Authority: Executive Order 11246, as amended, 30 FR 12319, 32 FR 14303, as amended by E.O. 12086; 29 U.S.C. 793, as amended, and 38 U.S.C. 4212, as amended.

■ 14. Add § 60–30.38 to read as follows:

§ 60–30.38 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–40—EXAMINATION AND COPYING OF OFCCP DOCUMENTS

■ 15. The authority citation for part 60–40 continues to read as follows:

Authority: E.O. 11246, as amended by E.O. 11375, and as amended by E.O. 12086; 5 U.S.C. 552.

■ 16. Add § 60–40.9 to read as follows:

§ 60–40.9 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part or chapter.

PART 60–50—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION OR NATIONAL ORIGIN

■ 17. The authority citation for part 60–50 continues to read as follows:

Authority: Sec. 201 of E.O. 11246, as amended, 30 FR 12319; 32 FR 14303, as amended by E.O. 12086; and E.O. 13672, 79 FR 42971.

■ 18. Add § 60–50.6 to read as follows:

§ 60–50.6 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–300—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING DISABLED VETERANS, RECENTLY SEPARATED VETERANS, ACTIVE DUTY WARTIME OR CAMPAIGN BADGE VETERANS, AND ARMED FORCES SERVICE MEDAL VETERANS

■ 19. The authority citation for part 60–300 continues to read as follows:

Authority: 29 U.S.C. 793; 38 U.S.C. 4211 and 4212; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

§ 60–300.2 [Amended]

■ 20. Amend § 60–300.2 by removing the definitions for ''Qualitative evidence'' and ''Quantitative evidence.

■ 21. Amend § 60–300.60 by revising paragraph (b) to read as follows:

§ 60–300.60 Compliance evaluations.

* * * * *

(b) Where deficiencies are found to exist, OFCCP will make reasonable efforts to secure compliance through conciliation and persuasion, pursuant to § 60–300.62. The ''reasonable efforts'' standard shall be interpreted consistently with title VII of the Civil Rights Act of 1964 and its requirement that the Equal Employment Opportunity Commission ''endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.''

* * * * *

■ 22. Revise § 60–300.62 to read as follows:

§ 60–300.6 2 Pre-enforcement notice and conciliation procedures.

(a) *Predetermination Notice.* If a compliance evaluation by OFCCP indicates preliminary indicators of discrimination, OFCCP will issue a Predetermination Notice describing the indicators and providing the contractor an opportunity to respond. The Predetermination Notice may also include other potential violations that OFCCP has identified at that stage of the review. After OFCCP issues the Predetermination Notice, the agency may identify additional violations and include them in a subsequent Notice of Violation or Show Cause Notice without amending the Predetermination Notice. OFCCP will provide the contractor an opportunity to conciliate additional violations identified in the Notice of Violation or Show Cause Notice. Any response to a Predetermination Notice

must be received by OFCCP within 15 calendar days of receipt of the Notice, which deadline OFCCP may extend for good cause. If the contractor does not respond or OFCCP determines that the contractor's response did not resolve the indicators of discrimination in the Predetermination Notice, OFCCP will proceed with the review.

(b) *Notice of Violation.* If a compliance evaluation by OFCCP indicates a violation of the equal opportunity clause, OFCCP will issue a Notice of Violation to the contractor requiring corrective action and inviting conciliation through a written agreement. The Notice of Violation will identify the violations and describe the recommended corrective actions. After the Notice of Violation is issued, OFCCP may include additional violations in a subsequent Show Cause Notice without amendment to the Notice of Violation. OFCCP will provide the contractor an opportunity to conciliate additional violations identified in the Show Cause Notice.

(c) *Conciliation agreement.* If a compliance review, complaint investigation, or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and:

(1) If the contractor, subcontractor, or bidder is willing to correct the violations and/or deficiencies; and

(2) If OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies identified, including, where appropriate (but not limited to), remedies such as back pay, salary adjustments, and retroactive seniority.

(d) *Show cause notices.* When the Director has reasonable cause to believe that a contractor has violated the equal opportunity clause the Director may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings, or other appropriate action to ensure compliance should not be instituted. OFCCP may issue a Show Cause Notice without first issuing a Predetermination Notice or Notice of Violation when the contractor has failed to provide access to its premises for an on-site review or refused to provide access to witnesses, records, or other information. The Show Cause Notice will include each violation that OFCCP has identified at the time of issuance. Where OFCCP identifies additional violations after issuing a Show Cause Notice, OFCCP will modify or amend the Show Cause Notice.

(e) *Expedited conciliation option.* OFCCP may agree to waive the procedures set forth in paragraphs (a) and/or (b) of this section to enter directly into a conciliation agreement with a contractor. OFCCP may offer the contractor this expedited conciliation option, but may not require or insist that the contractor avail itself of the expedited conciliation option.

§ 60–300.64 [Removed and Reserved]

■ 23. Remove and reserve § 60–300.64.

■ 24. Add § 60–300.85 to read as follows:

§ 60–300.85 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

PART 60–741—AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS REGARDING INDIVIDUALS WITH DISABILITIES

■ 25. The authority citation for part 60–741 continues to read as follows:

Authority: 29 U.S.C. 705 and 793; E.O. 11758 (3 CFR, 1971–1975 Comp., p. 841).

§ 60–741.2 April 20, 2022 [Amended]

■ 26. Amend § 60–741.2 by removing the definitions for ''Qualitative evidence'' and ''Quantitative evidence.''

■ 27. Amend § 60–741.60 by revising paragraph (b) to read as follows:

§ 60–741.6 0 Compliance evaluations.

* * * * *

(b) Where deficiencies are found to exist, OFCCP will make reasonable efforts to secure compliance through conciliation and persuasion, pursuant to § 60–741.62. The ''reasonable efforts'' standard shall be interpreted consistently with title VII of the Civil Rights Act of 1964 and its requirement that the Equal Employment Opportunity Commission ''endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.''

* * * * *

■ 28. Revise § 60–741.62 to read as follows:

§ 60–741.62 Pre-enforcement notice and conciliation procedures.

(a) Predetermination Notice. If a compliance evaluation by OFCCP indicates preliminary indicators of discrimination, OFCCP will issue a Predetermination Notice describing the indicators and providing the contractor an opportunity to respond. The Predetermination Notice may also include other potential violations that OFCCP has identified at that stage of the review. After OFCCP issues the Predetermination Notice, the agency may identify additional violations and include them in a subsequent Notice of Violation or Show Cause Notice without amending the Predetermination Notice. OFCCP will provide the contractor an opportunity to conciliate additional violations identified in the Notice of Violation or Show Cause Notice. Any response to a Predetermination Notice must be received by OFCCP within 15 calendar days of receipt of the Notice, which deadline OFCCP may extend for good cause. If the contractor does not respond or OFCCP determines that the contractor's response did not resolve the indicators of discrimination in the Predetermination Notice, OFCCP will proceed with the review.

(b) Notice of Violation. If a compliance evaluation by OFCCP indicates a violation of the equal opportunity clause, OFCCP will issue a Notice of Violation to the contractor requiring corrective action and inviting conciliation through a written agreement. The Notice of Violation will identify the violations and describe the recommended corrective actions. After the Notice of Violation is issued, OFCCP may include additional violations in a subsequent Show Cause Notice without amendment to the Notice of Violation. OFCCP will provide the contractor an opportunity to conciliate additional violations identified in the Show Cause Notice.

(c) Conciliation agreement. If a compliance review, complaint investigation, or other review by OFCCP or its representative indicates a material violation of the equal opportunity clause, and:

(1) If the contractor, subcontractor, or bidder is willing to correct the violations and/or deficiencies; and

(2) If OFCCP or its representative determines that settlement (rather than referral for consideration of formal enforcement) is appropriate, a written conciliation agreement shall be required. The agreement shall provide for such remedial action as may be necessary to correct the violations and/or deficiencies identified, including, where appropriate (but not limited to), remedies such as back pay, salary adjustments, and retroactive seniority.

(d) Remedial benchmarks. The remedial action referenced in paragraph (c) of this section may include the establishment of benchmarks for the contractor's outreach, recruitment,

hiring, or other employment activities. The purpose of such benchmarks is to create a quantifiable method by which the contractor's progress in correcting identified violations and/or deficiencies can be measured.

(e) Show cause notices. When the Director has reasonable cause to believe that a contractor has violated the equal opportunity clause the Director may issue a notice requiring the contractor to show cause, within 30 days, why monitoring, enforcement proceedings, or other appropriate action to ensure compliance should not be instituted. OFCCP may issue a Show Cause Notice without first issuing a Predetermination Notice or Notice of Violation when the contractor has failed to provide access to its premises for an on-site review or refused to provide access to witnesses, records, or other information. The Show Cause Notice will include each violation that OFCCP has identified at the time of issuance. Where OFCCP identifies additional violations after issuing a Show Cause Notice, OFCCP will modify or amend the Show Cause Notice.

(f) Expedited conciliation option. OFCCP may agree to waive the procedures set forth in paragraphs (a) and/or (b) of this section to enter directly into a conciliation agreement with a contractor. OFCCP may offer the contractor this expedited conciliation option, but may not require or insist that the contractor avail itself of the expedited conciliation option.

§ 60–741.64 [Removed and Reserved]

■ 29. Remove and reserve § 60–741.64.

■ 30. Add § 60–741.84 to read as follows:

§ 60–741.84 Severability.

Should a court of competent jurisdiction hold any provision(s) of this part to be invalid, such action will not affect any other provision of this part.

[FR Doc. 2022–05696 Filed 3–21–22; 8:45 am]

BILLING CODE 4510–CM–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–112; RM–11919; DA 22–240; FRS 77494]

Television Broadcasting Services Weston, West Virginia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Gray Television Licensee, LLC (Petitioner), the licensee of WDTV (CBS), channel 5, Weston, West Virginia. The Petitioner requests the substitution of channel 33 for channel 5 at Weston in the Table of Allotments.

DATES: Comments must be filed on or before April 21, 2022 and reply comments on or before May 6, 2022.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Joan Stewart, Esq., Wiley Rein LLP, 2050 M Street NW, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: In support, the Petitioner states the proposed channel substitution serves the public interest because it will resolve significant over-the-air reception problems in WDTV's existing service area. The Petitioner further states that the Commission has recognized the deleterious effects manmade noise has on the reception of digital VHF signals, and that the propagation characteristics of these channels allow undesired signals and noise to be receivable at relatively farther distances compared to UHF channels and nearby electrical devices can cause interference. A total of 388,223 persons are predicted to lose service using a contour analysis if the Bureau grants the channel 33 proposal. In evaluating the loss areas, Gray first considered to what extent the loss areas were served by other CBS affiliates, and concluded that all but 4,142 persons would continue to receive CBS service from other stations in the region, as well as continue to be well served by five or more television services.

According to the Petitioner, a terrain-limited analysis using the Commission's *TVStudy* software demonstrates that only 498 persons would no longer receive CBS network programming, or receive service from five or more full power television services. Gray also took into account its licensed sister station WVFX, which is co-located with WDTV and carries CBS network programing on a multicast channel. In addition, Gray relies on CBS programming carried on commonly owned and operated station WIYE–LD, Parkersburg, West Virginia. We note that while low power television stations are secondary and can be displaced by full power television stations, we believe it is unlikely that WIYE–LD will be displaced, and determined that there are multiple displacement channels available if it was displaced.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 22–112; RM–11919; DA 22–240, adopted March 9, 2022, and released March 9, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Post-Transition Table of DTV Allotments under West Virginia by revising the entry for Weston to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
WEST VIRGINIA	
* * * * *	
Weston	33
* * * * *	

[FR Doc. 2022–05932 Filed 3–21–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–116; RM–11922; DA–22–250; FRS 77512]

Television Broadcasting Services Missoula, Montana

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Scripps Broadcasting Holdings LLC (Petitioner), the licensee of KPAX–TV, channel 7, Missoula, Montana. The Petitioner requests the substitution of channel 25 for channel 7 at Missoula in the Table of Allotments.

DATES: Comments must be filed on or before April 21, 2022 and reply comments on or before May 6, 2022.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Christina A. Burrow, Esq., Cooley LLP, 1299 Pennsylvania Avenue NW, Washington, DC 20004–2400.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: In support, the Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances. According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on channel 7. The Engineering Statement provided with the Petition confirms that the proposed channel 25 contour would continue to reach virtually all of the population within the Station's current service area and fully cover the city of Missoula. An analysis using the Commission's *TVStudy* software tool indicates that KPAX–TV's move from channel 7 to channel 25 is predicted to create a small area where 444 persons are predicted to lose service. The loss area, however, is partially overlapped by the noise limited contour of Scripps' owned television station KXLF–TV, Butte, Montana, which is a CBS network affiliate, and reduces the number who are predicted to lose CBS network service to 121 persons.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 22–116; RM–11922; DA 22–250, adopted March 10, 2022, and released March 10, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a). *See* §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of Allotments under Montana by revising the entry for Missoula to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
MONTANA	
* * * * *	
Missoula	*11, 20, 23, 25
* * * * *	

[FR Doc. 2022–05865 Filed 3–21–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–117; RM–11923; DA–22–251; FRS 77504]

Television Broadcasting Services Great Falls, Montana

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Scripps Broadcasting Holdings LLC (Petitioner), the licensee of KRTV, channel 7, Great Falls, Montana. The Petitioner requests the substitution of channel 22 for channel 7 at Great Falls in the Table of Allotments.

DATES: Comments must be filed on or before April 21, 2022 and reply comments on or before May 6, 2022.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45

L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Christina A. Burrow, Esq., Cooley LLP, 1299 Pennsylvania Avenue NW, Washington, DC 20004–2400.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: In support, the Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances. According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on channel 7. The Engineering Statement provided with the Petition confirms that the proposed channel 22 contour would continue to reach virtually all of the population within the Station's current service area and fully cover the city of Great Falls. An analysis using the Commission's *TVStudy* software tool indicates that KRTV's move from channel 7 to channel 22 is predicted to create a small area where 554 persons are predicted to lose service. The loss area, however, is partially overlapped by the noise limited contour of other CBS affiliated stations and reduces the number who are predicted to lose CBS network service to 255 persons. Taking these other stations into account, less than 500 persons would lose CBS service if KRTV moves to channel 22, which Petitioner argues is *de minimis.* We note that in its calculation of viewer loss, Scripps relies on the CBS network service provided by full power television station KXLF–TV, Butte, Montana, as well as three Scripps-owned translator stations that retransmit CBS network programming. While the translator stations are secondary and can be displaced, we believe given the rural nature of Montana and neighboring states it is unlikely that these stations would be displaced, and if they were, Scripps would easily be able to find displacement channels for them. In addition, the loss area is also partially overlapped by the noise limited contours of television stations KFBB–TV (ABC/FOX), Great Falls, Montana; KTVM (NBC), Butte, Montana; and KTVH (NBC) and KUHM–TV (PBS), Helena, Montana.

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 22–117; RM–11923; DA 22–251, adopted March 10, 2022, and released March 10, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of Allotments under Montana by revising the entry for Great Falls to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
MONTANA	
* * * * *	
Great Falls	8, 17, *21, 22, 26
* * * * *	

[FR Doc. 2022–05931 Filed 3–21–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–115; RM–11921; DA 22–249; FRS 77595]

Television Broadcasting Services Butte, Montana

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Scripps Broadcasting Holdings LLC (Petitioner), the licensee of KXLF–TV, channel 5, Butte, Montana. The Petitioner requests the substitution of channel 15 for channel 5 at Butte in the Table of Allotments.

DATES: Comments must be filed on or before April 21, 2022 and reply comments on or before May 6, 2022.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Christina A. Burrow, Esq., Cooley LLP, 1299 Pennsylvania Avenue NW, Washington, DC 20004–2400.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: In support, the Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances. According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on channel 5. The Engineering Statement confirms that the proposed channel 15 contour would continue to reach virtually all of the population

within the Station's current service area and fully cover the city of Butte. An analysis using the Commission's *TVStudy* software tool indicates that KXLF–TV's move from channel 5 to channel 15 is predicted to create an area where approximately 3,000 persons are predicted to lose service. The loss area, however, is partially overlapped by the noise limited contours of Scripps' owned CBS network affiliates KPAX–TV, Missoula, Montana; KBZK, Bozeman, Montana; and KRTV, Great Falls, Montana. Taking these other stations into account, less than 500 persons would lose CBS service if KXLF–TV moves to channel 15, which Petitioner argues is *de minimis.*

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 22–115; RM–11921; DA 22–249, adopted March 10, 2022, and released March 10, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

See §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of Allotments under Montana by revising the entry for Butte to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
MONTANA	
* * * * *	
Butte	15, 19, 20, 24.
* * * * *	

[FR Doc. 2022–05934 Filed 3–21–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–114; RM–11920; DA–22–248; FRS 77585]

Television Broadcasting Services Bozeman, Montana

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has before it a petition for rulemaking filed by Scripps Broadcasting Holdings LLC (Petitioner), the licensee of KBZK, channel 13, Bozeman, Montana. The Petitioner requests the substitution of channel 27 for channel 13 at Bozeman in the Table of Allotments.

DATES: Comments must be filed on or before April 21, 2022 and reply comments on or before May 6, 2022.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 45 L Street NE, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Christina A. Burrow, Esq., Cooley LLP, 1299 Pennsylvania Avenue NW, Washington, DC 20004–2400.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: In support, the Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances. According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on channel 13. The Engineering Statement provided with the Petition confirms that the proposed channel 27 contour would continue to reach virtually all of the population within the Station's current service area and fully cover the city of Bozeman. An analysis using the Commission's *TVStudy* software tool indicates that KBZK's move from channel 13 to channel 27 is predicted to create a small area where 675 persons are predicted to lose service. The loss area, however, is partially overlapped by the noise limited contour of Scripps' owned television station KXLF–TV, Butte, Montana, which is also a CBS network affiliate, and reduces the number who are predicted to lose CBS network service to less than 500 persons, which Petitioner argues is *de minimis.*

This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 22–114; RM–11920; DA 22–248, adopted March 10, 2022, and released March 10, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C.

3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a). *See* §§ 1.415 and 1.420 of the Commission's rules for information regarding the proper filing procedures for comments, 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rule

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of Allotments under Montana by revising the entry for Bozeman to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
MONTANA	
* * * * *	
Bozeman	*8, 27
* * * * *	

[FR Doc. 2022–05933 Filed 3–21–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 22–118; RM–11924; DA–22–252; FR ID 77497]

Television Broadcasting Services Helena, Montana

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission (Commission) has before it a petition for rulemaking filed by Scripps Broadcasting Holdings LLC (Petitioner), the licensee of KTVH–DT, channel 12, Helena, Montana. The Petitioner requests the substitution of channel 31 for channel 12 at Helena in the Table of Allotments.

DATES: Comments must be filed on or before April 21, 2022 and reply comments on or before May 6, 2022.

ADDRESSES: You may submit comments, identified by MB Docket No. 22–118, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: *https://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

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

In addition to filing comments with the FCC, interested parties should serve counsel for the Petitioner as follows: Christina A. Burrow, Esq., Cooley LLP, 1299 Pennsylvania Avenue NW, Washington, DC 20004–2400.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, Media Bureau, at (202) 418–1647 or *Joyce.Bernstein@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rulemaking,* MB Docket No. 22–118; RM–11924; DA 22–252, adopted on March 10, 2022, and released on March 10, 2022. The full text of this document is available for download at *https://www.fcc.gov/edocs.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

In support, the Petitioner states that the Commission has recognized that VHF channels have certain characteristics that pose challenges for their use in providing digital television service, including propagation characteristics that allow undesired signals and noise to be receivable at relatively far distances. According to the Petitioner, it has received many complaints from viewers unable to receive a reliable signal on channel 12. The proposed channel 31 contour would continue to reach virtually all of the population within the Station's current service area and fully cover the city of Helena. An analysis using the Commission's *TVStudy* software tool indicates that KTVH–DT's move from channel 12 to channel 31 is predicted to create an area where 2,168 persons are predicted to lose service. The loss area, however, is partially overlapped by the noise limited contours of other NBC affiliated stations and reduces the number of people who are predicted to lose NBC network service to 226 persons. Taking these other stations into account, less than 500 persons would lose NBC service if KTVH moves to channel 31, which Petitioner argues is *de minimis.* We note that in its calculation of viewer loss, Scripps relies on the NBC network service provided by Class A television station KDBZ–CD, Bozeman, Montana, as well as low power television (LPTV) station KTGF–LD, Great Falls, Montana, which is the NBC network affiliate in Great Falls.

While the LPTV station is secondary and can be displaced, we believe given the rural nature of Montana and neighboring states it is unlikely the LPTV station would be displaced, and if it was, Scripps would easily be able to find a displacement channel for it.

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, do not apply to this proceeding.

Members of the public should note that all *ex parte* contacts are prohibited from the time a notice of proposed rulemaking is issued to the time the matter is no longer subject to Commission consideration or court review, *see* 47 CFR 1.1208. There are, however, exceptions to this prohibition, which can be found in § 1.1204(a) of the Commission's rules, 47 CFR 1.1204(a).

Pursuant to §§ 1.415 and 1.420 of the Commission's rules, 47 CFR 1.415, 1.420, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Thomas Horan,

Chief of Staff, Media Bureau.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

■ 2. In § 73.622(j), amend the Table of Allotments under Montana by revising the entry for Helena to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(j) * * *

Community	Channel No.
* * * * *	
MONTANA	
* * * * *	
Helena	29, 31
* * * * *	

[FR Doc. 2022–05863 Filed 3–21–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket DOT–OST–2021–0093]

RIN 2105–AE94

Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Oral Fluid Specimen Testing for Drugs; Extension of Comment Period

AGENCY: Office of the Secretary, U.S. Department of Transportation (DOT).

ACTION: Proposed rule; extension of comment period.

SUMMARY: The U.S. Department of Transportation is extending the comment period for its oral fluid notice of proposed rulemaking. The original comment period would close on March 30, 2022. The extension is granted in response to requests received from stakeholders, who have stated the March 30 closing date does not provide sufficient time for them to prepare and submit of comments to the docket. The Department agrees to extend the comment period by 30 days. Therefore, the closing date for submission of comments is extended to April 29, 2022, which will provide those entities submitting requests for an extension and others interested in commenting on the proposed rulemaking additional time to submit comments to the docket.

DATES: The comment period for the proposed rule published February 28, 2022, at 87 FR 11156, is extended. Comments must be received on or before April 29, 2022.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/DOT-OST-2021-0093/document* and follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor Room W12–140, Washington, DC 20590–0001.
- *Hand delivery:* West Building Ground Floor, Room W–12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

Instructions: To ensure proper docketing of your comment, please include the agency name and docket number DOT–OST–2021–0093 or the Regulatory Identification Number (RIN), 2105–AE94 for the rulemaking 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: Patrice M. Kelly, JD, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone number 202–366–3784; *ODAPCwebmail@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2022, at 87 FR 11156, DOT published in the **Federal Register** a notice of proposed rulemaking proposing to amend its transportation industry drug testing program procedures regulations, 49 CFR part 40, to include oral fluid testing. The proposal includes other provisions to update the Department's regulation, and to harmonize, as needed, with the new Mandatory Guidelines for Federal Workplace Drug Testing Programs using Oral Fluid established by the U.S. Department of Health and Human Services. In addition to adding oral fluid as a drug testing method and harmonizing with pertinent OFMG sections, we also propose to clarify certain part 40 provisions that cover urine drug testing procedures; to remove provisions that no longer are necessary; to add clarifying language to other provisions such as updated definitions and web links, as appropriate; and to update provisions to reflect issues that have arisen in recent practice.

All members of the public, including DOT-regulated employers and employees, urine collectors, HHS–NLCP certified laboratories, Medical Review Officers, Substance Abuse Professionals, and Consortium/Third Party Administrations, Transportation trade organizations, and labor organizations are invited to submit comments.

The original comment period for the proposal would have closed March 30,

2022. However, DOT stakeholders have expressed concern that this closing date does not provide sufficient time to coordinate with their respective members to develop comments to the NPRM and/or to submit comments to the docket. To allow time for interested parties to submit comments, the closing date is changed from March 30, 2022 to April 29, 2022.

Signed in Washington, DC, on March 16, 2022.

Patrice M. Kelly,

Office of Drug and Alcohol Policy and Compliance.

[FR Doc. 2022–05972 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–9X–P

Notices

Federal Register
Vol. 87, No. 55
Tuesday, March 22, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 17, 2022.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by April 21, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: WIC Nutrition Assessment and Tailoring Study In-Person Site Visit Data Collection.

Control Number: 0584–0663.

Summary of Collection: This is a revision to the currently approved information collection for the WIC Nutrition Assessment and Tailoring Study (WIC NATS). For this revision, the study has been renamed ''WIC Nutrition Assessment and Tailoring Study In-Person Site Visit Data Collection.'' It covers in-person site visits and accounts for the burden associated with collecting in-person data. This revision will collect data concerning the nutrition assessment process used by clinic sites in the Supplemental Nutrition Program for Women, Infants, and Children (WIC) to identify nutrition risks and apply that information to the tailoring of participant benefits. This revision will collect data via in-person site visits, where the data collection activities for the currently approved remote site visits will be replicated for use with 30 WIC clinic sites for in-person site visits once these sites can safely resume in-person operations. This data collection will provide the Food and Nutrition Service (FNS) with a comprehensive account of the WIC nutrition risk assessment and benefit tailoring processes provided during in-person clinic services. This study is an FNS priority resulting from policy changes from the publication in 2006 of the ''Value Enhanced Nutrition Assessment (VENA) in WIC: The First Step in Quality Nutrition Services'' and the publication in October 2009 of the interim final rule, ''Revisions in the WIC Food Packages,'' both of which affected the nutrition assessment or nutrition services process.

Section 28 of the Richard B. Russell National School Lunch Act as amended by the Healthy, Hunger-Free Kids Act of 2010 (Public Law 111–296, Section 305) provides the general statutory authority for this study.

Need and Use of the Information: This voluntary study will collect data from state and local government respondents in the WIC clinics; businesses and other for-profit and non-profit institutions that are WIC clinics, and WIC participants. FNS will use the information gathered from this study to inform program guidance and technical assistance related to the nutrition assessment process to support the implementation of best practices that meet the goals ensuring satisfaction with the program experience, promoting self-sufficiency, and improving the nutrition and health of women and children who participate in WIC. The study will identify specific practices or features of the nutrition services process associated with participant and staff satisfaction, reduced staff burden, and improved efficiency and will also provide FNS with a comprehensive, detailed description of the WIC nutrition risk assessment process, including how WIC staff apply the process to tailoring participant benefits during in-person clinic visits. FNS will compare data collected from in-person site visits to data collected from remote site visits to explore similarities and differences between remote and in-person nutrition services. This will allow FNS to better understand if there were differences in service quality or participant and staff satisfaction with WIC during remote appointments under the COVID–19 waiver flexibilities compared to traditional in-person clinic appointments. The data will be used to describe the nutrition assessment and benefit tailoring processes when conducted remotely and will be compared against the same processes used during in-person settings. It will also be used to investigate participant and staff perceptions of WIC nutrition services when provided remotely and will be compared against the perceptions observed during in-person WIC services.

Description of Respondents: State, Local, or Tribal Government; businesses or other for-profit, non-profit institutions, and individuals or households.

Number of Respondents: 1,050.

Frequency of Responses: Reporting: One-time only.

Total Burden Hours: 510.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–06004 Filed 3–21–22; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0031]

Privacy Act of 1974; New System of Records

AGENCY: U.S. Department of Agriculture, Food Safety and Inspection Service.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Department of Agriculture (USDA) proposes a new Food Safety and Inspection Service (FSIS) system of records entitled: USDA/FSIS–0005, AssuranceNet (ANet). ANet is a Web-based system that collects information to support FSIS' mission through detecting vulnerabilities in food safety systems, processes, and functions so that the potential for harm can be promptly identified, reduced, and eliminated. The information stored in ANet is gathered from various electronic and paper-based sources, and is used to track, measure, and monitor activities and performance. The System also alerts FSIS' management officials to the performance of critical public health and food defense functions; assists in discerning trends; identifies and focuses on areas of high-risk; and helps to determine strategies to combat threats to food safety and food defense. Within ANet, FSIS maintains contact and other identifying information about Federal employees, State employees, contractors of USDA, government officials, and representatives who work at or are associated with the work at meat and poultry establishments and egg products plants.

DATES: *Applicable Date:* April 21, 2022. Written comments must be received on or before the above date. The proposed system will be adopted on the above date, without further notice, unless it is modified in response to comments, in which case the notice will be republished.

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

- *Federal eRulemaking Portal:* This website provides the ability to type short comments directly into the comment field on this web page or 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–2011–0031. 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) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Scott Safian, AssuranceNet System Owner/Manager, Enforcement and Litigation Division, Office of Investigation, Enforcement and Audit, Food Safety and Inspection Service, 1400 Independence Ave. SW, Washington, DC, 20250; Telephone 202–418–8872. FOR PRIVACY Questions: Privacy Office, Office of the Chief Information Officer, USDA, 1400 Independence Ave. SW, Washington, DC, 20250; Telephone 202–619–8503.

SUPPLEMENTARY INFORMATION: The Privacy Act requires agencies to publish in the **Federal Register** (FR) a notice of any new or revised system of records. A ''system of records'' is a group of any records under the control of an agency from which information is retrievable by the name of the individual or by some unique identifier assigned to the individual. USDA is proposing to establish a new System of Records Notice, entitled USDA/FSIS–0005, AssuranceNet (ANet).

The primary purpose of ANet is to enable oversight, monitoring, and management of critical public health activities related to meat, poultry, and egg products manufactured and handled by businesses under the regulatory oversight of FSIS. ANet tracks, measures, and monitors critical public health information and regulatory functions executed by FSIS employees. ANet's data enables FSIS to ensure that critical public health functions and activities are performed effectively, according to designated schedules and times, and that the methods used are standardized and traceable. The System compares actual performance with predetermined performance measures of the individual regulated businesses and Agency employees, and in aggregate groups of establishments and in-commerce facilities, program circuits, regions and districts, and by program activities and projects.

FSIS program areas currently use ANet to monitor public health regulatory activities. ANet tracks regulatory, compliance, and performance information related to inspection, surveillance, enforcement, and litigation activities and compares this data to performance targets. The data comparisons allow for management oversight and control of regulatory activities and agency performance across several diverse program areas. ANet strengthens FSIS' ability to analyze the effectiveness of its regulatory policies and procedures and assures that its methods, evaluations, and enforcement activities are standardized and traceable nationwide.

ANet comprises multiple systems and system functions. The System's structure consists of the components that provide application security, application navigation, business logic processing, data storage and retrieval, data presentation, report creation and distribution, performance management, document management, and workflow management.

The USDA is issuing a Notice of Proposed Rulemaking to exempt this System of Records from certain provisions of the Privacy Act. A Privacy Impact Assessment is posted on *https://www.usda.gov/sites/default/files/documents/fsis-assurance-net-pia.pdf*.

In accordance with the Privacy Act, as implemented by the Office of Management and Budget (OMB) Circular A–108, USDA has provided a report of this proposed new system of records to the Chair of the Committee on Homeland Security and Governmental Affairs, United States Senate; the Chair of the Committee on Oversight and Government Reform, House of Representatives; and the Administrator of the Office of Information and Regulatory Affairs, OMB.

Done, in Washington, DC

Paul Kiecker,

Administrator.

SYSTEM NAME AND NUMBER:

AssuranceNet (ANet), USDA/FSIS–0005.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at the U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, and at USDA's National

Information Technology Center facility at 8930 Ward Parkway, Kansas City, Missouri, 64114.

SYSTEM MANAGER:

Director, Enforcement and Litigation Division, Office of Investigation, Enforcement and Audit, Food Safety and Inspection Service, 355 E Street SW, Room 9–205, Patriots Plaza 3, Washington, DC 20024.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*); Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*); Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*); Humane Methods of Livestock Slaughter Act of 1978 (7 U.S.C. 1901–1906); Authority to Operate (ATO), dated 03/23/2017.

PURPOSE OF THE SYSTEM:

The primary role of this web-based electronic database is to ensure data relating to work performed by employees, individually and in aggregate, is collected and maintained, as is information regarding management controls, performance tracking, and performance measurements associated with inspection, enforcement, laboratory sampling, pathogen reduction, recalls, import surveillance and re-inspection, investigations, policy development, management projects, and litigation activities.

ANet supports the various regulatory and enforcement functions critical to FSIS' food safety mission to ensure that meat, poultry, and egg products are safe, wholesome, unadulterated and properly labeled. Using ANet, FSIS monitors regulatory inspection, verification, compliance, enforcement, sampling, and other data and information to discern trends, causes, outcomes, and to measure the effectiveness of Agency efforts in protecting public health. Through its ability to schedule and analyze the use of FSIS resources, ANet also improves the Agency's ability to respond to naturally occurring events, accidents, and intentional acts that can put food and the food supply chain at risk.

ANet provides program offices with a central repository for reporting, managing, and analyzing in-plant and in-commerce data. It is designed to (1) assess the performance of non-supervisory in-plant inspection personnel, (2) assess the performance of in-plant supervisory personnel, (3) oversee surveillance and enforcement activities, (4) document all phases of a compliance action, (5) consolidate the existing information data reporting applications and aggregate performance data, and (6) document and report compliance and enforcement activities.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM

All individuals granted access to ANet are covered: (1) Employees and contractors of USDA (''USDA Personnel''); and (2) government officials (domestic and foreign) (''Other State and Federal Government Officials''). All individuals, even if they are not users of ANet, who are mentioned or referenced in any documents entered into ANet by a user are also covered. This group may include, but is not limited to: Establishment workers, vendors, agents, interviewees, as well as private citizens who become involved with FSIS investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

ANet contains the names and contact information of Federal employees and State employees who work at or are associated with the work at a plant. Contact information, including first and last names, telephone numbers, and work, home, or email addresses, will be retained for operators or officials of establishments or in-commerce facilities, as well as for private citizens involved with FSIS investigations.

RECORDS SOURCE CATEGORIES:

Information is obtained directly from the individual and firm (or designee) that is the subject of the records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, all or a portion of the records or information contained in this system may be disclosed outside of USDA as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the U.S. Department of Justice (DOJ or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary for the litigation and one of the following is a party to the litigation or has an interest in such litigation:

a. USDA or any component thereof;

b. Any employee of USDA in his/her official capacity;

c. Any employee of USDA in his/her individual capacity where DOJ or USDA has agreed to represent the employee; or

d. The United States or any agency thereof and if the USDA determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which USDA collected the records.

2. To the National Archives and Records Administration (NARA) or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

3. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

4. To an Agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function. This would include, but not be limited to, the Comptroller General or any of his/her authorized representatives in the course of the performance of the duties of the Government Accountability Office, or USDA's Office of the Inspector General or any authorized representatives of that office.

5. To appropriate agencies, entities, and persons when:

a. USDA suspects or has confirmed that there has been a breach of the system of records.

b. USDA has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals, USDA (including its information systems, programs, and operations), the Federal Government, or national security; and

c. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USDA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

6. To another Federal agency or Federal entity when USDA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (a) responding to a suspected or confirmed breach or (b) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal government or national security, resulting from a suspected or confirmed breach.

7. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for USDA, when necessary to accomplish an Agency function related to this system of records. Individuals who provided information under this routine

use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to USDA officers and employees.

8. When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program, statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, State, local, tribal, foreign, or other public authority responsible for investigating, enforcing or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if that information disclosed is relevant to any enforcement, regulatory, investigative, or prospective responsibility of the receiving entity.

9. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

10. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or appropriate authority responsive for protecting public health, preventing or monitoring disease or illness outbreaks, or ensuring the safety of the food supply. This includes the Department of Health and Human Services and its agencies, including the Centers for Disease Control and Prevention and the Food and Drug Administration, other Federal agencies, and State, tribal, and local health departments.

11. To a court or adjudicative body in proceeding when: (a) USDA or any component thereof, or (b) any employee of USDA in his or her official capacity; or (c) any employee of USDA in his or her individual capacity where USDA has agreed to represent the employee, or the United States Government, is a party to the litigation or has an interest in such litigation, and USDA determines that the records are both relevant and necessary to the litigation; and that use of such records is therefore deemed by USDA to be for a purpose that is compatible with the purpose for which USDA collected the records.

12. To an establishment regulated by FSIS, but only in connection with the USDA/FSIS investigation of establishments and verification activities.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

The system includes a database, electronic documents and paper records. The storage for the database records is a dedicated virtual server located in the USDA NITC facility in Kansas City, MO. Duplicate records are maintained at the USDA NITC facility in St. Louis, MO. The primary storage for the electronic documents is a records management system managed and hosted by USDA at their Enterprise Data Centers in Kansas City, MO and Saint Louis, MO. Paper records are maintained in the USDA offices where they were created. Records backup storage is maintained by NITC Personnel in a virtual tape library at the USDA NITC facility in Kansas City, MO. Copies of the backup records are maintained at the USDA NITC facility in St. Louis, MO.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are primarily retrieved using a unique identifier such as case ID or investigation file number. Records may also be retrieved by case type, date range, firm ID, firm name, region, or key word search. Names can also be used to retrieve individual records; however, using the case ID or other database fields reduces the need for retrieval by information that could identify an individual.

POLICIES AND PROCEDURES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be destroyed or retired in accordance with the USDA's published records disposition schedules, as approved by the NARA. A master file backup is created at the end of the calendar year and maintained in St. Louis Mo. The St. Louis offsite storage site is located approximately 250 miles from the primary data facility and is not susceptible to the same hazards.

ADMINISTRATION, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded by restricting accessibility, in accordance with USDA security and access policies. The safeguarding includes: Firewall(s), network protection, and an encrypted password. Each user is assigned a level of role-based access, which is strictly controlled and granted through USDA-approved, secure application (Level 2 eAuthentication) after the user has successfully completed the Government National Agency Check with Inquiries (NACI) investigation. Controls are in place to preclude anonymous usage and browsing.

RECORDS ACCESS PROCEDURES:

Because individual access to these records would impair investigations and alert subjects that their activities are being scrutinized, the Agency proposes to exempt portions of this system from the notification and access procedures of the Privacy Act, pursuant to section (k)(2) and USDA's implementing regulations at 7 CFR part 1. However, individuals seeking notification of and access to their records should submit a written request, with reasonable specificity, to the FSIS Freedom of Information Act (FOIA) Office at: 1400 Independence Ave. SW, Room 1168–South, Mail Stop No. 3713, Washington, DC 20250. Requests for such access will be reviewed on a case-by-case basis.

CONTESTING RECORDS PROCEDURES:

In accordance with the 7 CFR part 1, individuals seeking to contest or amend information maintained in the system should direct their request to the above listed System Manager and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records should contain: Name, address, ZIP code, name of the system of records, year of records in question, and any other pertinent information to help identify the file.

NOTIFICATION PROCEDURES:

See ''Records Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The USDA/FSIS–0005, AssuranceNet system of records is exempt from subsections (c)(3), (c)(4), (d)(1)–(4), (e)(1)–(3), (e)(4)(G)–(I), (f), and (g) of the Privacy Act, 5 U.S.C. 552a, to the extent it contains investigatory material compiled for law enforcement purposes in accordance with 5 U.S.C. 552a(k) (2). In addition, to the extent a record contains information from other exempt systems of records, USDA will rely on the exemptions claimed for those systems.

HISTORY:

None.

[FR Doc. 2022–05746 Filed 3–21–22; 8:45 am]

BILLING CODE 3410–DM–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a virtual (online) meeting Friday, April 1, 2022 at 1:00 p.m. Central Time. The purpose of the meeting is for the Committee to continue to discuss testimony regarding civil rights concerns related to IDEA compliance and implementation in Arkansas schools.

DATES: The meeting will be held on Friday, April 1, 2022 at 1 p.m. Central time.

Web Access (audio/visual): Register at: *https://tinyurl.com/yc48wbh4.*

Phone Access (audio only): 800–360–9505, Access Code 2764 637 4653.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, Designated Federal Officer, at *mwojnaroski@usccr.gov* or (202) 618–4158.

SUPPLEMENTARY INFORMATION: Members of the public may join online or listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Melissa Wojnaroski at *mwojnaroski@usccr.gov.*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome & Roll Call
III. Committee Discussion: IDEA Compliance and Implementation in Arkansas Schools
IV. Next Steps
V. Public Comment
VI. Adjournment

Dated: March 16, 2022,

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–05987 Filed 3–21–22; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) will hold a meeting via web teleconference on Thursday, April 14, 2022, from 3:30 p.m. to 4:30 p.m. Pacific, for the purpose of discussing their post report activities.

DATES: The meeting will be held on Thursday, April 14, 2022, from 3:30 p.m.–4:30 p.m. PT.

ADDRESSES: *Public Webex Registertion Link: https://tinyurl.com/3fen6jja.*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public WebEx registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *https://www.usccr.gov,* or you may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Discussion
IV. Public Comment
V. Adjournment

Dated: March 16, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–05989 Filed 3–21–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the South Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of public 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 the South Dakota State Advisory Committee to the Commission will convene a meeting on Monday, April 11, 2022, at 3:30 p.m. (CT). The purpose of the meeting is to discuss panelist recommendations to hear from during their study of voting rights.

DATES: Monday, April 11, 2022, at 3:30 p.m. (CT).

ADDRESSES:

Public Web Conference Registration Link (video and audio): https://bit.ly/3AnTnxv; password, if needed: USCCR.

If Joining by Phone Only, Dial: 1–800–360–9505; access code: 2762 840 3606#.

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg at *mtrachtenberg@usccr.gov* or by phone at (202) 809–9618.

SUPPLEMENTARY INFORMATION: The meeting is available to the public through the web link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with conference details found through registering at the web link above. To request other accommodations, please email *mtrachtenberg@usccr.gov* at least 7 days prior to the meeting for which accommodations are requested.

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 meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@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 *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

Monday, April 11, 2022, From 3:30 p.m. (CT)

I. Welcome and Roll Call
II. Announcements and Updates
III. Approval of Minutes
IV. Discussion: Panelist Recommendations
V. Public Comment
VI. Next Steps
VII. Adjournment

Dated: March 16, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–05988 Filed 3–21–22; 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; 2020 Post-Census Group Quarters Review

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 19, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: U.S. Census Bureau.

Title: 2020 Post-Census Group Quarters Review.

OMB Control Number: 0607–XXXX.

Form Number(s): None.

Type of Request: Regular submission, New Information Collection.

Number of Respondents: 1,500.

Average Hours per Response: 5.2.

Burden Hours: 7,800.

Needs and Uses:

Introduction

The 2020 Post-Census Group Quarters Review (PCGQR) provides a mechanism for governmental units (GUs) to request a review of their official 2020 Census results, specifically those for the population in group quarters (GQs). Please note, the population counts for a census block or other geographic units below the state level may seem inaccurate due to disclosure avoidance measures the Census Bureau applies to the published data. Population counts at the block level have the most ''noise'' of any geographic level due to disclosure avoidance to protect against data disclosure. Additional information on disclosure avoidance is available at the following URL: *https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/process/disclosure-avoidance.html.*

The Census Bureau will accept 2020 PCGQR cases from tribal, state, and local governmental units from June 2022 through June 30, 2023. The eligible governmental units and geographies are the same as for the 2020 Census Count Question Resolution (CQR) Program <*https://www.census.gov/programs-surveys/decennial-census/decade/2020/planning-management/evaluate/cqr.html*>. The Census Bureau will conduct the 2020 PCGQR case research by examining the 2020 Census records for the 2020 tabulation block(s) identified in the 2020 PCGQR case. All population counts are current as of April 1, 2020. Revised GQ population counts will be provided to the Census Bureau's Population Estimates Program where they will be included in the baseline data used to produce upcoming annual population estimates. Corresponding changes to demographic characteristics will be incorporated into subsequent rounds of estimates. The estimates developed from the updated population base will also be used by the American Community Survey (ACS) and the Puerto Rico Community Survey (PRCS). After the new annual estimates are available to the public on the regularly scheduled release dates, certified group quarters population counts can be provided by request to the highest elected official of the governmental unit. No new 2020 Census information products will be created by the 2020 PCGQR. This includes no revisions to 2020 Census information products such as the counts delivered to the President for apportionment or the 2020 Census Public Law 94–171 Redistricting Data Files and Geographic Products.

Once a resolution is determined for each case, the Census Bureau will respond to the governmental unit in writing with an official determination letter, even if the case is determined to be out of scope or if no corrections are warranted. The Census Bureau will attempt to respond to each inquiry within 90 days of receipt and complete all case research and resolution by no later than September 30, 2023.

Eligible Participants and Geographies

The Census Bureau will only accept cases from the eligible participants listed below or their designee. Details on how to designate someone else to submit on a government's behalf will be explained further in the guides that will be posted on the 2020 PCGQR website. The Census Bureau will not accept cases from any other type of statistical or legally defined areas, or any other

individual, group, or organization not included in this list.

1. Tribal areas, including federally recognized American Indian tribes with reservation and/or off-reservation trust lands, Alaska Native Regional Corporations, and Alaska Native villages.

2. States and equivalent entities (*e.g.,* District of Columbia and Puerto Rico).

3. Counties and equivalent entities (*e.g.,* parishes in Louisiana, boroughs in Alaska, municipios in Puerto Rico).

4. Minor civil divisions (*e.g.,* townships).

5. Consolidated cities.

6. Incorporated places (*e.g.,* villages, towns, cities).

2020 Post-Census Group Quarters Review Case Type

Group Quarters Population cases—request a Census Bureau review of group quarters population counts by block to correct error(s) affecting their population during the 2020 Census for a valid group quarter (*i.e.,* group quarters that existed and available for occupancy on April 1, 2020). Submissions should be consistent with the 2020 Census Residence Criteria and Residence Situations and additional guidance provided by the Census Bureau due to the COVID–19 pandemic.

2020 Post-Census Group Quarters Review Case Submission

To determine whether submitting a Post-Census Group Quarters Review case is necessary, governmental units need to review their group quarters population counts in the published Census Bureau data. The Census Bureau recommends a review of the Public Law 94–171 data tables to review their counts population of group quarters by type of group quarters (Table P5). These data are available on *https://data.census.gov/cedsci.*

To submit any Post-Census Group Quarters Review case, the governmental units must use the Secure Web Incoming Module (SWIM), available at *respond.census.gov/swim.*

Post-Census Group Quarters Review Case Disposition

If the population count is corrected, the count will be sent to the Census Bureau's Population Estimates Program to be included in the baseline data used to produce upcoming annual population estimates. Updated data will be included in the next possible population base as the production schedule allows. Corresponding changes to demographic characteristics will be incorporated into subsequent rounds of estimates. The estimates developed from the updated population base will also be used by the American Community Survey and the Puerto Rico Community Survey. Data received as part of a 2020 PCGQR cases is not shared with anyone outside of the staff involved with 2020 PCGQR processing.

The Census Bureau will not modify the 2020 Census apportionment counts and will not incorporate 2020 PCGQR corrections into the 2020 Census data summary files and tables or retabulate any of the other 2020 Census data products.

Affected Public: Tribal, state, or local governmental units in the United States and Puerto Rico.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. Section 6.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–06038 Filed 3–21–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Procedures for Submitting Rebuttals and Surrebuttals Requests for Exclusions From and Objections to the Section 232 National Security Adjustments of Imports of Steel and Aluminum

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on November 23, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Industry and Security.

Title: Procedures for Submitting Rebuttals and Surrebuttals Requests for Exclusions from and Objections to the Section 232 National Security Adjustments of Imports of Steel and Aluminum.

OMB Control Number: 0694–0141.

Form Number(s): None.

Type of Request: Regular submission, extension of a current information collection.

Number of Respondents: 19,462.

Average Hours per Response: 1 hour.

Burden Hours: 19,462.

Needs and Uses: On March 8, 2018, President Trump issued Proclamations 9704 and 9705, imposing duties on imports of aluminum and steel. The Proclamations also authorized the Secretary of Commerce to grant exclusions from the duties ''if the Secretary determines the steel or aluminum article for which the exclusion is requested is not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or should be excluded based upon specific national security considerations.'' On March 19, 2018, the Secretary of Commerce issued an interim final rule, setting forth the requirements U.S. businesses must satisfy when submitting exclusion requests. On behalf of the Secretary, the U.S. Department of Commerce, Bureau of Industry and Security (DOC/BIS) published the March 19 rule, *Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel into the United States and Adjusting Imports of Aluminum into the United States; and the filing of Objections to Submitted Exclusion Requests for Steel and Aluminum* (83 FR 12106). The March 19 rule also set forth the requirements that U.S. parties must meet when submitting objections to exclusion requests. The March 19 rule amended the National Security Industrial Base Regulations to add two new supplements, Supplements No. 1 (for steel exclusion requests) and No. 2 (for aluminum exclusion requests) to part 705. The Secretary started this

process with the publication of the March 19 rule and is continuing that process to make various improvements with the publication of a second interim final rule described below, including adding a rebuttal and surrebuttal process. On September 11, 2018, BIS published a second interim final rule, *Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum* (83 FR 46026). The second interim final rule published by BIS, on behalf of the Secretary, made changes to the two supplements added in the March 19 rule: Supplement No. 1 to Part 705—Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamation 9705 of March 8, 2018 Adjusting Imports of Steel Articles into the United States; and to Supplement No. 2 to Part 705—Requirements for Submissions Requesting Exclusions from the Remedies Instituted in Presidential Proclamation 9704 of March 8, 2018 to Adjusting Imports of Aluminum into the United States.

Affected Public: Business or other for-profit organizations.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

Legal Authority: Section 232 of the Trade Expansion Act of 1962, Presidential Proclamations 9704 and 9705.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0694–0141.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–05992 Filed 3–21–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Comment of the Office of Ocean Exploration and Research

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public comment.

SUMMARY: The National Ocean Mapping, Exploration, and Characterization (NOMEC) Council and the Interagency Working Group on Ocean Exploration and Characterization (IWG–OEC) request public comment from all interested parties on the draft Strategic Priorities for Ocean Exploration and Characterization of the United States Exclusive Economic Zone (''Priorities Report''). The Priorities Report was developed per the National Strategy for Ocean Mapping, Exploring, and Characterizing the United States Exclusive Economic Zone (''National Strategy'') and as detailed in the NOMEC Implementation Plan (''Implementation Plan''). To help ensure implementation of the National Strategy continues to be informed by all sectors, the NOMEC Council and IWG–OEC issue this notice to seek public comment on the specific thematic and geographic priorities for ocean exploration and characterization that were identified by Federal subject-matter experts.

The NOMEC Council and IWG–OEC issue this notice on behalf of the Ocean Science and Technology Subcommittee of the Ocean Policy Committee, which is chaired by the Office of Science and Technology Policy (OSTP) and the Council on Environmental Quality (CEQ).

DATES: Comments must be received by May 2, 2022.

ADDRESSES: A copy of the draft Priorities Report may be downloaded or viewed at: *https://www.noaa.gov/nomec/IWG-OEC.*

A copy of the National Strategy may be downloaded or viewed at: *https://www.noaa.gov/sites/default/files/2021-08/NOMEC%20Strategy.pdf.*

A copy of the Implementation Plan may be downloaded or viewed at: *https://www.noaa.gov/sites/default/files/2021-11/210107-FINALNOMECImplementationPlan-Clean.pdf.*

Responses should be submitted via email to *caitlin.adams@noaa.gov.*

Instructions: Response to this notice is voluntary. Include ''Public Comment on Priorities Report for Exploration and Characterization'' in the subject line of the message. If applicable, clearly indicate the section and page number to which submitted comments pertain. All submissions must be in English. Email attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats only. Each individual or institution is requested to submit only one response.

Responses to this notice may be posted without change on a Federal website. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will become publicly accessible. NOAA, therefore, requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this notice. Anonymous comments will be accepted. Please note that the U.S. Government will not pay for response preparation, or for the use of any information contained in the response.

FOR FURTHER INFORMATION CONTACT: IWG–OEC Co-Chairs: Rachel Medley, NOAA, *rachel.medley@noaa.gov,* 301–789–3075; Dr. Amanda Demopoulos, U.S. Geological Survey, *ademopoulos@usgs.gov,* 352–264–3490; Mark Mueller, Bureau of Ocean Energy Management, *mark.mueller@boem.gov,* 703–787–1089.

SUPPLEMENTARY INFORMATION: The NOMEC Council and IWG–OEC seek public comment for development of thematic and geographic ocean exploration and characterization priorities in accordance with the Implementation Plan of the National Strategy. In coordination with the Administrator of NOAA, this notice is issued on behalf of the Ocean Science and Technology Subcommittee of the Ocean Policy Committee, which is co-chaired by the Director of the OSTP and the Chair of the CEQ. The Priorities Report is pursuant to the Presidential Memorandum on ''Ocean Mapping of the United States Exclusive Economic Zone and the Shoreline and Nearshore of Alaska'' (84 FR 64699; Nov. 19, 2020).

The IWG–OEC has developed a draft report on Strategic Priorities for Ocean Exploration and Characterization of the United States Exclusive Economic Zone. This notice solicits comment from stakeholders, including academia, private industry, and other relevant institutions regarding thematic and geographic priorities. The public comment provided in response to this

notice will inform finalization of the report.

David Holst,

Chief Financial and Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–05955 Filed 3–21–22; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Solicitation of Applications for Stakeholder Representative Members of the Committee on Levee Safety

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice; extension of application period.

SUMMARY: On January 21, 2022, the U.S. Army Corps of Engineers posted a notice in the **Federal Register** soliciting applications to fill non-federal member positions for the Committee on Levee Safety (Committee). The Committee is being formed to advise the U.S. Army Corps of Engineers and the Federal Emergency Management Agency on various aspects of developing the National Levee Safety Program. The Committee will be comprised of 14 voting members from state, local, regional, and tribal governments, as well as the private sector. In that notice, the Corps stated that applications must be submitted on or before March 22, 2022. The Corps has decided to extend the application period by 45 days.

DATES: Applications must be submitted on or before May 6, 2022.

ADDRESSES: Interested persons may apply by submitting the required information to any of the following:

Email: hq-leveesafety@usace.army.mil and include ''Committee on Levee Safety'' in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Vicksburg District, ATTN: Levee Safety Center—RM 221, 4155 East Clay Street, Vicksburg, MS 39183.

Hand Delivery/Courier: Due to security requirements, we cannot receive applications by hand delivery or courier.

FOR FURTHER INFORMATION CONTACT: Ms. Tammy Conforti, 202–365–6586, email *hq-leveesafety@usace.army.mil* or visit *www.leveesafety.org.*

SUPPLEMENTARY INFORMATION: Please see the notice published in the January 21, 2022, issue of the **Federal Register** (87 FR 3286) for expectations for Committee members and the process for applying for membership on the Committee.

Pete G. Perez,

Chief, Engineering and Construction, Directorate of Civil Works.

[FR Doc. 2022–06032 Filed 3–21–22; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0040]

Agency Information Collection Activities; Comment Request; Application for Client Assistance Program

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before May 23, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0040. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or 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 6W208C, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact April Trice, (202) 245–6074.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Application for Client Assistance Program.

OMB Control Number: 1820–0520.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 9.

Abstract: The purpose of Client Assistance Program (CAP) is to advise and inform applicants and individuals eligible for services and benefits available under the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by the Workforce Innovation and Opportunity Act (WIOA), and title I of the Americans with Disabilities Act of 1990 (ADA), including students with disabilities under section 113 and individuals with disabilities employed at subminimum wage under section 511 of the Rehabilitation Act. In addition, applicants and eligible individuals may be provided advocacy and representation to ensure their rights in their relationship with projects, programs, and services to protect their rights provided under the Rehabilitation Act. In addition to providing assistance and advocacy under the Rehabilitation Act, a CAP agency may provide information on the assistance and

benefits on title I of the ADA, especially those who have traditionally been unserved or underserved by the vocational rehabilitation program, with respect to services that are directly related to facilitating the employment for applicants or eligible individuals.

Dated: March 16, 2022

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–05970 Filed 3–21–22; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: U.S. Election Assistance Commission Standards Board Annual Meeting.

DATES: Thursday, April 14, 2022 1:30 p.m.–4:30 p.m. Eastern.

ADDRESSES: Virtual via Zoom.

The meeting is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual annual meeting of the EAC Standards Board to conduct regular business, discuss EAC updates and upcoming programs, and discuss the Voluntary Voting System Guidelines (VVSG) 2.0 and electronic poll book pilot program next steps and supply chain considerations.

Agenda: The U.S. Election Assistance Commission (EAC) Standards Board will hold their 2022 Annual Meeting primarily to discuss next steps regarding the VVSG 2.0 Requirements and implementation, the status of the EAC's e-poll book pilot program, and supply chain issues affecting the 2022 midterm elections. This meeting will include a question-and-answer discussion between board members and EAC staff.

Board members will also review FACA Board membership guidelines and policies with EAC Acting General Counsel and receive a general update about the EAC programming. The Board will also elect two new members to the Executive Board Committee.

Background: On February 10, 2021, the U.S. Election Assistance Commission (EAC) announced the adoption of the Voluntary Voting System Guidelines (VVSG) 2.0; the VVSG 2.0 is the fifth iteration of national level voting system standards. The Federal Election Commission published the first two sets of federal standards in 1990 and 2002. The EAC then adopted Version 1.0 of the VVSG on December 13, 2005. In an effort to update and improve version 1.0 of the VVSG, on March 31, 2015, the EAC commissioners unanimously approved VVSG 1.1.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Status: This meeting will be open to the public.

Amanda Joiner,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2022–06097 Filed 3–18–22; 11:15 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–9–000]

North Carolina Electric Membership Corporation v. Duke Energy Progress, LLC; Notice Granting Motion To Continue To Hold Proceeding in Abeyance

On March 7, 2022, North Carolina Electric Membership Corporation (NCEMC) filed a motion to continue to hold the complaint filed in the above-captioned proceeding in abeyance until June 1, 2022. NCEMC represents that itself and Duke Energy Progress, LLC (DEP) have been negotiating an agreement to implement several changes to the Power Supply and Coordination Agreement at issue in this proceeding, but the parties need additional time to finalize the agreement. NCEMC asks that the Commission delay taking any action in this docket for an additional period up to and including June 1, 2022, to allow parties to continue to finalize these details. NCEMC also states that DEP supports the motion.

Upon consideration, notice is hereby given that NCEMC's motion is granted. As such, the Commission will not take any action on the complaint filed in this proceeding until after June 1, 2022.

Dated: March 16, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06015 Filed 3–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–63–000.

Applicants: Emerald Grove Solar, LLC.

Description: Emerald Grove Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/15/22.

Accession Number: 20220315–5240.

Comment Date: 5 p.m. ET 4/5/22.

Docket Numbers: EG22–64–000.

Applicants: Brightside Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Brightside Solar, LLC.

Filed Date: 3/15/22.

Accession Number: 20220315–5243.

Comment Date: 5 p.m. ET 4/5/22.

Docket Numbers: EG22–65–000.

Applicants: High Point Solar LLC.

Description: High Point Solar LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 3/16/22.

Accession Number: 20220316–5079.

Comment Date: 5 p.m. ET 4/6/22.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL21–77–000.

Applicants: Tenaska Clear Creek Wind, *LLC* v. *Southwest Power Pool, Inc.*

Description: Southwest Power Pool, Inc submits Results of the Restudy for the Tenaska Clear Creek Wind Project in Response to the December 16 Order.

Filed Date: 3/11/22.

Accession Number: 20220311–5274.

Comment Date: 5 p.m. ET 4/1/22.

Docket Numbers: EL22–42–000.

Applicants: RENEW Northeast, Inc. and the American Clean Power Association v. ISO New England Inc.

Description: Complaint of *RENEW Northeast, Inc.* and the *American Clean Power Association* v. *ISO New England, Inc.*

Filed Date: 3/15/22.
Accession Number: 20220315–5286.
Comment Date: 5 p.m. ET 4/4/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER04–835–010.
Applicants: California Independent System Operator Corporation, Pacific Gas and Electric Company.
Description: Refund Report of California Independent System Operator Corporation.
Filed Date: 3/16/22.
Accession Number: 20220316–5113.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: ER22–1050–001.
Applicants: DesertLink, LLC.
Description: Tariff Amendment: DesertLinks Amended Formula Rate Revision Filing to be effective 4/18/2022.
Filed Date: 3/16/22.
Accession Number: 20220316–5060.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: ER22–1354–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Amendment: Notice of Cancellation of CSA, Service Agreement No. 5500; Queue No. AC1–216 to be effective 2/15/2022.
Filed Date: 3/16/22.
Accession Number: 20220316–5031.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: ER22–1355–000.
Applicants: Energy Harbor LLC.
Description: Petition for Limited Waiver of Energy Harbor LLC.
Filed Date: 3/14/22.
Accession Number: 20220314–5316.
Comment Date: 5 p.m. ET 4/4/22.

Docket Numbers: ER22–1357–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: Sec. 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per § 35.13(a)(2)(iii): 2022–03–16_SA 2769 ATC-City of Reedsburg 2nd Rev CFA to be effective 5/16/2022.
Filed Date: 3/16/22.
Accession Number: 20220316–5056.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: ER22–1358–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: Sec. 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per § 35.13(a)(2)(iii): 2022–03–16_SA 2800 ATC-City of Stoughton 2nd Rev CFA to be effective 5/16/2022.
Filed Date: 3/16/22.
Accession Number: 20220316–5076.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: ER22–1359–000.
Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.
Description: Sec. 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per § 35.13(a)(2)(iii): 2022–03–16_SA 2805 ATC-Rock Energy Cooperative 2nd Rev CFA to be effective 5/16/2022.
Filed Date: 3/16/22.
Accession Number: 20220316–5077.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: ER22–1360–000.
Applicants: R–WS Antelope Valley Gen-Tie, LLC.
Description: Compliance filing: Shared Facilities Common Ownership Agreements and Request for Expedited Action to be effective 3/17/2022.
Filed Date: 3/16/22.
Accession Number: 20220316–5084.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: ER22–1361–000.
Applicants: Georgia-Pacific Toledo LLC.
Description: Sec. 205(d) Rate Filing: Filing of Revised MBR Tariff Record to be effective 3/17/2022.
Filed Date: 3/16/22.
Accession Number: 20220316–5088.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: ER22–1362–000.
Applicants: Georgia-Pacific Port Hudson LLC.
Description: Tariff Amendment: Notice of Cancellation of MBR Tariff to be effective 5/16/2022.
Filed Date: 3/16/22.
Accession Number: 20220316–5090.
Comment Date: 5 p.m. ET 4/6/22.

Docket Numbers: ER22–1363–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Sec. 205(d) Rate Filing: 2022–03–16_ROE Additional Compliance Filing to be effective 9/28/2016.
Filed Date: 3/16/22.
Accession Number: 20220316–5106.
Comment Date: 5 p.m. ET 4/6/22.

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 *https://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06027 Filed 3–21–22; 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: RP22–702–000.
Applicants: Northern Border Pipeline Company.
Description: Sec. 4(d) Rate Filing: Sequent Energy Management, LLC Name Change Clean up to be effective 3/15/2022.
Filed Date: 3/15/22.
Accession Number: 20220315–5155.
Comment Date: 5 p.m. ET 3/28/22.

Docket Numbers: RP22–703–000.
Applicants: Elba Express Company, L.L.C.
Description: Compliance filing: Annual Interruptible Revenue Crediting Report 2022 to be effective N/A.
Filed Date: 3/16/22.
Accession Number: 20220316–5009.
Comment Date: 5 p.m. ET 3/28/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP16–1022–002.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: Compliance filing: Second Petition to Amend Docket No. RP16–1022 Stipulation and Agreement to be effective N/A.
Filed Date: 3/15/22.
Accession Number: 20220315–5176.
Comment Date: 5 p.m. ET 3/22/22.

Docket Numbers: RP17–972–003.

Applicants: Wyoming Interstate Company, L.L.C.

Description: Wyoming Interstate Company, L.L.C. submits tariff filing per 154.203: Second Petition to Amend Docket No. RP17–972 Stipulation and Agreement to be effective N/A.

Filed Date: 3/15/22.

Accession Number: 20220315–5181.

Comment Date: 5 p.m. ET 3/22/22.

Docket Numbers: RP19–276–003.

Applicants: Young Gas Storage Company, Ltd.

Description: Young Gas Storage Company, Ltd. submits tariff filing per 154.203: Second Petition to Amend Docket No. RP19–276 Stipulation and Agreement to be effective N/A.

Filed Date: 3/15/22.

Accession Number: 20220315–5177.

Comment Date: 5 p.m. ET 3/22/22.

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 *https://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06026 Filed 3–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–15–000]

Texas Eastern Transmission, LP; Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Venice Extension Project, Request for Comments on Environmental Issues, Notice of Public Scoping Session, and Schedule for Environmental Review

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Venice Extension Project (Project) involving construction and operation of facilities by Texas Eastern Transmission, LP (Texas Eastern) in Pointe Coupee, Iberville, Lafourche, and Plaquemines Parishes, Louisiana. The Commission will use this EIS in its decision-making process to determine whether the Project is in the public convenience and necessity. The schedule for preparation of the EIS is discussed in the *Schedule for Environmental Review* section of this notice.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the Project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission's NEPA process is described below in the *NEPA Process and the EIS* section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document, including comments on potential alternatives and impacts, and any relevant information, studies, or analyses of any kind concerning impacts affecting the quality of the human environment. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on April 15, 2022. Comments may be submitted in written or oral form. Further details on how to submit comments are provided in the *Public Participation* section of this notice.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the Project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not grant, exercise, or oversee the exercise of eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

Texas Eastern provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (*www.ferc.gov*) under the Natural Gas Questions or Landowner Topics link.

Public Participation

There are four methods you can use to submit your comments to the Commission. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or *FercOnlineSupport@ferc.gov.* Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature, which is located on the Commission's website (*www.ferc.gov*) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature, which is also on the Commission's website (*www.ferc.gov*) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making; a comment on a particular project is considered a ''Comment on a Filing'';

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP22–15–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal

Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852; or

(4) In lieu of sending written comments, the Commission invites you to attend one of the virtual public scoping sessions its staff will conduct by telephone, scheduled as follows:

Date and Time

Tuesday, March 29, 2022, 5:00 p.m.–7:00 p.m. (EST), Call in number: 800–779–8625, Participant code: 3472916

Wednesday, March 30, 2022, 5:00 p.m.–7:00 p.m. (EST), Call in number: 800–779–8625, Participant code: 3472916

The primary goal of these scoping sessions is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Individual oral comments will be taken on a one-on-one basis with a court reporter present on the line. This format is designed to receive the maximum amount of oral comments, in a convenient way during the timeframe allotted, and is in response to the ongoing COVID–19 pandemic.

There will not be a formal presentation by Commission staff when the session opens. Each scoping session is scheduled from 5:00 p.m. to 7:00 p.m. Eastern Time. You may call at any time after 5:00 p.m. at which time you will be placed on mute and hold. Calls will be answered in the order they are received. Once answered, you will have the opportunity to provide your comment directly to a court reporter with FERC staff or representative present on the line. A time limit of three minutes will be implemented for each commentor.

Transcripts of all comments received during the scoping sessions will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary).

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a virtual scoping session.

Additionally, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Summary of the Proposed Project, the Project Purpose and Need, and Expected Impacts

Texas Eastern proposes to (i) construct, install, own, operate and maintain an approximately 3.0-mile-long, 36-inch-diameter pipeline segment on its Line 40 in Pointe Coupee Parish; (ii) abandon in place a 2.2-mile-long, 36-inch-diameter existing pipeline segment on Line 40 in Pointe Coupee Parish; (iii) construct a new 31,900 horsepower (hp) compressor station and metering and regulating facilities in Pointe Coupee Parish; (iv) abandon in place the existing, inactive 19,800 hp compressor unit at its White Castle Compressor Station in Iberville Parish, and the existing, inactive 19,800 hp compressor unit at its Larose Compressor Station in Lafourche Parish; (v) install one new 31,900 hp compressor unit and related appurtenances at both the White Castle and Larose Compressor Stations; and (vi) upgrade a metering and regulating facility on a platform in Plaquemines Parish.

The Project would reverse natural gas flow on a portion of Texas Eastern's Line 40 to provide firm natural gas transportation service for up to 1,260,000 dekatherms per day on its existing Line 40 to an interconnection with a proposed pipeline lateral, owned and operated by Venture Global Gator Express, LLC, with ultimate delivery to Venture Global Plaquemines LNG, LLC's liquefied natural gas (LNG) terminal. Texas Eastern states that the Project is needed to provide the necessary natural gas pipeline infrastructure to ensure the firm transportation of natural gas to the Plaquemines LNG terminal that Venture Global Gator Express, LLC is seeking.

The general location of the Project facilities is shown in appendix 1.[1]

Based on the environmental information provided by Texas Eastern, construction of the proposed facilities would disturb about 285.5 acres of land for the aboveground facilities and the pipeline. Following construction, Texas Eastern would maintain about 42.2 acres for operation of the Project facilities; the remaining acreage would be restored and revert to former uses. About 56 percent of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

Based on an initial review of Texas Eastern's proposal, Commission staff have identified several expected impacts that deserve attention in the EIS. The majority of the Project impacts would be within waterbodies (with approximately 169.4 acres of potential impacts within these systems), resulting in further impacts on fisheries and essential fish habitat. Further, Project construction would impact about 28.6 acres of forested land/wildlife habitat and require 13.6 acres for operation; multiple residences would be in close proximity to the abandonment of the existing pipeline segment; and the Project would increase air emissions.

The NEPA Process and the EIS

The EIS issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed Project under the relevant general resource areas:

- Geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;
- land use;
- air quality and noise; and
- reliability and safety.

Commission staff will also make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff focus its analysis on the issues that may have a significant effect on the human environment.

The EIS will present Commission staff's independent analysis of the issues. Staff will prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any draft and final EIS will be available in electronic format in the public record through eLibrary [2] and the Commission's natural gas environmental documents web page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). If eSubscribed, you will receive instant email notification when the environmental document is issued.

Alternatives Under Consideration

The EIS will evaluate reasonable alternatives that are technically and economically feasible and meet the purpose and need for the proposed action.[3] Alternatives currently under consideration include:

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary''. For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

[2] For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] 40 CFR 1508.1(z).

- The no-action alternative, meaning the Project is not implemented;
- system alternatives, meaning using existing facilities to meet the needs of the Project;
- pipeline route alternatives, meaning using alternate pipeline routes that may avoid impacting specific resources or residences; and
- compression drive alternatives, meaning using different equipment to power the compressors, such as electric-driven units.

With this notice, the Commission requests specific comments regarding any additional potential alternatives to the proposed action or segments of the proposed action. Please focus your comments on reasonable alternatives (including alternative facility sites and pipeline routes) that meet the Project objectives, are technically and economically feasible, and avoid or lessen environmental impact.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and other government agencies, interested Indian tribes, and the public to solicit their views and concerns regarding the Project's potential effects on historic properties.[4] The Project EIS will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Schedule for Environmental Review

On November 24, 2021, the Commission issued its Notice of Application for the Project. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Project. This notice identifies the Commission staff's planned schedule for completion of the final EIS for the Project, which is based on an issuance of the draft EIS in August 2022.

Issuance of Notice of Availability of the final EIS—February 17, 2023

90-day Federal Authorization Decision Deadline [5]—May 18, 2023

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Permits and Authorizations

The table below lists the anticipated permits and authorizations for the Project required under federal law. This list may not be all-inclusive and does not preclude any permit or authorization if it is not listed here. Agencies with jurisdiction by law and/or special expertise may formally cooperate in the preparation of the Commission's EIS and may adopt the EIS to satisfy its NEPA responsibilities related to this Project. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Agency	Permit
U.S. Army Corps of Engineers	Section 404 of the Clean Water Act.
U.S. Fish and Wildlife Service	Consultation under Section 7 of the Endangered Species Act (ESA); Migratory Bird Treaty Act; Bald and Golden Eagle Protection Act; and Wildlife Coordination Act.
U.S. Department of Commerce; National Oceanic and Atmospheric Administration, National Marine Fisheries Service.	Section 7 of the ESA; Marine Mammal Protection Act; Section 305 of the Magnuson-Stevens Act.
Louisiana Department of Environmental Quality (LDEQ)	Section 401 of the Clean Water Act, Water Quality Certification.
Louisiana Division of Historic Preservation	Section 106 of the National Historic Preservation Act.
Louisiana Department of Natural Resources, Office of Coastal Management.	Coastal Use Permit; Coastal Zone Consistency Review. JPA filed with the U.S. Army Corps of Engineers—New Orleans District.

Environmental Mailing List

This notice is being sent to the Commission's current environmental mailing list for the Project which includes federal, state, and local government representatives and agencies; environmental and public interest groups; Native American Tribes; and other interested parties. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for Project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP22–15–000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached ''Mailing List Update Form'' (appendix 2).

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

[5] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.,* CP22–15). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: March 16, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06018 Filed 3–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or 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. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202)502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
1. CP16–10–000	3–3–2022	FERC Staff.[1]
CP21–57–000		
2. CP21–57–000	3–7–2022	FERC Staff.[2]
3. CP16–10–000	3–15–2022	FERC Staff.[3]
CP21–57–000		
Exempt:		
None.		

[1] Emailed comments dated 3/3/22 from Steve Legge.
[2] Memorandum regarding ex parte communication from February 2022 with Dennis Tidrig and 11 other individuals.
[3] Emailed comments dated 3/15/22 from Steve Legge.

Dated: March 16, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06019 Filed 3–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–90–000]

National Fuel Gas Distribution Corporation; Notice of Application and Establishing Intervention Deadline

Take notice that on March 10, 2022, National Fuel Gas Distribution Corporation (National Fuel Distribution), 6363 Main Street Williamsville, NY 14221–5887 filed in the above referenced docket an application pursuant to section 7(f) of the Natural Gas Act and Part 157 of the Commission's regulations requesting that the jurisdictional natural gas distribution facilities within its distribution service area locations may, without further Commission authorization, be enlarged or expanded.

National Fuel Distribution filed a request for the Commission's authorization to have its service area determination under Section 7(f) of the NGA amended and enlarged to allow it to operate a minimal amount of

residential service piping across Erie County, Pennsylvania to Chautauqua County, New York border in order to distribute and deliver natural gas to a small number of Pennsylvania retail customers whose residences lie in close proximity to the Pennsylvania/New York border. National Fuel Distribution also requests a finding that qualifies for treatment as an LDC for purposes of Section 311 of the Natural Gas Policy Act and a waiver of various Commission requirements as appropriate and consistent with the requested determination.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application should be directed to Jeffrey B. Same, Esq. Senior Attorney, National Fuel Gas Distribution Corporation, 6363 Main Street Williamsville, NY 14221–5887; by phone (716) 857–7507; or by email: *SameJ@natfuel.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

[1] 18 CFR (Code of Federal Regulations) 157.9.

Public Participation

There are three ways to become involved in the Commission's review of this project: You can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on April 5, 2022. How to file protests, motions to intervene, and comments is explained below.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is April 5, 2022. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which April 5, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before April 5, 2022. The filing of a comment alone will not serve to make the filer a party to the proceeding to become a party, you must intervene in the proceeding.

How to File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP22–90–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select General'' and then

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

select ''Protest'', ''Intervention'', or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP22–90–000.

To mail via USPS, use the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To mail via any other courier, use the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Jeffrey B. Same, Esq. Senior Attorney National Fuel Gas Distribution Corporation, 6363 Main Street Williamsville, NY 14221–5887; by phone (716) 857–7507; or by email: *SameJ@natfuel.com.*

Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *https://www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: March 16, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06016 Filed 3–21–22; 8:45 am]

BILLING CODE 6717–01–P

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–63–000]

ANR Pipeline Company; Notice of Application and Establishing Intervention Deadline

Take notice that on March 2, 2022, ANR Pipeline Company (ANR), 700 Louisiana Street, Suite 1300, Houston TX 77002, filed an application under section 7(b) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting the authority necessary to abandon its Winfield Storage Field, including all associated facilities and base gas, located in Montcalm County, Michigan, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Specifically, ANR proposes to: (1) Abandon 72 injection/withdrawal wells by permanently plugging and abandoning; (2) abandon 15 miles of associated storage lines in the Field, consisting of two 10-inch-diameter laterals, seven 6-inch-diameter laterals, and 82 4-inch-diameter laterals. Approximately 0.8 miles will be removed and 14.2 miles will be abandoned in place; (3) abandon 4.43 miles of a 16-inch-diameter storage lateral (Lateral 249) in its entirety from the Winfield Interconnect at milepost 0.0 to milepost 4.41, of which approximately 0.49 miles will be removed, 3.59 miles will be abandoned in place, and 0.35 miles will be cut, capped, and grouted; (4) abandon by removal the Winfield Compressor Station, including all below- and aboveground structures; (5) abandon by removal all above-ground appurtenances including pipeline markers, cathodic protection test stations, rectifiers, casing vents, and above-ground pipeline blowdown vents; (6) abandon in place remaining below-ground miscellaneous appurtenances; and (7) permanently plug and abandon five observation wells located within the Field. The total estimated cost of abandonment is approximately $35 million.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding the proposed project should be directed to David A. Alonzo, Manager, Project Authorizations at ANR Pipeline Company, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700; by phone at (832) 320 5477 or by email to *David_Alonzo@tcenergy.com.*

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: Complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Public Participation

There are two ways to become involved in the Commission's review of this project: You can file comments on the project, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or

[1] 18 CFR (Code of Federal Regulations) 157.9.

intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on April 6, 2022.

Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please submit your comments on or before April 6, 2022.

There are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number CP22–63–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You may file a paper copy of your comments by mailing them to the following address below.[2] Your written comments must reference the Project docket number (CP22–63–000).

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

Interventions

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[3] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [4] and the regulations under the NGA [5] by the intervention deadline for the project, which is April 6, 2022. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP22–63–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below.[6] Your motion to intervene must reference the Project docket number CP22–63–000.

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Motions to intervene must be served on the applicant either by mail or email at: David A. Alonzo, Manager, Project Authorizations at ANR Pipeline Company, 700 Louisiana Street, Suite 1300, Houston, Texas 77002–2700; by phone at (832) 320 5477 or by email to *David_Alonzo@tcenergy.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [7] motions to intervene are automatically granted by operation of Rule 214(c)(1).[8] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[9] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *http://www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which

[2] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[3] 18 CFR 385.102(d).

[4] 18 CFR 385.214.

[5] 18 CFR 157.10.

[6] Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

[7] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[8] 18 CFR 385.214(c)(1).

[9] 18 CFR 385.214(b)(3) and (d).

allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Intervention Deadline: 5:00 p.m. Eastern Time on April 6, 2022.

Dated: March 16, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06017 Filed 3–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

TIME AND DATE: March 24, 2022, 10:00 a.m.

PLACE: Open to the public via audio Webcast only. Join FERC online to listen live at *http://ferc.capitolconnection.org/.*

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda

* *Note*—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *https://elibrary.ferc.gov/eLibrary/search* using the eLibrary link.

1088TH—MEETING, OPEN MEETING

[March 24, 2022, 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD22–1–000	Agency Administrative Matters.
A–2	AD22–2–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	EL21–66–001	Central Hudson Gas & Electric Corporation, Consolidated Edison of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and *Rochester Gas and Electric Corporation* v. *New York Independent System Operator Inc.*
	ER21–1647–002 (not consolidated)	New York Independent System Operator, Inc. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Niagara Mohawk Power Corporation, New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation.
E–2	ER21–1115–003	Duke Energy Progress, LLC and Duke Energy Carolinas, LLC.
	ER21–1118–003	Louisville Gas and Electric Company.
	ER21–1125–003	Alabama Power Company.
	ER21–1128–003	Dominion Energy South Carolina, Inc.
E–3	ER21–1111–005	Alabama Power Company.
	ER21–1112–005	Dominion Energy South Carolina, Inc.
	ER21–1114–005	Louisville Gas and Electric Company.
	ER21–1116–005	Duke Energy Carolinas, LLC.
	ER21–1117–005	Duke Energy Progress, LLC.
	ER21–1119–005	Georgia Power Company.
	ER21–1120–005	Kentucky Utilities Company.
	ER21–1121–005 (Not consolidated)	Mississippi Power Company.
E–4	OMITTED.	
E–5	ER22–865–000	Glaciers Edge Wind Project, LLC.
E–6	EL10–56–000	Western Electricity Coordinating Council.
E–7	ER21–2401–001	Oliver Wind Energy Center II, LLC.
E–8	EF21–3–000	Bonneville Power Administration.
E–9	ER21–2179–001	Oliver Wind I, LLC.
E–10	ER21–1807–003	Hill Top Energy Center LLC.
E–11	ER21–2860–001	The Connecticut Light and Power Company.
E–12	EL22–27–000	Alabama Power Company, Georgia Power Company, and Mississippi Power Company.
E–13	ER18–194–000, ER18–195–000	Southwest Power Pool, Inc. and American Electric Power Service Corporation.
E–14	ER18–1106–002	Kestrel Acquisition, LLC.
E–15	EL22–8–000	Irradiant Partners, LP.
E–16	EL21–98–000	Pacific Gas and Electric Company.
	Gas	
G–1	RP22–433–000	Range Resources-Appalachia, LLC and *Columbia Gulf Transmission, LLC* v. *Texas Eastern Transmission, LP.*
	RP22–435–000 (Not Consolidated)	*Range Resources-Appalachia, LLC* v. *Texas Eastern Transmission, LP.*
G–2	RP21–1001–002	Texas Eastern Transmission, LP.
G–3	RP21–957–000	Northern Natural Gas Company.

1088TH—MEETING, OPEN MEETING—Continued

[March 24, 2022, 10:00 a.m.]

Item No.	Docket No.	Company
	Hydro	
H–1	P–14227–005	The Nevada Hydro Company, Inc.
H–2	P–15229–000	Alabama Power Company.
	Certificates	
C–1	PL18–1–001	Certification of New Interstate Natural Gas Facilities.
	PL21–3–001	Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews.
C–2	CP20–527–000	Columbia Gulf Transmission, LLC.
C–3	CP20–50–000	Tennessee Gas Pipeline Company, L.L.C.
	CP20–51–000	Southern Natural Gas Company, L.L.C.
C–4	CP20–48–000	Iroquois Gas Transmission System, L.P.
C–5	CP15–554–004, CP15–554–005, CP15–554–006, CP15–554–007, CP15–554–009.	Atlantic Coast Pipeline, LLC.
	CP15–555–003, CP15–555–004, CP15–555–005.	Dominion Energy Transmission, Inc.
	CP15–555–007	Eastern Gas Transmission and Storage, Inc.
C–6	CP17–458–015	Midship Pipeline Company, LLC.
C–7	CP21–28–000	Northern Natural Gas Company.

The public is invited to listen to the meeting live at *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to hear this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its audio webcast. The Capitol Connection provides technical support for this free audio webcast. It will also offer access to this event via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Shirley Al-Jarani at 703–993–3104.

Issued: March 17, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06147 Filed 3–18–22; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1324–000]

LeConte Energy Storage, LLC, Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of LeConte Energy Storage, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 5, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *https://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*https://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 16, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06028 Filed 3–21–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 15262–000]

CW Bill Young Hydropower Group, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On February 9, 2022, CW Bill Young Hydropower Group, Inc., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of hydropower at the existing U.S. Army Corps of Engineers' C.W. Bill Young Lock and Dam located on the Allegheny River in Allegheny County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed CW Bill Young Lock and Dam Hydropower Project would consist of the following: (1) A new 90-foot-wide, 150-foot-long reinforced concrete powerhouse to be located downstream along the northern bank; (2) a new 90-foot-wide, 100- to 200-foot-long forebay intake area enclosed by reinforced concrete walls; (3) two 5-megawatt (MW) turbine-generator units with a total generating capacity of 10 MW; (4) a new 90-foot-wide by 150-foot-long tailrace; (5) a new 60-foot-long by 50-foot-wide substation with a three-phase step-up transformer; (6) a new 6,200-foot-long, 69-kilovolt transmission line; and (7) appurtenant facilities. The proposed project would have an estimated annual generation of 52,000 megawatt-hours.

Applicant Contact: Alan W. Skelly, CW Bill Young Hydropower Group, Inc., 127 Longwood Blvd., Mount Orab, Ohio 45154; phone: (937) 802–8866.

FERC Contact: Monir Chowdhury; phone: (202) 502–6736.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, notices of intent, and competing applications using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* 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.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's website at *https://elibrary.ferc.gov/eLibrary/search.* Enter the docket number (P–15262) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: March 16, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06014 Filed 3–21–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0163; FRL–9408–02–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Uses—February 2022

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before April 21, 2022.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the File Symbol of the EPA registration Number of interest as shown in the body of this document, through the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets/about-epa-dockets.*

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is open to visitors by appointment only. For the latest status information on EPA/DC services and access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Charles Smith, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (202) 566–2427, email address: *BPPDFRNotices@epa.gov;* or Marietta Echeverria, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark

the part or all of the information that you claim to be CBI. For CBI information in 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.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

Notice of Receipt—New Uses

1. *EPA Registration Number:* 8033–102 and 8033–103. *Docket ID number:* EPA–HQ–OPP–2021–0788. *Applicant:* Nippon Soda Co., Ltd., Shin-Ohtemachi Bldg., 2–1, 2-Chome Ohtemachi, Chiyoda-ku, Tokyo, 100–8165, Japan. *Active ingredient:* Cyflufenamid. *Product type:* Fungicide. *Proposed use:* Sugar beet. *Contact:* RD.

2. *EPA Registration Numbers:* 10163–354, 10163–355, and 10163–356. *Docket ID number:* EPA–HQ–OPP–2021–0555. *Applicant:* Gowan Company, LLC 370 S Main St., Yuma, AZ 85366. *Active ingredient:* Ethalfluralin. *Product type:* Herbicide. *Proposed use:* 3–07A. onion, bulb subgroup. *Contact:* RD.

3. *EPA Registration Numbers:* 61842–21, 61842–22, and 61842–24. *Docket ID number:* EPA–HQ–OPP–2022–0134. *Applicant:* Tessenderlo Kerley, Inc./NovaSource 2910 N 44th Street, Suite 100, Phoenix, AZ 85018. *Active ingredient:* Linuron. *Product type:* Herbicide. *Proposed use:* Alfalfa forage and hay. *Contact:* RD.

4. *EPA Registration Numbers:* 67690–6, 67690–78. *Docket ID number:* EPA–HQ–OPP–2021–0787. *Applicant:* SePRO Corporation, 11550 North Meridian Street, Suite 600, Carmel, IN 46032. *Active ingredient:* Fluridone. *Product type:* Herbicide. *Proposed uses:* Citrus fruit (crop group 10–10); pome fruit (crop group 11–10); berry and small fruit (crop group 13–07); tree nut (crop group 14–12); grass forage, fodder and hay (crop group 17); non-grass animal feeds (crop group 18); tropical and subtropical, small fruit, edible peel (crop subgroup 23A); tropical and subtropical fruit, inedible peel (crop subgroup 24B); rice, and hops. *Contact:* RD.

5. *EPA Registration Numbers:* 71512–21 & 71512–22. *Docket ID number:* EPA–HQ–OPP–2021–0385. *Applicant:* Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540. *Active ingredient:* Isofetamid. *Product type:* Fungicide. *Proposed use:* Ginseng, and crop group expansion to all of the bean and pea commodities in proposed subgroups 6–19A edible podded bean legume vegetable subgroup; 6–19B edible podded pea legume vegetable subgroup, 6–19C succulent shelled bean subgroup; 6–19D succulent shelled pea subgroup; 6–19E dried shelled bean, except soybean, subgroup; and 6–19F dried shelled pea subgroup. *Contact:* RD.

6. *EPA Registration Number:* 71512–25, 71512–24 & 71512–43. *Docket ID number:* EPA–HQ–OPP–2021–0386. *Applicant:* The State University of New Jersey Rutgers, 500 College Road East, Suite 201 W, Princeton, NJ 08540. *Active ingredient:* Pyriofenone. *Product type:* Fungicide. *Proposed use:* New greenhouse uses of pyriofenone on tomato subgroup 8–10A; pepper/eggplant subgroup 8–10B and cucumber. *Contact:* RD.

7. *File Symbol:* 89600–T. *Docket ID number:* EPA–HQ–OPP–2022–0224. *Applicant:* Anatis Bioprotection Inc., 278 Rang Saint-André, St-Jacques-le-Mineur, Quebec J0J 1Z0, Canada (c/o SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192). *Active ingredient: Beauveria bassiana* strain ANT–03. *Product type:* Insecticide. *Proposed use:* For use on poultry litter and livestock bedding. *Contact:* BPPD.

8. *EPA Registration Number:* 91746–5. *Docket ID number:* EPA–HQ–OPP–2022–0257. *Applicant:* Belchim Crop Protection US Corporation, 2751 Centreville Road, Suite 100, Wilmington, Delaware 19808. *Active ingredient:* Pyridate. *Product type:* herbicide. *Proposed use:* Dry peas and soybeans. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: March 16, 2022.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–06047 Filed 3–21–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9678–01–R5]

Great Lakes Advisory Board Notice for Virtual Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Meeting for Great Lakes Advisory Board.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Environmental Protection Agency (EPA) provides notice of a public meeting for the Great Lakes Advisory Board. Pre-registration is required.

DATES: This virtual public meeting will be held on April 6th, 2022, from 1:00 p.m. to 2:30 p.m. Central Daylight Time. Members of the public seeking to view the meeting must register by 3:00 p.m. Central Daylight Time on April 1st, 2022. Members of the public seeking to make comments relevant to issues discussed at the virtual meeting must register and indicate a request to make oral and/or written public comments in advance of the meeting. For information on how to register, please see [How do I participate in the meeting] below.

FOR FURTHER INFORMATION CONTACT: Todd Nettesheim, Acting Designated Federal Officer (DFO), at *Nettesheim.Todd@epa.gov* or 312–353–9153.

SUPPLEMENTARY INFORMATION:

I. General Information

The GLAB is chartered in accordance with the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix 2, as amended) and 41 CFR 102–3.50(d). The Advisory Board provides advice and recommendations on matters related to the Great Lakes Restoration Initiative. The Advisory Board also advises on domestic matters related to implementation of the Great Lakes Water Quality Agreement between the U.S. and Canada. The major objectives are to provide advice and recommendations on: Great Lakes protection and restoration activities; long-term goals, objectives, and priorities for Great Lakes protection and restoration; and other issues identified

by the Great Lakes Interagency Task Force/Regional Working Group.

II. How do I participate in the remote public meeting?

A. Remote Meeting

This meeting will be conducted as a virtual meeting on April 6th, 2022, from 1:00 p.m. to 2:30 p.m. Central Daylight Time. You must register by 3:00 p.m. Central Daylight Time on April 1st, 2022 to receive information on how to participate. You may also submit written or oral comments for the committee by following the processes outlined below.

B. Registration

Individual registration is required for participation in this meeting. Information on registration for this meeting can be found at *https://event.capconcorp.com/form/view.php?id=135500.* When registering, please provide your name, email, organization, city, and state. Please also indicate whether you would like to provide oral and/or written comments during the meeting at the time of registration.

C. Procedures for Providing Public Comments

Oral Statements: In general, oral comments at this virtual conference will be limited to the Public Comments portions of the meeting agenda. Members of the public may provide oral comments limited to up to three minutes per individual or group and may submit further information as written comments. Persons interested in providing oral statements should register at *https://event.capconcorp.com/form/view.php?id=135500* for the meeting and indicate your interest to provide public comments. Oral commenters will be provided an opportunity to speak in the order in which their request was received by the DFO and to the extent permitted by the number of comments and the scheduled length of the meeting. Persons not able to provide oral comments during the meeting will be given an opportunity to provide written comments after the meeting.

Written Statements: Persons interested in providing written statements pertaining to this committee meeting may do so by indicating at *https://event.capconcorp.com/form/view.php?id=135500.* Written comments will be accepted before and during the public meeting for consideration by the Great Lakes Advisory Board members.

D. Availability of Meeting Materials

The meeting agenda and other materials for the virtual conference will be posted on the GLAB website at *www.glri.us/glab.*

E. Accessibility

Persons with disabilities who wish to request reasonable accommodations to participate in this event may contact the Acting DFO at *Nettesheim.todd@epa.gov* or 312–353–9153 by 3:00 p.m. Central Daylight Time on April 1st, 2022. All final meeting materials will be posted to the GLAB website in an accessible format following the meeting, as well as a written summary of this meeting.

Dated: March 16, 2022.

Debra Shore,

Regional Administrator & Great Lakes National Program Manager, U.S. EPA Region 5.

[FR Doc. 2022–06042 Filed 3–21–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0095; –0117]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Agency information collection activities: Submission for OMB review; comment request.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0095; and –0117). The notice of the proposed renewal for these information collections was previously published in the **Federal Register** on January 25, 2022, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before April 21, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/index.html.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Procedures for Monitoring Bank Protection Act Compliance

OMB Number: 3064–0095.

Form Number: None.

Affected Public: Insured state nonmember banks.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDENS

[OMB No. 3064–0095]

IC Description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Hours per response	Annual burden (hours)
Implementation Burden:						
Bank Protection Act Compliance Program—*Institutions with an Asset Size Less than $500 million.*	Recordkeeping (Mandatory) ...	Annually	35	1	50	1,750
Bank Protection Act Compliance Program—*Medium-Sized Institutions ($500 million—$10 billion).*	Recordkeeping (Mandatory) ...	Annually	57	1	300	17,100
Bank Protection Act Compliance Program—*Large Institutions (Over $10 billion).*	Recordkeeping (Mandatory) ...	Annually	12	1	500	6,000
Ongoing Burden:						
Bank Protection Act Compliance Program—Routine Revisions.	Recordkeeping (Mandatory) ...	Annually	2,880	1	5	14,400
Bank Protection Act Compliance Program—Significant Revisions.	Recordkeeping (Mandatory) ...	Annually	320	1	35	11,200
Total Annual Burden Hour:	.....	.....	.....	.....	.....	50,450

Source: FDIC.

General Description of Collection: The collection requires insured state nonmember banks to comply with the Bank Protection Act and to review bank security programs The Bank Protection Act of 1968 (12 U.S.C. 1881–1884) requires each Federal supervisory agency to promulgate rules establishing minimum standards for security devices and procedures to discourage financial crime and to assist in the identification of persons who commit such crimes. To avoid the necessity of constantly updating a technology-based regulation, the FDIC takes a flexible approach to implementing this statute. It requires each insured nonmember bank to designate a security officer who will administer a written security program. The security program must: (1) Establish procedures for opening and closing for business and for safekeeping valuables; (2) establish procedures that will assist in identifying persons committing crimes against the bank; (3) provide for initial and periodic training of employees in their responsibilities under the security program; and (4) provide for selecting, testing, operating and maintaining security devices as prescribed in the regulation. In addition, the FDIC requires the security officer to report at least annually to the bank's board of directors on the effectiveness of the security program.

There is no change in the method or substance of the collection. The 48,683 increase in burden hours is the result of the agency re-evaluating the time it takes for recordkeeping and reporting associated with the rule, and including new implementation burdens for new entities and entities reviewing their policies in light of mergers and other organizational changes.

2. *Title:* Mutual-to-Stock Conversion of State Savings Banks.

OMB Number: 3064–0117.

Form Numbers: None.

Affected Public: Insured state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–0117]

Information collection description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Hours per response	Annual burden (hours)
Application or Notice to engage in certain activities	Reporting	On occasion ...	5	250	1,250
Total Annual Burden (Hours)	.....	.....	.....	.....	1,250

Source: FDIC.

General Description of Collection: State savings associations must file a notice of intent to convert to stock form, and provide the FDIC with copies of documents filed with state and federal banking and/or securities regulators in connection with any proposed mutual-to-stock conversion. There is no change in the method or substance of the collection.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; 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. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on March 15, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–05953 Filed 3–21–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Arbitrators' Personal Data Questionnaire

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS), invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection request, Arbitrator's Personal Data Questionnaire, (Agency Form R–22). This information collection request was previously approved by the Office of Management Budget (OMB) but has expired. FMCS is requesting a reinstatement without change. The Arbitrator's Personal Data Questionnaire, (Agency Form R–22), allows FMCS to comply with its statutory obligation pursuant to the statute, 29 U.S.C. 171(b), to make governmental facilities available for voluntary arbitration. To carry out this policy, FMCS have issued regulations, 29 CFR part 1404, which provide for the operation and maintenance of a roster of professional arbitrators. The arbitrators are private citizens, not employees of FMCS, and are paid by the parties for hearing and deciding the issues submitted under a collective bargaining agreement and in other circumstances. Applicants for listing on the roster submit an Arbitrator's Personal Data Questionnaire (Agency Form R–22) which is used by FMCS to evaluate their qualifications. This allows FMCS to be able to restrict its roster to qualified individuals only.

DATES: Comments must be submitted on or before May 23, 2022.

ADDRESSES: You may submit comments, identified by Arbitrator's Personal Data Questionnaire (Agency Form R–22), through one of the following methods:

- *Email:* Arthur Pearlstein, *apearlstein@fmcs.gov;*
- *Mail:* Arthur Pearlstein, HQ Office of Arbitration, One Independence Square, 250 E St. SW, Washington, DC 20427. Please note that at this time, the FMCS office is not open for visitors and mail is not checked daily. Therefore, we encourage emailed comments.

FOR FURTHER INFORMATION CONTACT: Arthur Pearlstein, 202–606–8103, *apearlstein@fmcs.gov.*

SUPPLEMENTARY INFORMATION: Copies of the agency form are available here. Paper copies are available from the Office of Arbitration Services by emailing Arthur Pearlstein at the email address above. Please ask for the Arbitrator's Personal Data Questionnaire (Agency Form R–22).

I. Information Collection Request

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0001.

Type of Request: Reinstatement without change of a previously approved collection.

Affected Entities: Individual who apply for admission to the FMCS Roster of Arbitrators.

Frequency: This form is completed once, which is at the time of application to the FMCS Roster of Arbitrators.

Abstract: Title II of the Labor Management Relations Act of 1947, 29 U.S.C. 171(b), provides that ''the settlement of issues between employers and employees through collective bargaining may advance by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration . . .'' 29 U.S.C. 171(b). Pursuant to the statute and 29 CFR part 1404, FMCS has long maintained a roster of qualified, private labor arbitrators to hear disputes arising under collective bargaining agreements and provide fact finding and interest arbitration. The existing regulation establishes the policy and administrative responsibility for the FMCS roster, criteria, procedures for listing and removing arbitrators, and procedures for using arbitration services.

Burden: The number of respondents is approximately 100 individuals per year, which is the approximate number of individuals who request membership on the FMCS Roster. The time required to complete this questionnaire is approximately one hour. Each respondent is required to respond only once per application and to update the information as necessary.

II. Request for Comments

FMCS solicits comments to:

i. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

ii. Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

iii. Enhance the quality, utility, and clarity of the information to be collected.

iv. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

III. The Official Record

The official records are electronic records.

List of Subjects

Labor-Management Relations.

Dated: March 17, 2022.

Anna Davis,

Acting General Counsel.

[FR Doc. 2022–06071 Filed 3–21–22; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Arbitrator's Report and Fee Statement

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: 60-Day notice and request for comments.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS), invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection request, Arbitrator's Report and Fee Statement, (Agency Form R–19). This information collection request was previously approved by the Office of Management Budget (OMB) but has expired. FMCS is requesting a reinstatement without change. The Arbitrator's Report and Fee Statement, (Agency Form R–19), allows FMCS to comply with its statutory obligation pursuant to the statute, 29 U.S.C. 171(b), to make governmental facilities available for voluntary arbitration. To carry out this policy, FMCS have issued regulations, 29 CFR part 1404, which provide for the operation and maintenance of a roster of professional arbitrators. The Agency Form R–19, which arbitrators file with the Agency following each decision rendered, allows FMCS to monitor the work of the arbitrator and to collect arbitration information, such as median arbitrator fees and days spent on each case, for the Agency's annual report.

DATES: Comments must be submitted on or before May 23, 2022.

ADDRESSES: You may submit comments, identified by Arbitrator's Report and Fee Statement (Agency Form R–19), through one of the following methods:

• *Email:* Arthur Pearlstein, *apearlstein@fmcs.gov;*

• *Mail:* Arthur Pearlstein, HQ Office of Arbitration, One Independence Square, 250 E St. SW, Washington, DC 20427. Please note that at this time, the FMCS office is not open for visitors and mail is not checked daily. Therefore, we encourage emailed comments.

FOR FURTHER INFORMATION CONTACT: Arthur Pearlstein, 202–606–8103, *apearlstein@fmcs.gov.*

SUPPLEMENTARY INFORMATION: Copies of the agency form are available here. Paper copies are available from the Office of Arbitration Services by emailing Arthur Pearlstein at the email address above. Please ask for the Arbitrator's Report and Fee Statement (Agency Form R–19).

I. Information Collection Request

Agency: Federal Mediation and Conciliation Service.

Form Number: OMB No. 3076–0003.

Type of Request: Reinstatement without change of a previously approved collection.

Affected Entities: Individual arbitrators who render decisions under FMCS Arbitration policies and procedures.

Frequency: This form is completed each time an Arbitrator hears an arbitration case and issues a decision.

Abstract: Pursuant to 29 U.S.C. 171(b) and 29 CFR part 1404, FMCS assumes responsibility to monitor the work of the arbitrators who serve on its Roster. This is satisfied by requiring the completion and submission of a Report and Fee Statement, which indicates when the arbitration award was rendered, the file number, the company and union, the issues, whether briefs were filed and transcripts taken, if there were any waivers by parties on the date the award was due, and the fees and days for services of the arbitrator. FMCS publishes this information in the agency's annual report, to inform the public about the arbitration services program and certain national trends in arbitration.

Burden: FMCS receives approximately 2,000 responses per year. The form is filled out each time an arbitrator hears a case and the time required is approximately ten minutes. FMCS uses this form to review arbitrator conformance with its fee and expense reporting requirements.

II. Request for Comments

FMCS solicits comments to:

i. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

ii. Enhance the accuracy of the agency's estimates of the burden of the proposed collection of information.

iii. Enhance the quality, utility, and clarity of the information to be collected.

iv. Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic collection technologies or other forms of information technology.

III. The Official Record

The official records are electronic records.

List of Subjects

Labor-Management Relations.

Dated: March 15, 2022.

Anna Davis,

Acting General Counsel.

[FR Doc. 2022–06070 Filed 3–21–22; 8:45 am]

BILLING CODE 6732–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than April 6, 2022.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Elizabeth M. Hodgson, Ann Arbor, Michigan;* to retain voting shares of Charlevoix First Corporation, and thereby indirectly retain voting shares of Charlevoix State Bank, both of Charlevoix, Michigan.

Board of Governors of the Federal Reserve System, March 17, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–06033 Filed 3–21–22; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 192 3209]

CafePress; Analysis of Proposed Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreements in this matter settle alleged violations of Federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Orders to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before April 21, 2022.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write ''CafePress; File No. 192 3209'' on your comment and file your comment online at *https://www.regulations.gov* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Mohammed Aijaz (214–979–9386), Federal Trade Commission Southwest Region, 1999 Bryan Street, Suite 2150, Dallas, TX 75201–6808.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at *https://www.ftc.gov/news-events/commission-actions.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before April 21, 2022. Write ''CafePress; File No. 192 3209'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the *https://www.regulations.gov* website.

Due to the COVID–19 pandemic and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the *https://www.regulations.gov* website.

If you prefer to file your comment on paper, write ''CafePress; File No. 192 3209'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at *https://www.regulations.gov,* you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any ''trade secret or any commercial or financial information which . . . is privileged or confidential''—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the *https://www.regulations.gov* website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC website at *https://www.ftc.gov* to read this Notice and the news release describing the proposed settlement. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before April 21, 2022. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *https://www.ftc.gov/site-information/privacy-policy.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, agreements containing consent orders from Residual Pumpkin Entity, LLC (''Residual Pumpkin'') and PlanetArt, LLC (''PlanetArt'') (collectively, ''Respondents'').

The proposed consent orders (''Proposed Orders'') have been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements and take appropriate action or make final the Proposed Orders.

This matter involves Respondents' data security and privacy practices. Respondent Residual Pumpkin owned CafePress until September 2020, when Residual Pumpkin sold CafePress to Respondent PlanetArt. The CafePress website allows users, known as shopkeepers, to earn commissions from sales of merchandise offered to consumers. CafePress collected information such as names, email addresses, telephone numbers and—from shopkeepers—Social Security numbers (''Personal Information''). CafePress claimed to keep this information safe, but in fact failed to provide reasonable security. For example, CafePress failed to: Guard against well-known and reasonably foreseeable threats, such as SQL injection and cross-site scripting attacks; encrypt Social Security numbers; and implement a process for receiving and addressing third-party security vulnerability reports. CafePress also claimed to adhere to principles set forth in the EU-U.S. and Swiss U.S. Privacy Shield frameworks, specifically that it would honor user requests to delete data and user choices about how email addresses would be used. Instead, CafePress failed to delete Personal Information when it was requested to do so and sent marketing emails to nearly all its consumers, even those who had not opted in to receive such messages. As a result of CafePress' data security practices, consumers' Personal Information was stolen and sold on the dark web. CafePress learned of the breach but failed to notify affected consumers. After some shopkeepers learned of the breach and closed their accounts, CafePress withheld up to $25 in payable commissions from each of those shopkeepers.

The complaint alleges that Respondents violated Section 5(a) of the FTC Act by: (1) Misrepresenting the measures CafePress took to protect Personal Information; (2) misrepresenting the steps CafePress took to secure consumer accounts following security incidents; (3) failing to employ reasonable data security practices; (4) misrepresenting how CafePress would use email addresses; (5) misrepresenting CafePress's adherence to the Privacy

Shield frameworks; (6) misrepresenting whether CafePress would honor deletion requests; and (7) unfairly withholding commissions payable to shopkeepers.

The Proposed Orders contain provisions designed to prevent Respondents from engaging in the same or similar acts or practices in the future.

Summary of Proposed Order With Residual Pumpkin

Part I prohibits Residual Pumpkin from misrepresenting: (1) Privacy and security measures it takes to prevent unauthorized access to Personal Information; (2) the extent to which Residual Pumpkin is a member of any privacy or security program sponsored by a government, self-regulatory, or standard-setting organization; (3) privacy and security measures to honor users' privacy choices; (4) information deletion and retention practices; and (5) the extent to which it maintains and protects the privacy, security, availability, confidentiality, or integrity of Personal Information.

Part II requires Residual Pumpkin to establish and implement, and thereafter maintain, a comprehensive information security program (''Security Program'') that protects the privacy, security, confidentiality, and integrity of Personal Information. Part III requires Residual Pumpkin to obtain initial and biennial data security assessments for 20 years. Part IV requires Residual Pumpkin to disclose all material facts to the assessor and prohibits Residual Pumpkin from misrepresenting any fact material to the assessment required by Part II. Part V requires Residual Pumpkin to submit an annual certification from a senior corporate manager (or senior officer responsible for its Security Program) that Residual Pumpkin has implemented the requirements of the order and is not aware of any material noncompliance that has not been corrected or disclosed to the Commission. Part VI requires Residual Pumpkin to notify the Commission of a ''Covered Incident'' within thirty days of discovering such incident.

Parts VII and VIII require Residual Pumpkin to pay to the Commission $500,000 and describe the procedures and legal rights related to that payment. Part IX requires Residual Pumpkin to provide customer information to enable the Commission to administer consumer redress. Part X requires Residual Pumpkin to submit an acknowledgement of receipt of the order, including all officers or directors and employees having managerial responsibilities for conduct related to the subject matter of the order, and to obtain acknowledgements from each individual or entity to which a Residual Pumpkin has delivered a copy of the order.

Part XI requires Residual Pumpkin to file compliance reports with the Commission and to notify the Commission of bankruptcy filings or changes in corporate structure that might affect compliance obligations. Part XII contains recordkeeping requirements for accounting records, personnel records, consumer correspondence, advertising and marketing materials, and claim substantiation, as well as all records necessary to demonstrate compliance with the order. Part XIII contains other requirements related to the Commission's monitoring of Respondent's order compliance.

Part XIV provides the effective dates of the order, including that, with exceptions, the order will terminate in twenty (20) years.

Summary of Proposed Order With PlanetArt

Part I prohibits PlanetArt from misrepresenting: (1) Privacy and security measures it takes to prevent unauthorized access to Personal Information; (2) the extent to which PlanetArt is a member of any privacy or security program sponsored by a government, self-regulatory, or standard-setting organization; (3) privacy and security measures to honor users' privacy choices; (4) information deletion and retention practices; and (5) the extent to which it maintains and protects the privacy, security, availability, confidentiality, or integrity of Personal Information.

Part II requires PlanetArt to establish and implement, and thereafter maintain, a comprehensive information security program that protects the privacy, security, confidentiality, and integrity of Personal Information. Part III requires PlanetArt to obtain initial and biennial data security assessments for 20 years. Part IV requires PlanetArt to disclose all material facts to the assessor and prohibits PlanetArt from misrepresenting any fact material to the assessment required by Part II.

Part V requires PlanetArt to submit an annual certification from a senior corporate manager (or senior officer responsible for its Security Program) that PlanetArt has implemented the requirements of the order and is not aware of any material noncompliance that has not been corrected or disclosed to the Commission. Part VI requires PlanetArt to notify the Commission of a ''Covered Incident'' within thirty days of discovering such incident. Parts VII requires PlanetArt to provide notice to consumers to inform them of the breach and the settlement with the FTC.

Part VIII requires PlanetArt to submit an acknowledgement of receipt of the order, including all officers or directors and employees having managerial responsibilities for conduct related to the subject matter of the order, and to obtain acknowledgements from each individual or entity to which a PlanetArt has delivered a copy of the order.

Part IX requires PlanetArt to file compliance reports with the Commission and to notify the Commission of bankruptcy filings or changes in corporate structure that might affect compliance obligations. Part X contains recordkeeping requirements for accounting records, personnel records, consumer correspondence, advertising and marketing materials, and claim substantiation, as well as all records necessary to demonstrate compliance with the order. Part XI contains other requirements related to the Commission's monitoring of PlanetArt's order compliance.

Part XII provides the effective dates of the order, including that, with exceptions, the order will terminate in 20 years.

The purpose of this analysis is to facilitate public comment on the Proposed Orders, and it is not intended to constitute an official interpretation of the complaint or Proposed Orders, or to modify the Proposed Orders' terms in any way.

By direction of the Commission.

April J. Tabor,

Secretary.

[FR Doc. 2022–06022 Filed 3–21–22; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice MG–2022–01; Docket No. 2022–0002; Sequence No. 1]

Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Notification of Upcoming Web-Based Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: Notice of this web-based public meeting is being provided in accordance with the Federal Advisory Committee Act. This notice provides the date for the Green Building Advisory

Committee meeting, which is open to the public. Interested individuals must register to attend as instructed below under **SUPPLEMENTARY INFORMATION.**

DATES: The Green Building Advisory Committee will hold a web-based public meeting on Monday, April 18, 2022 from 11:00 a.m. to 5:00 p.m. Eastern Time (ET).

FOR FURTHER INFORMATION CONTACT: Dr. Ken Sandler, Designated Federal Officer, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, General Services Administration, 1800 F Street NW (Mail-code: MG), Washington, DC 20405, at *ken.sandler@gsa.gov* or 202–219–1121. Additional information about the Committee, including meeting materials and agendas, will be available on-line at *https://www.gsa.gov/gbac.*

SUPPLEMENTARY INFORMATION:

Procedures for Attendance

Contact Dr. Ken Sandler at *ken.sandler@gsa.gov* to register to attend this public web-based meeting. To register, submit your full name, organization, email address and phone number. Requests to attend the web-based meeting must be received by 5:00 p.m. ET, on Tuesday, April 12, 2022. Meeting call-in information will be provided to interested parties who register by the deadline. (GSA will be unable to provide technical assistance to any listener experiencing technical difficulties. Testing access to the web-based meeting site before the meetings is recommended.) Contact Dr. Sandler to register to provide public comment during the April 18, 2022 meeting public comment period. Attendees registered to provide public comment will be allowed a maximum of five minutes each and will need to provide written copies of their comments. Requests to provide public comment at the Committee meeting must be received by 5:00 p.m. ET, on Tuesday, April 12, 2022. To request for an accommodation, such as closed captioning, or to ask about accessibility, please contact Mr. Bryan Steverson at *bryan.steverson@gsa.gov* by Monday, April 4, 2022 to give GSA as much time as possible to process the request.

Background

The Administrator of GSA established the Committee on June 20, 2011 (**Federal Register**/Vol. 76, No. 118) pursuant to Section 494 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17123). Under this statute, the Committee provides independent policy advice and recommendations to GSA to advance federal building innovations in planning, design, and operations to reduce costs, enable agency missions, enhance human health and performance, and minimize environmental impacts.

April 18, 2022 Meeting Agenda

- Updates and Introductions
- Update on Embodied Carbon
- Environmental Justice and Equity for Federal Green Buildings Task Group: Proposed Advice Letter
- Federal Building Decarbonization Task Group: Proposed Advice Letter and Update
- Executive Order 14057: Update and Discussion
- New Committee Topics and Directions
- Public Comment
- Next Steps and Closing Comments

Kevin Kampschroer,

Federal Director, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, General Services Administration.

[FR Doc. 2022–06040 Filed 3–21–22; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3422–N]

Announcement of the Re-Approval of the American Association for Laboratory Accreditation (A2LA) as an Accreditation Organization Under the Clinical Laboratory Improvement Amendments of 1988

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the application of the American Association for Laboratory Accreditation (A2LA) for approval as an accreditation organization for clinical laboratories under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) program. We have determined that the A2LA meets or exceeds the applicable CLIA requirements. In this notice, we announce the approval and grant the A2LA deeming authority for a period of 6 years.

DATES: The approval announced in this notice is effective from March 23, 2022, until March 22, 2028.

FOR FURTHER INFORMATION CONTACT: Cindy Flacks, 410–786–6520.

SUPPLEMENTARY INFORMATION:

I. Background and Legislative Authority

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Pub. L. 100–578). CLIA amended section 353 of the Public Health Service Act. We issued a final rule implementing the accreditation provisions of CLIA on July 31, 1992 (57 FR 33992). Under those provisions, we may grant deeming authority to an accreditation organization if its requirements for laboratories accredited under its program are equal to or more stringent than the applicable CLIA program requirements in 42 CFR part 493 (Laboratory Requirements). Subpart E of part 493 (Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program) specifies the requirements an accreditation organization must meet to be approved by CMS as an accreditation organization under CLIA.

II. Notice of Approval of A2LA as an Accreditation Organization

In this notice, we approve the American Association for Laboratory Accreditation (A2LA) as an organization that may accredit laboratories for purposes of establishing their compliance with CLIA requirements in all specialties and subspecialties. We have examined the initial A2LA application and all subsequent submissions to determine its accreditation program's equivalency with the requirements for approval of an accreditation organization under subpart E of part 493. We have determined that the A2LA meets or exceeds the applicable CLIA requirements. We have also determined that the A2LA will ensure that its accredited laboratories will meet or exceed the applicable requirements in subparts H, I, J, K, M, Q, and the applicable sections of subpart R of part 493. Therefore, we grant the A2LA approval as an accreditation organization under subpart E of part 493, for the period stated in the **DATES** section of this notice for all specialties and subspecialties under CLIA. As a result of this determination, any laboratory that is accredited by the A2LA during the time period stated in the **DATES** section of this notice will be deemed to meet the CLIA requirements for the listed specialties and subspecialties, and therefore, will generally not be subject to routine inspections by a State survey agency to determine its compliance with CLIA requirements. The accredited laboratory,

however, is subject to validation and complaint investigation surveys performed by CMS, or its agent(s).

III. Evaluation of the A2LA Request for Approval as an Accreditation Organization Under CLIA

The following describes the process used to determine that the A2LA accreditation program meets the necessary requirements to be approved by CMS and that, as such, we may approve the A2LA as an accreditation program with deeming authority under the CLIA program. The A2LA formally applied to CMS for approval as an accreditation organization under CLIA for all specialties and subspecialties.

In reviewing these materials, we reached the following determinations for each applicable part of the CLIA regulations:

A. Subpart E—Accreditation by a Private, Nonprofit Accreditation Organization or Exemption Under an Approved State Laboratory Program

The A2LA submitted its mechanism for monitoring compliance with all requirements equivalent to condition-level requirements, a list of all its current laboratories and the expiration date of their accreditation, and a detailed comparison of the individual accreditation requirements with the comparable condition-level requirements. We have determined that the A2LA policies and procedures for oversight of laboratories performing all laboratory testing covered by CLIA are equivalent to those required by our CLIA regulations in the matters of inspection, monitoring proficiency testing (PT) performance, investigating complaints, and making PT information available. The A2LA submitted documentation regarding its requirements for monitoring and inspecting laboratories and describing its own standards regarding accreditation organization data management, inspection processes, procedures for removal or withdrawal of accreditation, notification requirements, and accreditation organization resources. We have determined that the requirements of the accreditation program submitted for approval are equal to or more stringent than the requirements of the CLIA regulations.

B. Subpart H—Participation in Proficiency Testing for Laboratories Performing Nonwaived Testing

We have determined that the A2LA's requirements are equal to or more stringent than the CLIA requirements at §§ 493.801 through 493.865. Consistent with the CLIA requirements, all of the A2LA's accredited laboratories are required to participate in an HHS-approved PT program for tests listed in subpart I. The CLIA requirement at § 493.801(b)(6) requires PT activities for the primary methods for nonwaived testing, whereas the A2LA requires its accredited laboratories to conduct PT activities for both primary and secondary test systems for waived and non-waived testing.

C. Subpart J—Facility Administration for Nonwaived Testing

The A2LA's requirements are equal to or more stringent than the CLIA requirements at §§ 493.1100 through 493.1105.

D. Subpart K—Quality System for Nonwaived Testing

We have determined that the quality control requirements of the A2LA are equal to or more stringent than the CLIA requirements at §§ 493.1200 through 493.1299.

E. Subpart M—Personnel for Nonwaived Testing

We have determined that the A2LA's requirements are equal to or more stringent than the CLIA requirements at §§ 493.1403 through 493.1495 for laboratories that perform moderate and high complexity testing.

F. Subpart Q—Inspection

We have determined that the A2LA's inspection requirements are equal to or more stringent than the CLIA requirements at §§ 493.1771 through 493.1780. The A2LA will continue to conduct biennial onsite inspections. The A2LA requires annual review of all accredited laboratories. Laboratories are required to submit any updates on information about its organization, facilities, key personnel, and results of any proficiency testing. Laboratories may be required to undergo an onsite surveillance visit if they do not submit their annual review documentation to the A2LA by the established 30-day deadline, if significant changes to the facility or organization have occurred, or if proficiency testing results have been consistently poor. The CLIA regulations do not have these requirements.

G. Subpart R—Enforcement Procedures

We have determined that A2LA meets the requirements of subpart R to the extent that it applies to accreditation organizations. The A2LA policy sets forth the actions the organization takes when laboratories it accredits do not comply with its requirements and standards for accreditation. When appropriate, the A2LA will deny, suspend, or revoke accreditation in a laboratory accredited by A2LA and report that action to us within 30 days. A2LA also provides an appeals process for laboratories that have had accreditation denied, suspended, or revoked.

We have determined that the A2LA's laboratory enforcement and appeal policies are equal to or more stringent than the requirements of part 493, subpart R, as they apply to accreditation organizations.

IV. Federal Validation Inspections and Continuing Oversight

The Federal validation inspections of laboratories accredited by the A2LA may be conducted on a representative sample basis or in response to substantial allegations of noncompliance (that is, complaint inspections). The outcome of those validation inspections, performed by CMS or our agents, or the State survey agencies, will be our principal means for verifying that the laboratories accredited by the A2LA remain in compliance with CLIA requirements. This Federal monitoring is an ongoing process.

V. Removal of Approval as an Accrediting Organization

Our regulations provide that we may rescind the approval of an accreditation organization, such as that of the A2LA, for cause, before the end of the effective date of approval. If we determine that the A2LA has failed to adopt, maintain, and enforce requirements that are equal to, or more stringent than, the CLIA requirements, or that systemic problems exist in its monitoring, inspection or enforcement processes, we may impose a probationary period, not to exceed 1 year, in which the A2LA would be allowed to address any identified issues. Should the A2LA be unable to address the identified issues within that timeframe, we may, in accordance with the applicable regulations, revoke the A2LA's deeming authority under CLIA.

Should circumstances result in our withdrawal of the A2LA's approval, we will publish a notice in the **Federal Register** explaining the basis for removing its approval.

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting record keeping or third party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget (OMB) under the authority of the

Paperwork Reduction Act of 1995 (44 U.S.C. 35). The requirements associated with the accreditation process for clinical laboratories under the CLIA program, and the implementing regulations in 42 CFR part 493, subpart E, are currently approved under OMB control number 0938–0686.

VII. Executive Order 12866 Statement

In accordance with the provisions of Executive Order 12866, this notice was not reviewed by the Office of Management and Budget.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: March 17, 2022.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–06023 Filed 3–21–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7066–N]

Announcement of the Advisory Panel on Outreach and Education (APOE) April 7, 2022 Virtual Meeting

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the next meeting of the APOE (the Panel) in accordance with the Federal Advisory Committee Act. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance Marketplace®, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES: *Meeting Date:* Thursday, April 7, 2022 from 12:00 p.m. to 5:00 p.m. eastern daylight time (e.d.t).

Deadline for Meeting Registration, Presentations, Special Accommodations, and Comments: Thursday, March 31, 2022 5:00 p.m. (e.d.t).

ADDRESSES: *Meeting Location:* Virtual. All those who RSVP will receive the link to attend.

Presentations and Written Comments: Presentations and written comments should be submitted to: Lisa Carr, Designated Federal Official (DFO), Office of Communications, Centers for Medicare & Medicaid Services, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov*.

Registration: Persons wishing to attend this meeting must register at the website *https://www.eventbrite.com/e/apoe-april-7-2022-virtual-meeting-tickets-261248299697* or by contacting the DFO listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Lisa Carr, Designated Federal Official, Office of Communications, 200 Independence Avenue SW, Mailstop 325G HHH, Washington, DC 20201, 202–690–5742, or via email at *APOE@cms.hhs.gov*.

Additional information about the APOE is available at: *https://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE* Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background and Charter Renewal Information

A. Background

The Advisory Panel for Outreach and Education (APOE) (the Panel) is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of federal advisory committees. The Panel is authorized by section 1114(f) of the Social Security Act (the Act) (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a).

The Secretary of the U.S. Department of Health and Human Services (HHS) (the Secretary) signed the charter establishing the Citizen's Advisory Panel on Medicare Education [1] (the predecessor to the APOE) on January 21, 1999 (64 FR 7899) to advise and make recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on the effective implementation of national Medicare education programs, including with respect to the Medicare+Choice (M+C) program added by the Balanced Budget Act of 1997 (Pub. L. 105–33).

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) expanded the existing health plan options and benefits available under the M+C program and renamed it the Medicare Advantage (MA) program. CMS has had substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options available and better tools to evaluate these options. The successful MA program implementation required CMS to consider the views and policy input from a variety of private sector constituents and to develop a broad range of public-private partnerships.

In addition, Title I of the MMA authorized the Secretary and the Administrator of CMS (by delegation) to establish the Medicare prescription drug benefit. The drug benefit allows beneficiaries to obtain qualified prescription drug coverage. In order to effectively administer the MA program and the Medicare prescription drug benefit, we have substantial responsibilities to provide information to Medicare beneficiaries about the range of health plan options and benefits available, and to develop better tools to evaluate these plans and benefits.

The Patient Protection and Affordable Care Act (Pub. L. 111–148) and Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (collectively referred to as the Affordable Care Act) expanded the availability of other options for health care coverage and enacted a number of changes to Medicare as well as to Medicaid and CHIP. Qualified individuals and qualified employers are now able to purchase private health insurance coverage through a competitive marketplace, called an Affordable Insurance Exchange (also called Health Insurance Marketplace®, or Marketplace® [2]). In order to effectively implement and administer these changes, we must provide information

[1] We note that the Citizen's Advisory Panel on Medicare Education is also referred to as the Advisory Panel on Medicare Education (65 FR 4617). The name was updated in the Second Amended Charter approved on July 24, 2000.

[2] Health Insurance Marketplace® and Marketplace® are service marks of the U.S. Department of Health and Human Services.

to consumers, providers, and other stakeholders through education and outreach programs regarding how existing programs will change and the expanded range of health coverage options available, including private health insurance coverage through the Marketplace®. The APOE (the Panel) allows us to consider a broad range of views and information from interested audiences in connection with this effort and to identify opportunities to enhance the effectiveness of education strategies concerning the Affordable Care Act.

The scope of this Panel also includes advising on issues pertaining to the education of providers and stakeholders with respect to the Affordable Care Act and certain provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA) (Pub. L. 111–5).

On January 21, 2011, the Panel's charter was renewed and the Panel was renamed the Advisory Panel for Outreach and Education. The Panel's charter was most recently renewed on January 19, 2021, and will terminate on January 19, 2023 unless renewed by appropriate action.

B. Charter Renewal

In accordance with the January 19, 2021, charter, the APOE will advise HHS and CMS on developing and implementing education programs that support individuals who are enrolled in or eligible for Medicare, Medicaid, CHIP, or coverage available through the Health Insurance Marketplace® and other CMS programs. The scope of this FACA group also includes advising on education of providers and stakeholders with respect to health care reform and certain provisions of the HITECH Act enacted as part of the ARRA.

The charter will terminate on January 19, 2023, unless renewed by appropriate action. The APOE was chartered under 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended. The APOE is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

In accordance with the renewed charter, the APOE will advise the Secretary and the CMS Administrator concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, Medicare, Medicaid, CHIP, and coverage available through the Health Insurance Marketplace® and other CMS programs.
- Enhancing the federal government's effectiveness in informing Medicare, Medicaid, CHIP, or the Health Insurance Marketplace® consumers, issuers, providers, and stakeholders, pursuant to education and outreach programs of issues regarding these programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers, partners and stakeholders.
- Expanding outreach to minority and underserved communities, including racial and ethnic minorities, in the context of Medicare, Medicaid, CHIP, and the Health Insurance Marketplace® education programs and other CMS programs as designated.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health coverage options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices, and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under the Affordable Care Act.

The current members of the Panel as of February 4, 2022, are as follows:

- Julie Carter, Senior Federal Policy Associate, Medicare Rights Center.
- Scott Ferguson, Psychotherapist, Scott Ferguson Psychotherapy.
- Jean-Venable Robertson Goode, Professor, Department of Pharmacotherapy and Outcomes Science, School of Pharmacy, Virginia Commonwealth University.
- Ted Henson, Director of Health Center Performance and Innovation, National Association of Community Health Centers.
- Joan Ilardo, Director of Research Initiatives, Michigan State University, College of Human Medicine.
- Cheri Lattimer, Executive Director, National Transitions of Care Coalition.
- Melissa McChesney, Health Policy Advisor, Unidos US.
- Cori McMahon, Vice President, Tridiuum.
- Alan Meade, Director of Rehabilitation Services, Holston Medical Group.
- Neil Meltzer, President and CEO, LifeBridge Health.
- Michael Minor, National Director, H.O.P.E. HHS Partnership, National Baptist Convention USA, Incorporated.
- Jina Ragland, Associate State Director of Advocacy and Outreach, AARP Nebraska.
- Morgan Reed, Executive Director, Association for Competitive Technology.
- Margot Savoy, Senior Vice President, American Academy of Family Physicians.
- Congresswoman Allyson Schwartz, Senior Advisor, FTI Consulting.
- Tia Whitaker, Statewide Director, Outreach and Enrollment, Pennsylvania Association of Community Health Centers.

II. Provisions of This Notice

In accordance with section 10(a) of the FACA, this notice announces a meeting of the APOE. The agenda for the April 7, 2022 meeting will include the following:

- Welcome and listening session with CMS leadership
- Recap of the previous (February 3, 2022) meeting
- CMS programs, initiatives, and priorities
- An opportunity for public comment
- Meeting summary, review of recommendations, and next steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

III. Meeting Participation

The meeting is open to the public, but attendance is limited to registered participants. Persons wishing to attend this meeting must register at the website *https://www.eventbrite.com/e/apoe-april-7-2022-virtual-meeting-tickets-261248299697* or contact the DFO at the address or number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice. This meeting will be held virtually. Individuals who are not registered in advance will be unable to attend the meeting.

IV. Collection of Information

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements.

Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: March 16, 2022.

Lynette Wilson,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2022–05963 Filed 3–21–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0278]

Proposed Information Collection Activity; Family Reunification Packet for Sponsors of Unaccompanied Children

AGENCY: Office of Refugee Resettlement, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is inviting public comments on revisions to an approved information collection. The request consists of several forms that allow the Unaccompanied Children (UC) Program to assess the suitability of potential sponsors for UC.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov*. Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: ORR proposes the following revisions to this information collection:

- Authorization for Release of Information—
  - ORR replaced the term ''minor'' with ''child.''
  - ORR removed the Alien Registration Number field, since it is not required for background checks.
  - ORR removed reference to ''past and present immigration status,'' since that information will no longer be collected in the Family Reunification application.
- Family Reunification Application—
  - ORR replaced the term ''minor'' with ''child.''
  - Proof of Identity—ORR added clarification that individuals under the age of 21 may use the ORR Verification of Release form with a photograph to meet this requirement.
  - Proof of Immigration Status or U.S. Citizenship—ORR removed the requirement that potential sponsors provide documentation verifying their immigration status or U.S. citizenship. ORR no longer uses this information as a criterion to determine when a sponsor care plan is required; therefore, it is no longer necessary to collect this information.
  - Proof of Address—ORR also removed the phrase ''dated within the last two months'' that appears after the current lease and current mortgage line items, because it is not applicable to those two acceptable forms of documentation.
  - Burden Estimate—ORR increased the average burden hours per response from 0.75 hours to a more accurate estimate of 1.0 hour.
- Letter of Designation for Care of a Minor—
  - ORR replaced the term ''minor'' with ''child.''
  - ORR also increased the average burden hours per response from 0.5 hours to a more accurate estimate of 0.75 hours.

Respondents: Potential sponsors of UC.

Annual Burden Estimates:

Respondents:

Instrument title	Annual total number of respondents	Annual total number of responses per respondent	Average burden hours per response	Annual total burden hours
Authorization for Release of Information (Forms FRP–2 & FRP–2s)	81,532	1	0.50	40,766
Family Reunification Application (Forms FRP–3 & FRP–3s)	122,950	1	1.00	122,950
Fingerprinting Instructions (Forms FRP–7 & FRP–7s)	81,532	1	1.25	101,915
Letter of Designation for Care of Minor (Forms FRP–9 & FRP–9s)	41,181	1	0.75	30,886

Estimated Annual Burden Total: 296,517.

Record Keepers:

Instrument title	Annual total number of record keepers	Annual total number of responses per record keeper	Average burden hours per response	Annual total burden hours
Authorization for Release of Information (Forms FRP–2 & FRP–2s)	235	347	0.25	20,386
Family Reunification Application (Forms FRP–3 & FRP–3s)	235	523	0.25	30,726
Fingerprinting Instructions (Forms FRP–7 & FRP–7s)	235	347	1.00	81,545
Letter of Designation for Care of Minor (Forms FRP–9 & FRP–9s)	235	175	0.25	10,281

Estimated Annual Burden Hours Total: 142,938.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 6 U.S.C. 279; 8 U.S.C. 1232; Flores v. Reno Settlement Agreement, No. CV85–4544–RJK (C.D. Cal. 1996).

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–05957 Filed 3–21–22; 8:45 am]

BILLING CODE 4184–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Request for Information: Technical Assistance Needs and Priorities on Implementation and Coordination of Early Childhood Development Programs in American Indian and Alaska Native Communities

AGENCY: Administration for Children and Families, U.S. Department of Health and Human Services.

ACTION: Request for public comment.

SUMMARY: Through this Request for Information (RFI), the Administration for Children and Families (ACF), in the U.S. Department of Health and Human Services (HHS), seeks to further the development, implementation, and coordination of early childhood development programs in American Indian and Alaska Native (AI/AN) communities, by soliciting information and recommendations from a broad array of individuals and organizations with knowledge and expertise around the context and needs of tribal communities and early childhood programs. ACF will analyze information received from this RFI to support the development, improvement, and implementation of technical assistance (TA) (*i.e.,* information, tools, training, and other supports) efforts and strategies to support tribal communities and programs in carrying out and coordinating early childhood services and initiatives.

DATES: Send comments on or before April 5, 2022.

ADDRESSES: Submit questions, comments, and supplementary documents to *OCCTribal@acf.hhs.gov* with ''Tribal TA RFI'' in the subject line.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Moushumi Beltangady at *Moushumi.beltangady@acf.hhs.gov* or 202–260–3613.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: HHS invites comments regarding this notice. You do not need to address every question and should focus on those where you have relevant expertise or experience. In your response, please provide a brief description of yourself and your role or organization before addressing the questions. To ensure that your comments are clearly stated, please identify the questions you are responding to when submitting your response.

1.0 Background

Ensuring high-quality, culturally appropriate, birth-to-age 5 early childhood services to children from AI/AN communities has long been a critical priority for Native communities throughout the United States. Health care and education are considered a fundamental treaty right by tribes, and the fact that AI/AN populations experience disparities in health and well-being relative to other population groups highlights a significant need for targeted services. Building on neuroscience findings indicating that interventions in the first few years of a child's life have significant impacts on their lifelong health and well-being, tribal early childhood programs show promise in mitigating disparities. Programs like Head Start (*https://eclkc.ohs.acf.hhs.gov*), child care (*https://www.acf.hhs.gov/occ*), and home visiting (*https://www.acf.hhs.gov/ecd/tribal/tribal-home-visiting*) are key resources for children and families in diverse tribal communities. In addition, in recent years, there has been growing recognition of the need to support collaboration across these and other programs and develop more coordinated early childhood systems in AI/AN communities.

The federal government has increased its focus on supporting the implementation and coordination of tribal early childhood programs over the past year through various efforts to bring together and learn from tribal communities and highlight innovative and promising practices, as well as significantly increased funding to tribes through the American Rescue Plan Act. In addition, there are current collaborative federal efforts in place to promote collaboration and coordination of TA for tribal programs. There is also the potential for new or expanded early childhood programs to be implemented in tribal communities in the coming years, making a focus on supportive effective implementation and coordination of programs even more.

2.0 Request for Information

Through this Request for Information (RFI), ACF is seeking input from tribal leaders, tribal program administrators, service providers, current federal and non-federal TA providers, potential TA providers, national organizations, researchers, philanthropy, families and community members, states, and others about the TA needs and priorities of tribal communities around implementing and providing early childhood services (including Head Start, child care, home visiting, preschool, and early intervention and special education), as well as needs around coordination of services and supporting stronger early childhood systems at the tribal level.

Responses to this RFI will inform ongoing and future efforts to provide training and TA to tribal communities. We are not only interested in feedback about current TA needs and priorities, but also the needs, capacity, and potential of the system to support implementation and coordination of any new or expanded early childhood initiatives. This RFI is for information and planning purposes only and should not be construed as a solicitation or as an obligation on the part of ACF or HHS.

3.0 Key Questions

3.1 In your opinion, what are the key topics or areas where tribal communities want or need TA or support to effectively implement or coordinate tribal early childhood programs (*e.g.,* Head Start, child care, home visiting, preschool, early intervention, and special education)?

- What TA would be helpful to support tribal communities to implement their priorities around integration of language and culture, including language preservation and maintenance, in their early childhood programs and systems?
- What TA would be helpful to support tribal communities in conducting needs assessments and strategic planning activities to support effective and coordinated early childhood programs and systems?
- What TA would be helpful to support tribal communities in effective

fiscal and administrative management of early childhood programs and grants?

• Given existing challenges with recruiting, hiring, and retaining qualified tribal early childhood program staff, what TA would be helpful to support tribal communities in building, supporting, strengthening, and maintaining an effective early childhood workforce?

• What TA would be helpful to support tribal communities in planning for, developing, building, maintaining, and improving appropriate early care and education facilities?

• What TA supports do tribal communities need or want around data collection and management, data systems, and data sovereignty in their early childhood programs and systems?

• What TA would be helpful to support tribal communities in implementing continuous quality improvement and evaluation initiatives in their early childhood programs and systems?

• What TA would be helpful to support tribal communities directly implementing high-quality early childhood programs and services (including evidence-based, developmentally appropriate practices, as well as infant and toddler programs and services to children with disabilities)?

• What TA would be helpful to support tribal early childhood programs in implementation of health, behavioral health, nutrition services, as appropriate?

• What TA would be helpful to support tribal early childhood programs and communities in effectively engaging families, elders, and community members and promoting family leadership (*i.e.,* empowering families to have a voice in program planning, implementation, and evaluation and advocate for their children)?

• What TA would be helpful to support tribal communities in developing, implementing, and overseeing (1) subsidy and certificate programs, (2) licensing programs, and (3) grants and contracts for early childhood services?

• What TA would be helpful to better support (1) tribal-level coordination and integration of early childhood programs and supports and (2) development of early childhood systems?

• What TA would be helpful to support tribes, when they desire, to collaborative effectively with states on implementation of early childhood programs and services?

• Are there any other key topic areas where TA would be helpful to support tribal communities in implementation and coordination of early childhood programs and systems? Are there any specific considerations around implementing possible new child care or preschool programs?

3.2 In your opinion, what is the ability and capacity of the current federal early childhood TA system to support tribal communities in the areas where TA is needed?

• What are the strengths of the existing TA system?

• Where are the gaps in the existing TA system?

• What existing resources could be more fully leveraged or tailored to be responsive to tribal early childhood programs and the needs of tribal communities?

3.3 In your opinion, what is the ideal structure of a TA network to provide support to tribal communities around implementation and coordination of early childhood programs and systems?

• What is the ideal overall organization of a federal tribal early childhood TA system (*e.g.,* national coordinating centers, regional-specific centers, topic-specific centers)?

• What are the best ways to ensure that federal TA is well-coordinated?

• What are the needed skills, background, capacities, experiences, and resources of entities and individuals providing TA to tribal communities implementing early childhood programs and systems?

• What are the best strategies for providing TA to tribal communities to implement coordinated early childhood programs and supports (*e.g.,* universal, targeted, intensive)?

• What are the ideal methods for providing TA to tribal communities on early childhood programs (*e.g.,* written resources, tools, webinars, trainings, meetings, site visits, peer learning and collaboration, coaching)?

3.4 If new or expanded TA supports are needed to support tribal early childhood program implementation and coordination, in your opinion, in what ways can the field (including TA providers) build capacity to provide the needed TA to tribal communities?

• Are there organizations or entities that are capable to serve as TA providers?

• Is there a pool of people who have the skills and experience necessary, including understanding the context of tribal communities, tribal sovereignty, culture and language, and tribal early childhood programs, to provide the TA that is needed?

• How can the TA system build capacity without negatively impacting tribal communities themselves (*e.g.,* by hiring away experienced staff)?

• How could potential new TA investments be integrated into the existing network of federal tribal early childhood TA providers?

3.5 In your opinion, do different types of tribal communities have different TA needs and priorities (topics, methods, strategies)?

• Larger tribal communities?

• Smaller tribal communities?

• Alaska Native communities?

• Urban Indian communities?

• Tribes that are consolidating child care into their 102–477 employment, training, and related services plans?

3.6 In your opinion, what are key challenges and lessons learned in providing effective TA to tribal communities to implement coordinated early childhood programs and systems?

• What are the primary challenges or barriers?

• For entities that have provided TA to tribal communities on these topics, what are some key lessons learned?

Authority: Section 511, Title V of the Social Security Act (42 U.S.C. 711); Head Start Act, as amended (42 U.S.C. 9801 et seq.); CCDB Act of 2014, as amended (Pub. L. 113–186).

Katie Hamm,

Deputy Assistant Secretary for Early Childhood Development Administration for Children and Families U.S. Department of Health and Human Services.

[FR Doc. 2022–05962 Filed 3–21–22; 8:45 am]

BILLING CODE 4184–74–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1584]

Authorization of Emergency Use of Certain Medical Devices During COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the issuance of Emergency Use Authorizations (EUAs) (the Authorizations) for certain medical devices related to the Coronavirus Disease 2019 (COVID–19) public health emergency. FDA has issued the Authorizations listed in this document under the Federal Food, Drug, and Cosmetic Act (FD&C Act). These Authorizations contain, among other things, conditions on the emergency use of the authorized products. The

Authorizations follow the February 4, 2020, determination by the Secretary of Health and Human Services (HHS) that there is a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves the virus that causes COVID–19, and the subsequent declarations on February 4, 2020, March 2, 2020, and March 24, 2020, that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the virus that causes COVID–19, personal respiratory protective devices, and medical devices, including alternative products used as medical devices, respectively, subject to the terms of any authorization issued under the FD&C Act. These Authorizations, which include an explanation of the reasons for issuance, are listed in this document, and can be accessed on FDA's website from the links indicated.

DATES: These Authorizations are effective on their date of issuance.

ADDRESSES: Submit written requests for single copies of an EUA 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 Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

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, 301–796–8510 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or 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. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by a biological, chemical, radiological, or nuclear agent or agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50 of the U.S. Code, of attack with (A) a biological, chemical, radiological, or nuclear agent or agents; or (B) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces; [1] (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Under section 564(h)(1) of the FD&C Act, revisions to an authorization shall be made available on the internet website of FDA. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under section 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, or 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA [2] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that (A) the product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii), that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied. No other criteria for issuance have been

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

prescribed by regulation under section 564(c)(4) of the FD&C Act.

II. Electronic Access

An electronic version of this document and the full text of the Authorizations are available on the internet and can be accessed from *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

III. The Authorizations

Having concluded that the criteria for the issuance of the following Authorizations under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of the following products for diagnosing, treating, or preventing COVID–19 subject to the terms of each Authorization. The Authorizations in their entirety, including any authorized fact sheets and other written materials, can be accessed from the FDA web page entitled ''Emergency Use Authorization,'' available at *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.* The lists that follow include Authorizations issued from September 11, 2021, through January 24, 2022, and we have included explanations of the reasons for their issuance, as required by section 564(h)(1) of the FD&C Act. In addition, the EUAs that have been reissued can be accessed from FDA's web page: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

FDA is hereby announcing the following Authorizations for molecular diagnostic and antigen tests for COVID–19, excluding multianalyte tests: [3]

- Life Sciences Testing Center's Life Sciences Testing Center COVID–19 Test, issued September 22, 2021;
- ANP Technologies, Inc.'s NIDS COVID–19 Antigen Rapid Test Kit, issued September 24, 2021;
- Cleveland Clinic Robert J. Tomsich Pathology and Laboratory Medicine Institute's SelfCheck cobas SARS–CoV–2 Assay, issued September 29, 2021;
- ACON Laboratories, Inc.'s Flow*flex* COVID–19 Antigen Home Test, issued October 4, 2021;
- Xtrava Health's SPERA COVID–19 Ag Test, issued October 12, 2021;
- LMSI, LLC's (d/b/a Lighthouse Lab Services) CovidNow SARS–CoV–2 Assay, issued October 14, 2021;
- Celltrion USA, Inc.'s Celltrion DiaTrust COVID–19 Ag Home Test, issued October 21, 2021;
- Detect, Inc's Detect Covid–19 Test, issued October 28, 2021;
- Talis Biomedical Corporation's Talis One COVID–19 Test System, issued November 5, 2021;
- iHealth Labs, Inc.'s iHealth COVID–19 Antigen Rapid Test, issued November 5, 2021;
- Meridian Bioscience, Inc.'s Revogene SARS–CoV–2, issued November 9, 2021;
- InBios International Inc.'s SCoV–2 Ag *Detect* Rapid Self-Test, issued November 22, 2021;
- Nano-Ditech Corp.'s Nano-Check COVID–19 Antigen Test, issued December 6, 2021;
- UCSD BCG EXCITE Lab's UCSD EXCITE COVID–19 Test, issued December 17, 2021;
- SD Biosensor, Inc.'s COVID–19 At-Home Test, issued December 24, 2021;
- Siemens Healthineers' CLINITEST Rapid COVID–19 Antigen Self-Test, issued December 29, 2021;
- Premier Medical Laboratory Services' PMLS SARS–CoV–2 Assay, issued January 7, 2022;
- iHealth Labs, Inc.'s iHealth COVID–19 Antigen Rapid Test Pro, issued January 14, 2022;
- Maxim Biomedical, Inc.'s MaximBio ClearDetect COVID–19 Antigen Home Test, issued January 19, 2022; and
- Mammoth Biosciences, Inc.'s DETECTR BOOST SARS–CoV–2 Reagent Kit, issued January 21, 2022.

FDA is hereby announcing the following Authorizations for serology tests: [4]

- EUROIMMUN US, Inc.'s EUROIMMUN Anti-SARS–CoV–2 S1 Curve ELISA (IgG), issued October 4, 2021;
- InBios International, Inc.'s SCoV–2 *Detect* Neutralizing Ab ELISA, issued October 22, 2021.

FDA is hereby announcing the following Authorizations for multianalyte in vitro diagnostics:

- Laboratory Corporation of America's Labcorp SARS–CoV–2 & Influenza A/B Assay, issued September 30, 2021; [5]
- PerkinElmer, Inc.'s PKamp Respiratory SARS–CoV–2 RT–PCR Panel 1, issued October 6, 2021; [6] and
- Applied BioCode, Inc.'s BioCode CoV–2 Flu Plus Assay, issued December 15, 2021 [7] FDA is hereby announcing the following Authorizations for other medical devices:
- Quest Diagnostics Infectious Disease, Inc.'s Quest Diagnostics Collection Kit for COVID–19, issued October 8, 2021; [8]

[3] As set forth in the EUAs for these products, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the products may be effective in diagnosing COVID–19, and that the known and potential benefits of the products, when used for diagnosing COVID–19, outweigh the known and potential risks of such products; and (3) there is no adequate, approved, and available alternative to the emergency use of the products.

[4] As set forth in the EUAs for these products, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the products may be effective in diagnosing recent or prior infection with SARS–CoV–2 by identifying individuals with an adaptive immune response to the virus that causes COVID–19, and that the known and potential benefits of the products when used for such use, outweigh the known and potential risks of the products; and (3) there is no adequate, approved, and available alternative to the emergency use of the products.

[5] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in diagnosing COVID–19 through the simultaneous qualitative detection and differentiation of SARS–CoV–2, influenza A virus, and/or influenza B virus RNA and that the known and potential benefits of the product when used for diagnosing COVID–19, outweigh the known and potential risks of the product; and (3) there is no adequate, approved, and available alternative to the emergency use of the product.

[6] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in diagnosing COVID–19, through the simultaneous qualitative detection and differentiation of SARS–CoV–2, influenza A, influenza B, and/or RSV virus RNA, and that the known and potential benefits of the product when used for diagnosing COVID–19, outweigh the known and potential risks of the product; and (3) there is no adequate, approved, and available alternative to the emergency use of the product.

[7] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in diagnosing COVID–19, through the simultaneous qualitative detection and differentiation of RNA from SARS–CoV–2, influenza A virus, influenza B virus, and/or RSV, and that the known and potential benefits of your product when used for diagnosing COVID–19, outweigh the known and potential risks of your product; and (3) there is no adequate, approved, and available alternative to the emergency use of the product.

[8] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in diagnosing COVID–19 by serving as an appropriate means to collect and

• Audere's *HealthPulse@home,* issued November 30, 2021; [9]

In addition, on September 23, 2021, FDA issued a letter to Developers of Certain Molecular, Antigen and Serology In Vitro Diagnostics (IVDs) Authorized for Emergency Use for Coronavirus Disease 2019 (COVID–19) as of Today's Date (September 23, 2021) for Establishing additional Conditions of Authorization for the EUAs of Certain Molecular, Antigen and Serology IVDs related to viral mutations.[10]

Dated: March 14, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–06008 Filed 3–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0902]

Agency Information Collection Activities; Proposed Collection; Comment Request; Medication Guides for Prescription Drug Products

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection associated with Medication Guides for prescription drug products.

DATES: Submit either electronic or written comments on the collection of information by May 23, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of May 23, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include Docket No. FDA–2011–N–0902 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Medication Guide Requirements for Prescription Drug Product Labeling.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management

transport human specimens so that an authorized laboratory can detect SARS–CoV–2 RNA from the collected human specimen, and that the known and potential benefits of the product when used for such use, outweigh the known and potential risks of the product; and (3) there is no adequate, approved, and available alternative to the emergency use of the product.

[9] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in diagnosing COVID–19 by serving as an appropriate means to collect and transport human specimens so that an authorized laboratory can detect SARS–CoV–2 RNA from the collected human specimen, and that the known and potential benefits of the product when used for such use, outweigh the known and potential risks of the product; and (3) there is no adequate, approved, and available alternative to the emergency use of the product.

[10] FDA concluded that establishing additional conditions on the EUAs within the scope of the letter is appropriate to protect the public health or safety and revised all such EUAs pursuant to Section 564(g)(2)(C) of the FD&C Act to establish the three additional conditions set forth in the letter as permitted by Section 564(e) of the FD&C Act.

Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2(A) of the PRA (44 U.S.C. 3506(c)(2)(A) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Medication Guide Requirements for Prescription Drug Product Labeling

OMB Control Number 0910–0393—Extension

This information collection supports FDA regulations pertaining to the distribution of patient labeling, called Medication Guides, for human prescription drug and biological products used primarily on an outpatient basis, and required for products that pose a serious and significant public health concern. Applicable regulations are codified at 21 CFR part 208: Medication Guides for Prescription Drug Products, and set forth general content and format requirements, as well as provide for exemptions and deferrals. Medication Guides provide patients with important written information about drug products, including the drug's approved uses, contraindications, adverse drug reactions, and cautions for specific populations, and are required in accordance with Agency regulations.

To assist consumers and industry with understanding applicable regulatory requirements in 21 CFR part 208 pertaining to developing, distributing, and submitting certain Medication Guides, we have developed the guidance document entitled ''Medication Guides—Distribution Requirements and Inclusion in Risk Evaluation and Mitigation Strategies (REMS)'' (available at *https://www.fda.gov/media/79776/download*). The guidance document includes a discussion of the applicable regulations; FDA enforcement policy with regard to Medication Guides associated with products dispensed to healthcare professionals, or patient caregivers, instead of being dispensed directly to the patient for self-administration; and Medication Guides required as part of a risk evaluation and mitigation strategy.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity; 21 CFR section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Content and format of a Medication Guide; § 208.20	41	1	41	320	13,120
Exemptions and deferrals; § 208.26(a)	1	1	1	4	4
Total			42		13,124

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Upon evaluation of the information collection, we have removed burden we attributed to reporting associated with supplements and other changes to approved abbreviated new drug applications, new drug applications, and biologics license applications (21 CFR 314.70(b)(3)(ii) and 601.12(f)). We now account for burden associated with these regulatory provisions in OMB control numbers 0910–0001 and 0910–0338 and have decreased the burden associated with this collection accordingly.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity; 21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure [2]	Total hours
Distribute Medication Guides to authorized dispensers; § 208.24(c).	191	9,000	1,719,000	1.25	2,148,750
Distribute and Dispense Medication Guides to Patients; § 208.24(e).	88,000	5,705	502,040,000	0.05 (3 minutes)	25,102,000
Total			503,759,000		27,250,750

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] Numbers may not sum due to rounding.

We have decreased our estimated burden associated with disclosures to reflect a decrease in related submissions over the past 3 years.

Dated: March 14, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–06034 Filed 3–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0335]

Authorization of Emergency Use of a Biological Product During the COVID–19 Pandemic; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of an Emergency Use Authorization (EUA) (the Authorization) under the Federal Food, Drug, and Cosmetic Act (FD&C Act) for use during the COVID–19 pandemic. FDA has issued one Authorization for a biological product as requested by Eli Lilly and Company (Lilly). The Authorization contains, among other things, conditions on the emergency use of the authorized product. The Authorization follows the February 4, 2020, determination by the Secretary of Health and Human Services (HHS) that there is a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves a novel (new) coronavirus. The virus, now named SARS–CoV–2, causes the illness COVID–19. On the basis of such determination, the Secretary of HHS declared on March 27, 2020, that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID–19 pandemic, pursuant to the FD&C Act, subject to the terms of any authorization issued under that section. The Authorization, which includes an explanation of the reasons for issuance, is reprinted in this document.

DATES: The Authorization is effective as of February 11, 2022.

ADDRESSES: Submit written requests for a single copy of the EUA 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 Authorization may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Michael Mair, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4340, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen 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. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by biological, chemical, nuclear, or radiological agents when there are no adequate, approved, and available alternatives (among other criteria).

II. Criteria for EUA Authorization

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50, U.S. Code, of attack with (A) a biological, chemical, radiological, or nuclear agent or agents; or (B) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces; [1] (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Under section 564(h)(1) of the FD&C Act, revisions to an authorization shall be made available on the internet website of FDA. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use in an actual or potential emergency when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, and 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances),

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

FDA [2] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that: (A) The product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii) of the FD&C Act, that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act.

III. The Authorization

The Authorization follows the February 4, 2020, determination by the Secretary of HHS that there is a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad and that involves a novel (new) coronavirus. The virus, now named SARS–CoV–2, causes the illness COVID–19. Notice of the Secretary's determination was provided in the **Federal Register** on February 7, 2020 (85 FR 7316). On the basis of such determination, the Secretary of HHS declared on March 27, 2020, that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID–19 pandemic, pursuant to section 564 of the FD&C Act, subject to the terms of any authorization issued under that section. Notice of the Secretary's declaration was provided in the **Federal Register** on April 1, 2020 (85 FR 18250). Having concluded that the criteria for issuance of the Authorization under section 564(c) of the FD&C Act are met, FDA has issued the authorization for the emergency use of a biological product during the COVID–19 pandemic. On February 11, 2022, FDA issued an EUA to Lilly for the biological product bebtelovimab, subject to the terms of the Authorization. The initial Authorization, which is included below in its entirety after section IV of this document (not including the authorized versions of the fact sheets and other written materials), provides an explanation of the reasons for issuance, as required by section 564(h)(1) of the FD&C Act. Any subsequent reissuance of the Authorization can be found on FDA's web page at: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

IV. Electronic Access

An electronic version of this document and the full text of the Authorization is available on the internet at: *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

BILLING CODE 4164–01–P

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

U.S. FOOD & DRUG ADMINISTRATION

February 11, 2022

Eli Lilly and Company
Attention: Christine Phillips, PhD, RAC
Advisor Global Regulatory Affairs - US
Lilly Corporate Center
Drop Code 2543
Indianapolis, IN 46285

RE: Emergency Use Authorization 111

Dear Ms. Phillips:

This letter is in response to Eli Lilly and Company's ("Lilly") request that the Food and Drug Administration (FDA or Agency) issue an Emergency Use Authorization (EUA) for the emergency use of bebtelovimab for the treatment of mild-to-moderate coronavirus disease 2019 (COVID-19) in certain adults and pediatric patients who are at high-risk for progression to severe COVID-19, including hospitalization or death, pursuant to Section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. §360bbb-3).

On February 4, 2020, pursuant to Section 564(b)(1)(C) of the Act, the Secretary of the Department of Health and Human Services (HHS) determined that there is a public health emergency that has a significant potential to affect national security or the health and security of United States citizens living abroad, and that involves the virus that causes coronavirus disease 2019 (COVID-19).[1] On the basis of such determination, the Secretary of HHS on March 27, 2020, declared that circumstances exist justifying the authorization of emergency use of drugs and biological products during the COVID-19 pandemic, pursuant to Section 564 of the Act (21 U.S.C. 360bbb-3), subject to terms of any authorization issued under that section.[2]

Bebtelovimab is a neutralizing IgG1 monoclonal antibody that binds to an epitope within the receptor binding domain of the spike protein of SARS-CoV-2. Bebtelovimab is not FDA-approved for any uses, including use as treatment for COVID-19.

Based on the review of the data from the BLAZE-4 clinical trial (NCT04634409), a Phase 1/2 randomized, single-dose clinical trial studying bebtelovimab for the treatment of non-hospitalized patients with mild-to-moderate COVID-19, as well as available pharmacokinetic data and nonclinical viral neutralization data for Omicron and other variants of concern, it is reasonable to believe that bebtelovimab may be effective for the treatment of mild-to-moderate

[1] U.S. Department of Health and Human Services, *Determination of a Public Health Emergency and Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*. February 4, 2020.
[2] U.S. Department of Health and Human Services, *Declaration that Circumstances Exist Justifying Authorizations Pursuant to Section 564(b) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 360bbb-3*, 85 FR 18250 (April 1, 2020).

COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) who are at high-risk for progression to severe COVID-19, including hospitalization or death, and for whom alternative COVID-19 treatment options approved or authorized by FDA are not accessible or clinically appropriate, as described in the Scope of Authorization (Section II), and when used under the conditions described in this authorization, the known and potential benefits of bebtelovimab outweigh the known and potential risks of such product.

Having concluded that the criteria for issuance of this authorization under Section 564(c) of the Act are met, I am authorizing the emergency use of bebtelovimab for the treatment of mild-to-moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) who are at high-risk for progression to severe COVID-19, including hospitalization or death, as described in the Scope of Authorization section of this letter (Section II) and subject to the terms of this authorization.

I. Criteria for Issuance of Authorization

I have concluded that the emergency use of bebtelovimab for treatment of mild-to-moderate COVID-19, when administered as described in the Scope of Authorization (Section II), meets the criteria for issuance of an authorization under Section 564(c) of the Act, because:

1. SARS-CoV-2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus;

2. Based on the totality of scientific evidence available to FDA, it is reasonable to believe that bebtelovimab may be effective for the treatment of mild-to-moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) who are at high-risk for progression to severe COVID-19, including hospitalization or death, as described in the Scope of Authorization (section II), and that, when used under the conditions described in this authorization, the known and potential benefits of bebtelovimab outweigh the known and potential risks of such product; and

3. There is no adequate, approved, and available alternative[3] to the emergency use of bebtelovimab for the treatment of mild-to-moderate COVID-19 in adults and pediatric (12 years of age and older weighing at least 40 kg) patients as further described in the Scope of Authorization (section II).[4]

II. Scope of Authorization

I have concluded, pursuant to Section 564(d)(1) of the Act, that the scope of this authorization is limited as follows:

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[3] Although Veklury (remdesivir) is an approved alternative to treat COVID-19 in adults and pediatric patients within the scope of this authorization, FDA does not consider it to be an adequate alternative for certain patients for whom it may not be feasible or practical (e.g., it requires a 3-day treatment duration).

[4] No other criteria of issuance have been prescribed by regulation under Section 564(c)(4) of the Act.

- Distribution of the authorized bebtelovimab will be controlled by the United States (U.S.) Government for use consistent with the terms and conditions of this EUA. Lilly will supply bebtelovimab to authorized distributor(s)[5], who will distribute to healthcare facilities or healthcare providers as directed by the U.S. Government, in collaboration with state and local government authorities as needed;

- Bebtelovimab may only be used for the treatment of mild-to-moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg):

    - With positive results of direct SARS-CoV-2 viral testing, and
    - Who are at high-risk[6] for progression to severe COVID, including hospitalization or death, and
    - For whom alternative COVID-19 treatment options approved or authorized by FDA are not accessible or clinically appropriate.

- Bebtelovimab is **not** authorized for use in the following patient populations[7]:

    - Adults or pediatric patients who are hospitalized due to COVID-19, or
    - Adults or pediatric patients who require oxygen therapy and/or respiratory support due to COVID-19, or
    - Adults or pediatric patients who require an increase in baseline oxygen flow rate and/or respiratory support due to COVID-19 in those patients on chronic oxygen therapy and/or oxygen support due to underlying non-COVID-19-related comorbidity;

- Bebtelovimab is **not** authorized for treatment of mild-to-moderate COVID-19 in geographic regions where infection is likely to have been caused by a non-susceptible SARS-CoV-2 variant, based on available information including variant susceptibility to these drugs and regional variant frequency.[8]

- Bebtelovimab may only be administered in settings in which health care providers have immediate access to medications to treat a severe infusion reaction, such as

[5] "Authorized Distributor(s)" are identified by Lilly as an entity or entities allowed to distribute authorized bebtelovimab.

[6] For information on medical conditions and factors associated with increased risk for progression to severe COVID-19, see the Centers for Disease Control and Prevention (CDC) website: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html.

[7] Treatment with bebtelovimab has not been studied in patients hospitalized due to COVID-19. Monoclonal antibodies, such as bebtelovimab, may be associated with worse clinical outcomes when administered to hospitalized patients with COVID-19 requiring high flow oxygen or mechanical ventilation.

[8] FDA will monitor conditions to determine whether use in a geographic region is consistent with this scope of authorization, referring to available information, including information on variant susceptibility (see, e.g., section 12.4 of authorized Fact Sheet for Health Care Providers), and CDC regional variant frequency data available at: https://covid.cdc.gov/covid-data-tracker/#variant-proportions. FDA's determination and any updates will be available at: https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization#coviddrugs.

anaphylaxis, and the ability to activate the emergency medical system (EMS), as necessary;

- The use of bebtelovimab covered by this authorization must be in accordance with the authorized Fact Sheets.

Product Description

Bebtelovimab injection (NDC 0002-7589-01) is a sterile, preservative-free clear to opalescent and colorless to slightly yellow to slightly brown solution supplied in a single-dose vial. Each carton contains a single vial of bebtelovimab, which is labeled "For Use Under Emergency Use Authorization (EUA)".

The authorized storage and handling information is included in the authorized Fact Sheet for Healthcare Providers.

Bebtelovimab is authorized for emergency use with the following product-specific information required to be made available to healthcare providers and to patients, parents, and caregivers, respectively, through Lilly's website www.LillyAntibody.com/bebtelovimab (referred to as the "authorized labeling"):

- Fact Sheet for Healthcare Providers: Emergency Use Authorization (EUA) for bebtelovimab
- Fact Sheet for Patients, Parents, and Caregivers: Emergency Use Authorization (EUA) of bebtelovimab for Coronavirus Disease 2019 (COVID-19)

I have concluded, pursuant to Section 564(d)(2) of the Act, that it is reasonable to believe that the known and potential benefits of bebtelovimab, when used for the treatment of COVID-19 and used in accordance with this Scope of Authorization (Section II), outweigh the known and potential risks.

I have concluded, pursuant to Section 564(d)(3) of the Act, based on the totality of scientific evidence available to FDA, that it is reasonable to believe that bebtelovimab may be effective for the treatment of COVID-19 when used in accordance with this Scope of Authorization (Section II), pursuant to Section 564(c)(2)(A) of the Act.

Having reviewed the scientific information available to FDA, including the information supporting the conclusions described in Section I above, I have concluded that bebtelovimab (as described in this Scope of Authorization (Section II)) meets the criteria set forth in Section 564(c) of the Act concerning safety and potential effectiveness.

The emergency use of bebtelovimab under this EUA must be consistent with, and may not exceed, the terms of the Authorization, including the Scope of Authorization (Section II) and the Conditions of Authorization (Section III). Subject to the terms of this EUA and under the circumstances set forth in the Secretary of HHS's determination under Section 564(b)(1)(C) described above and the Secretary of HHS's corresponding declaration under Section 564(b)(1), bebtelovimab is authorized

for the treatment of COVID-19 as described in this Scope of Authorization (Section II) under this EUA, despite the fact that it does not meet certain requirements otherwise required by applicable federal law.

III. Conditions of Authorization

Pursuant to Section 564 of the Act, I am establishing the following conditions on this authorization:

Lilly and Authorized Distributors[9]

A. Lilly and authorized distributor(s) will ensure that the authorized bebtelovimab is distributed, as directed by the U.S. government, and the authorized labeling (i.e., Fact Sheets) will be made available to healthcare facilities and/or healthcare providers consistent with the terms of this letter.

B. Lilly and authorized distributor(s) will ensure that the terms of this EUA are made available to all relevant stakeholders (e.g., U.S. government agencies, state and local government authorities, authorized distributors, healthcare facilities, healthcare providers) involved in distributing or receiving bebtelovimab. Lilly will provide to all relevant stakeholders a copy of this Letter of Authorization and communicate any subsequent amendments that might be made to this Letter of Authorization and its authorized accompanying materials (i.e., Fact Sheets).

C. Lilly may request changes to this authorization, including to the authorized Fact Sheets for bebtelovimab. Any request for changes to this EUA must be submitted to the Office of Infectious Diseases/Office of New Drugs/Center for Drug Evaluation and Research. Such changes require appropriate authorization prior to implementation.[10]

D. Lilly may develop and disseminate instructional and educational materials (e.g., materials providing information on product administration and/or patient monitoring) that are consistent with the authorized emergency use of bebtelovimab as described in this Letter of Authorization and authorized labeling, without FDA's review and concurrence, when necessary to meet public health needs. Any instructional and educational materials that are inconsistent with the authorized labeling for bebtelovimab are prohibited. If the Agency notifies Lilly that any instructional and educational materials are inconsistent with the authorized labeling, Lilly must cease distribution of such instructional and educational

[9] Supra at Note 5.

[10] The following types of revisions may be authorized without reissuing this letter: (1) changes to the authorized labeling; (2) non-substantive editorial corrections to this letter; (3) new types of authorized labeling, including new fact sheets; (4) new carton/container labels; (5) expiration dating extensions; (6) changes to manufacturing processes, including tests or other authorized components of manufacturing; (7) new conditions of authorization to require data collection or study; (8) new strengths of the authorized product, new product sources (e.g., of active pharmaceutical ingredient) or of product components. For changes to the authorization, including the authorized labeling, of the type listed in (3), (6), (7), or (8), review and concurrence is required from the Counter-Terrorism and Emergency Coordination Staff/Office of the Center Director/CDER and the Office of Counterterrorism and Emerging Threats/Office of the Chief Scientist.

materials. Furthermore, as part of its notification, the Agency may also require Lilly to issue corrective communication(s).

E. Lilly will report to FDA all serious adverse events and medication errors potentially related to bebtelovimab use that are reported to Lilly using either of the following options.

Option 1: Submit reports through the Safety Reporting Portal (SRP) as described on the FDA SRP web page.

Option 2: Submit reports directly through the Electronic Submissions Gateway (ESG) as described on the FAERS electronic submissions web page.

Submitted reports under both options must state: "Bebtelovimab use for COVID-19 under Emergency Use Authorization (EUA)." For reports submitted under Option 1, include this language at the beginning of the question "Describe Event" for further analysis. For reports submitted under Option 2, include this language at the beginning of the "Case Narrative" field.

F. All manufacturing, packaging, and testing sites for both drug substance and drug product used for EUA supply will comply with current good manufacturing practice requirements of Section 501(a)(2)(B) of the Act.

G. Lilly will submit information to the Agency within three working days of receipt of any information concerning significant quality problems with distributed drug product of bebtelovimab that includes the following:

- Information concerning any incident that causes the drug product or its labeling to be mistaken for, or applied to, another article; or
- Information concerning any microbiological contamination, or any significant chemical, physical, or other change or deterioration in the distributed drug product, or any failure of one or more distributed batches of the drug product to meet the established specifications.

If a significant quality problem affects unreleased product and may also impact product(s) previously released and distributed, then information must be submitted for all potentially impacted lots.

Lilly will include in its notification to the Agency whether the batch, or batches, in question will be recalled. If FDA requests that these, or any other batches, at any time, be recalled, Lilly must recall them.

If not included in its initial notification, Lilly must submit information confirming that Lilly has identified the root cause of the significant quality problems, taken corrective action, and provide a justification confirming that the corrective action is appropriate and effective. Lilly must submit this information as soon as possible but no later than 45 calendar days from the initial notification.

H. Lilly will manufacture bebtelovimab to meet all quality standards and per the manufacturing process and control strategy as detailed in Lilly's EUA request. Lilly will not implement any changes to the description of the product, manufacturing process, facilities and equipment, and elements of the associated control strategy that assure process performance and quality of the authorized product, without notification to and concurrence by the Agency as described under condition D.

I. Lilly will list bebtelovimab with a unique product NDC under the marketing category of Emergency Use Authorization. Further, the listing will include each establishment where manufacturing is performed for the drug and the type of operation performed at each such establishment.

J. Through a process of inventory control, Lilly and authorized distributor(s) will maintain records regarding distribution of bebtelovimab (i.e., lot numbers, quantity, receiving site, receipt date).

K. Lilly will establish a process for monitoring genomic database(s) for the emergence of global viral variants of SARS-CoV-2. A summary of Lilly's process should be submitted to the Agency as soon as practicable, but no later than 30 calendar days of the issuance of this letter, and within 30 calendar days of any material changes to such process. Lilly will provide reports to the Agency on a monthly basis summarizing any findings as a result of its monitoring activities and, as needed, any follow-up assessments planned or conducted.

L. FDA may require Lilly to assess the activity of the authorized bebtelovimab against any global SARS-CoV-2 variant(s) of interest (e.g., variants that are prevalent or becoming prevalent that harbor substitutions in the target protein or in protein(s) that interact with the target protein). Lilly will perform the required assessment in a manner and timeframe agreed upon by Lilly and the Agency. Lilly will submit to FDA a preliminary summary report immediately upon completion of its assessment followed by a detailed study report within 30 calendar days of study completion. Lilly will submit any relevant proposal(s) to revise the authorized labeling based on the results of its assessment, as may be necessary or appropriate based on the foregoing assessment.

M. Lilly shall provide samples as requested of the authorized bebtelovimab to the HHS for evaluation of activity against emerging global viral variants of SARS-CoV-2, including specific amino acid substitution(s) of interest (e.g., variants that are highly prevalent or that harbor substitutions in the target protein) within 5 business days of any request made by HHS. Analyses performed with the supplied quantity of authorized bebtelovimab may include, but are not limited to, cell culture potency assays, protein binding assays, cell culture variant assays (pseudotyped virus-like particles and/or authentic virus), and *in vivo* efficacy assays.

N. Lilly must provide the following information to the Agency:

1. Lilly will submit a study report to FDA characterizing the development of SARS-CoV-2 resistance to bebtelovimab in cell culture passage experiments no later than 30 days of the completion of these experiments.
2. Lilly will submit to FDA all sequencing data assessing bebtelovimab, including sequencing of any participant samples from the full analysis population from PYAH arms 9-14 that have not yet been completed no later than March 31, 2022.
3. Lilly will submit a proposed clinical trial protocol to further evaluate bebtelovimab for the treatment of mild-to-moderate COVID-19 in non-hospitalized patients no later than March 1, 2022.

O. Lilly and authorized distributor(s) will make available to FDA upon request any records maintained in connection with this EUA.

Healthcare Facilities to Whom Bebtelovimab Is Distributed and Healthcare Providers Administering bebtelovimab

P. Healthcare facilities and healthcare providers will ensure that they are aware of the letter of authorization, and the terms herein, and that the authorized Fact Sheets are made available to healthcare providers and to patients and caregivers, respectively, through appropriate means, prior to administration of bebtelovimab as described in the Scope of Authorization (Section II) under this EUA.

Q. Healthcare facilities and healthcare providers receiving bebtelovimab will track all serious adverse events and medication errors that are considered to be potentially related to bebtelovimab use and must report these to FDA in accordance with the Fact Sheet for Healthcare Providers. Complete and submit a MedWatch form (www.fda.gov/medwatch/report.htm), or complete and submit FDA Form 3500 (health professional) by fax (1-800-FDA-0178) (these forms can be found via link above). Call 1-800-FDA-1088 for questions. Submitted reports must state, "Bebtelovimab use for COVID-19 under Emergency Use Authorization" at the beginning of the question "Describe Event" for further analysis.

R. Healthcare facilities and healthcare providers will ensure that appropriate storage is maintained until the product is administered consistent with the terms of this letter and the authorized labeling.

S. Through a process of inventory control, healthcare facilities will maintain records regarding the dispensing and administration of bebtelovimab for the use authorized in this letter (i.e., lot numbers, quantity, receiving site, receipt date), product storage, and maintain patient information (e.g., patient name, age, disease manifestation, number of doses administered per patient, other drugs administered).

T. Healthcare facilities will ensure that any records associated with this EUA are maintained until notified by Lilly and/or FDA. Such records will be made available to Lilly, HHS, and FDA for inspection upon request.

U. Healthcare facilities and providers will report therapeutics information and utilization data as directed by HHS.

Conditions Related to Printed Matter, Advertising, and Promotion

V. All descriptive printed matter, advertising, and promotional materials relating to the use of bebtelovimab under this authorization shall be consistent with the authorized labeling, as well as the terms set forth in this EUA, and meet the requirements set forth in Section 502(a) and (n) of the Act, as applicable, and FDA implementing regulations. References to "approved labeling", "permitted labeling" or similar terms in these requirements shall be understood to refer to the authorized labeling for the use of bebtelovimab under this authorization. In addition, such materials shall:

- Be tailored to the intended audience.
- Not take the form of reminder advertisements, as that term is described in 21 CFR 202.1(e)(2)(i), 21 CFR 200.200 and 21 CFR 201.100(f).
- Present the same risk information relating to the major side effects and contraindications concurrently in the audio and visual parts of the presentation for advertising and promotional materials in audio-visual format.
- Be accompanied by the authorized labeling, if the promotional materials are not subject to Section 502(n) of the Act.
- Be submitted to FDA accompanied by Form FDA-2253 at the time of initial dissemination or first use.

If the Agency notifies Lilly that any descriptive printed matter, advertising or promotional materials do not meet the terms set forth in conditions V through X of this EUA, Lilly must cease distribution of such descriptive printed matter, advertising, or promotional materials in accordance with the Agency's notification. Furthermore, as part of its notification, the Agency may also require Lilly to issue corrective communication(s).

W. No descriptive printed matter, advertising, or promotional materials relating to the use of bebtelovimab under this authorization may represent or suggest that bebtelovimab is safe or effective when used for the treatment of COVID-19.

X. All descriptive printed matter, advertising, and promotional material, relating to the use of bebtelovimab under this authorization clearly and conspicuously shall state that:

- Bebtelovimab has not been approved, but has been authorized for emergency use by FDA under an EUA, for the treatment of mild-to-moderate COVID-19 in adults and pediatric patients (12 years of age and older weighing at least 40 kg) who are at high-risk for progression to severe COVID-19, including hospitalization or death, and for whom alternative COVID-19 treatment options approved or authorized by FDA are not accessible or clinically appropriate; and

- The emergency use of bebtelovimab is only authorized for the duration of the declaration that circumstances exist justifying the authorization of the

Page 10 – Eli Lilly and Company

emergency use of drugs and biological products during the COVID-19 pandemic under Section 564(b)(1) of the Act, 21 U.S.C. § 360bbb-3(b)(1), unless the declaration is terminated or authorization revoked sooner.

IV. Duration of Authorization

This EUA will be effective until the declaration that circumstances exist justifying the authorization of the emergency use of drugs and biological products during the COVID-19 pandemic is terminated under Section 564(b)(2) of the Act or the EUA is revoked under Section 564(g) of the Act.

Sincerely,

/s/

Jacqueline A. O'Shaughnessy, Ph.D.
Acting Chief Scientist
Food and Drug Administration

Dated: March 14, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–06009 Filed 3–21–22; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0236]

Prioritizing the Addition of Maximum Daily Exposure Information and Removing Dosage Form Information From the Inactive Ingredient Database; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA, we, or Agency) is announcing the establishment of a docket to solicit comments that will assist the Agency in determining how best to prioritize the addition of maximum daily exposure (MDE) information for inactive ingredients that do not currently include MDE information in the Center for Drug Evaluation and Research's Inactive Ingredient Database (IID) and whether to restructure the IID by removing dosage form information.

DATES: Submit either electronic or written comments on the notice by June 21, 2022.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of June 21, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

Instructions: All submissions received must include the Docket No. FDA–2022–N–0236 for ''Prioritizing the Addition of Maximum Daily Exposure Information and Removing Dosage Form Information From the Inactive Ingredient Database; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states

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

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

FOR FURTHER INFORMATION CONTACT: Susan Zuk, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 6684, Silver Spring, MD 20993–0002, 240–402–9133, *Susan.Zuk@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The IID provides information on inactive ingredients in FDA-approved drug products.[1] An inactive ingredient, or excipient, is any component of a drug product other than an active ingredient (21 CFR 210.3(b)(8) and 314.3(b)). Generally, the IID identifies excipients that appear in approved drug products for a particular dosage form and route of administration. This information in the IID has been used by all segments of industry as an aid in developing new drug products, including new generic drug products. For example, excipients used in drug products submitted in an abbreviated new drug application are required to be safe at the levels proposed and under the conditions prescribed, recommended, or suggested in the labeling proposed for the drug (see sections 505(j)(4)(H)(i) and (ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(4)(H)(i) and (ii))). The IID provides evidence that a particular excipient was previously permitted by FDA in specific levels, routes of administration, and dosage forms in FDA-approved products. FDA may consult the IID when performing regulatory filing reviews and technical reviews of applications as part of an evaluation of whether the proposed levels of excipients in drug product formulations are acceptable or require additional documentation to support their use.

FDA made certain enhancements to the IID in 2020 consistent with the Generic Drug User Fee Amendments (GDUFA) Reauthorization Performance Goals and Program Enhancements Fiscal Years 2018–2022 (GDUFA II commitment letter).[2] One of these enhancements permits users to perform electronic queries to obtain accurate maximum daily intake (MDI) and MDE information for each route of administration for which data are available. MDE is defined as the total amount of the excipient that would be taken in a day based on the maximum daily dose of the drug products in which it is used. MDE can also be referred to as MDI for oral drug products. FDA has steadily increased the number of excipient records that display MDE with each publication of the IID,[3] but not all excipients in the IID have MDE information. The inclusion of such information could enhance the ability of applicants to reference IID information in support of proposed levels of excipients in their drug products. In meetings with FDA, stakeholders have asked about FDA's plan to prioritize the addition of MDE information and have suggested that FDA focus on specific excipients that the stakeholders consider to be of high priority.

Further, some stakeholders have expressed that the numerous records in the IID for each excipient can be confusing. Each IID record includes the excipient, its route of administration, and its dosage form. An excipient search can yield a lengthy list of dosage forms for each route of administration, which could make finding the most appropriate IID record to reference challenging. Some stakeholders have suggested that FDA could remove dosage form information from the IID to simplify searches. We believe such an approach would be consistent with the GDUFA II commitment letter, which describes upgrades to the IID to provide excipient MDE information associated with particular routes of administration. However, we recognize that some stakeholders may find the IID's dosage form information helpful for drug product development. For example, applicants may refer to this information to confirm that FDA has approved drug products in certain dosage forms that contain an excipient at a particular level. For these applicants, removal of dosage form information from the IID could hinder their drug development program.

II. Other Issues for Consideration

FDA is considering how best to prioritize the addition of MDE information and plans to target those excipients deemed to be high priority by various stakeholders. Under such a plan, individual excipients could be designated for prioritization from those currently listed in the IID without MDE information. Alternatively, priority excipients could be designated based on a category of drug products in which they are used (*e.g.,* excipients used in oral or topical products), and then FDA would prioritize adding MDE information for those excipients included in that category of drug products. FDA intends to develop a priority list based on feedback to this **Federal Register** notice. FDA will consider those excipients that are a high priority for multiple stakeholders and will also consider stakeholders' rationale for inclusion of specific excipients in developing the priority list. FDA is also considering how to post information about recent updates to the IID based on efforts related to this **Federal Register** notice.

FDA intends also to explore the feasibility of modifying the IID structure to eliminate dosage form information if feedback to this **Federal Register** notice indicates that such action would benefit drug developers and other stakeholders.

Interested persons are invited to provide detailed comments on all aspects described in this notice. To facilitate this input, FDA has developed the following list of questions. These questions are not meant to be exhaustive, and FDA is also interested in other pertinent information

[1] For more information on the IID, see the draft guidance for industry entitled ''Using the Inactive Ingredient Database'' (July 2019). When final, this guidance will represent FDA's current thinking on this topic. For the most recent version of a guidance, check the FDA guidance web page at *https://www.fda.gov/regulatory-information/search-fda-guidance-documents.*

[2] See the GDUFA II commitment letter, p.17, at *https://www.fda.gov/media/101052/download.*

[3] The IID is updated on a quarterly basis at *https://www.accessdata.fda.gov/scripts/cder/iig/index.cfm.*

stakeholders would like to share on this topic. In all cases, FDA encourages stakeholders to provide the specific rationale and basis for their comments, including available supporting information.

1. Should FDA focus on adding MDE information for certain excipients? If so, which excipients should be prioritized for inclusion of MDE information and why?

2. Should FDA focus on prioritizing excipients used in certain categories of drug products (*e.g.,* oral or topical products)? If so, which categories and which specific excipients used in those categories should be prioritized and why?

3. Is dosage form information in the IID helpful to your drug development program? If so, please explain how dosage form information in the IID is used in your drug development program.

4. Is the current structure or format of the IID difficult to navigate? If so, how can it be improved?

Dated: March 15, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–06031 Filed 3–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0415]

Irfanali Nisarali Momin: Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Irfanali Nisarali Momin for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Mr. Momin was convicted of one felony count under Federal law for conspiracy. The factual basis supporting Mr. Momin's conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Mr. Momin was given notice of the proposed debarment and was given an opportunity to request a hearing to show why he should not be debarred. As of December 26, 2021 (30 days after receipt of the notice), Mr. Momin had not responded. Mr. Momin's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

DATES: This order is applicable March 22, 2022.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM–4029), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance. On February 12, 2021, Mr. Momin was convicted, as defined in section 306(l)(1) of the FD&C Act, in the U.S. District Court for the District of Georgia, Rome Division, when the court entered judgment against him for the offense of conspiracy, in violation of 18 U.S.C. 371. FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: As contained in the information in Mr. Momin's case, filed on September 23, 2020, to which he plead guilty, between August 2014 and November 2018, Mr. Momin along with his co-conspirators, illegally imported misbranded drugs from China that he marketed for male enhancement under names such as ''Black Ant King,'' ''Bull,'' ''Rhino 7,'' ''Super Hard,'' ''Herb Viagra,'' ''Jack Rabbit,'' ''Zhen Gongfu,'' ''Stree Overlord,'' ''Pro Power Max,'' ''A Traditional Chinese Medicine-Kidney Reinforcing Pallet,'' ''Libigrow,'' ''Red Mamba,'' ''Rhino 69,'' ''Krazzy Rhino,'' ''Rhino 25,'' Hard Steel,'' and ''Black Mamba.'' These products contained sildenafil, the active pharmaceutical ingredient in Pfizer, Inc.'s FDA-approved erectile dysfunction drug, VIAGRA, and/or tadalafil, the active pharmaceutical ingredient in Eli Lilly & Company's FDA-approved erectile dysfunction drug, CIALIS. Both VIAGRA and CIALIS can be obtained in the United States only with a prescription from a practitioner licensed by law to administer such drugs pursuant to section 503(b) of the FD&C Act (21 U.S.C. 353(b)). In order to evade U.S. import restrictions, Mr. Momin illegally imported misbranded drugs into the United States from China. As per the conspiracy Mr. Momin was involved in, the U.S. Customs declarations on the boxes containing the misbranded drugs falsely declared the contents of the boxes to be something other than misbranded drugs, such as beauty products and health products, to make it appear that the boxes contained items that could legally be imported into the United States. Mr. Momin then introduced and delivered for introduction into interstate commerce these misbranded drugs containing undeclared sildenafil and tadalafil, in violation of sections 301(a), 301(c), 303(a)(2), 502(a), and 502(f) of the FD&C Act (21 U.S.C. 331(a), 331(c), 333(a)(2), 352(a) and 352(f)).

As a result of this conviction, FDA sent Mr. Momin, by certified mail, on November 19, 2021, a notice proposing to debar him for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Mr. Momin's felony conviction under Federal law for conspiracy, in violation of 18 U.S.C. 371, was for conduct relating to the importation into the United States of any drug or controlled substance because he illegally imported and then introduced misbranded tadalafil and sildenafil into interstate commerce. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Mr. Momin's offense and concluded that the offense warranted the imposition of a 5-year period of debarment.

The proposal informed Mr. Momin of the proposed debarment and offered him an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Momin received the proposal and notice of opportunity for a hearing at his residence on November 26, 2021. Mr. Momin failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Irfanali Momin has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Mr. Momin is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Mr. Momin is a prohibited act.

Any application by Mr. Momin for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2021–N–0415 and sent to the Division of Dockets Management Staff (see **ADDRESSSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: March 15, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–06052 Filed 3–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0417]

Shiba I. Momin: Final Debarment Order

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Shiba I. Momin for a period of 5 years from importing or offering for import any drug into the United States. FDA bases this order on a finding that Ms. Momin was convicted of one felony count under Federal law for Conspiracy. The factual basis supporting Ms. Momin's conviction, as described below, is conduct relating to the importation into the United States of a drug or controlled substance. Ms. Momin was given notice of the proposed debarment and was given an opportunity to request a hearing to show why she should not be debarred. As of December 26, 2021 (30 days after receipt of the notice), Ms. Momin had not responded. Ms. Momin's failure to respond and request a hearing constitutes a waiver of her right to a hearing concerning this matter.

DATES: This order is applicable March 22, 2022.

ADDRESSES: Submit applications for termination of debarment to the Dockets Management Staff, Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, or at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jaime Espinosa, Division of Enforcement (ELEM–4029), Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240–402–8743, or at *debarments@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(1)(D) of the FD&C Act (21 U.S.C. 335a(b)(1)(D)) permits debarment of an individual from importing or offering for import any drug into the United States if FDA finds, as required by section 306(b)(3)(C) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any drug or controlled substance.

On February 12, 2021, Ms. Momin was convicted, as defined in section 306(l)(1) of the FD&C Act, in the U.S. District Court for the District of Georgia, Rome Division, when the court entered judgment against her for the offense of conspiracy, in violation of 18 U.S.C. 371.

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows:

As contained in the Information in Ms. Momin's case, filed on September 23, 2020, to which she pleaded guilty, between August 2014 and November 2018, Ms. Momin along with her co-conspirators, illegally imported misbranded drugs from China that she marketed for male enhancement under names such as ''Black Ant King,'' ''Bull,'' ''Rhino 7,'' ''Super Hard,'' ''Herb Viagra,'' ''Jack Rabbit,'' ''Zhen Gongfu,'' ''Stree Overlord,'' ''Pro Power Max,'' ''A Traditional Chinese Medicine-Kidney Reinforcing Pallet,'' ''Libigrow,'' ''Red Mamba,'' ''Rhino 69,'' ''Krazzy Rhino,'' ''Rhino 25,'' Hard Steel,'' and ''Black Mamba.'' These products contained sildenafil, the active pharmaceutical ingredient in Pfizer, Inc.'s FDA-approved erectile dysfunction drug, VIAGRA, and/or tadalafil, the active pharmaceutical ingredient in Eli Lilly & Company's FDA-approved erectile dysfunction drug, CIALIS. Both VIAGRA and CIALIS can be obtained in the United States only with a prescription from a practitioner licensed by law to administer such drug pursuant to section 503(b) of the FD&C Act (21 U.S.C. 353(b)). In order to evade U.S. import restrictions, Ms. Momin illegally imported misbranded drugs into the United States from China. As per the conspiracy Ms. Momin was involved in, the U.S. Customs declarations on the boxes containing the misbranded drugs falsely declared the contents of the boxes to be something other than misbranded drugs, such as beauty products and health products, to make it appear that the boxes contained items that could legally be imported into the United States Ms. Momin then introduced and delivered for introduction into interstate commerce these misbranded drugs containing undeclared sildenafil and tadalafil, in violation of sections 301(a), 301(c), 303(a)(2), 502(a), and 502(f) of the FD&C Act (21 U.S.C. 331(a), 331(c), 333(a)(2), 352(a) and 352(f)).

As a result of this conviction, FDA sent Ms. Momin, by certified mail, on November 19, 2021, a notice proposing to debar her for a 5-year period from importing or offering for import any drug into the United States. The proposal was based on a finding under section 306(b)(3)(C) of the FD&C Act that Ms. Momin's felony conviction under Federal law for conspiracy, in violation of 18 U.S.C. 371, was for conduct relating to the importation into the United States of any drug or controlled substance because she illegally imported and then introduced misbranded tadalafil and sildenafil into interstate commerce. In proposing a debarment period, FDA weighed the considerations set forth in section 306(c)(3) of the FD&C Act that it considered applicable to Ms. Momin's offense and concluded that the offense warranted the imposition of a 5-year period of debarment.

The proposal informed Ms. Momin of the proposed debarment and offered her an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Ms. Momin received the proposal and notice of opportunity for a hearing at her residence on November 26, 2021. Ms. Momin failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and waived any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(3)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Ms. Shiba I. Momin has been convicted of a felony under Federal law for conduct relating to the importation into the United States of any drug or controlled substance. FDA finds that the offense should be accorded a debarment period of 5 years as provided by section 306(c)(2)(A)(iii) of the FD&C Act.

As a result of the foregoing finding, Ms. Momin is debarred for a period of 5 years from importing or offering for import any drug into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act (21 U.S.C. 331(cc)), the importing or offering for import into the United States of any drug or controlled substance by, with the assistance of, or at the direction of Ms. Momin is a prohibited act.

Any application by Ms. Momin for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2021–N–0417 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at *https://www.regulations.gov* or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

Dated: March 15, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–06036 Filed 3–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0336]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Vaccines and Related Biological Products Advisory Committee (VRBPAC). The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. This meeting will be held to discuss considerations for use of COVID–19 vaccine booster doses and the process for COVID–19 vaccine strain selection to address current and emerging variants. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on April 6, 2022, from 8:30 a.m. to 5 p.m. Eastern Time. Submit either electronic or written comments on this public meeting by April 5, 2022. Comments received on or before March 31, 2022, will be provided to the committee. Comments received after March 31, 2022, and by April 5, 2022, will be taken into consideration by FDA.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. The online web conference meeting will be available at the following link on the day of the meeting: *https://youtu.be/x8rq247E80I.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–0336. The docket will close on April 5, 2022. Submit either electronic or written comments on this public meeting by April 5, 2022. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 5, 2022. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before March 31, 2022, will be provided to the committee. Comments received March 31, 2022, and by April 5, 2022, will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments 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–2022–N–0336 for ''Vaccines and Related Biological Products Advisory Committee (VRBPAC); Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be

placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Eastern Time 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.'' FDA 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 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 the 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, September18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

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

FOR FURTHER INFORMATION CONTACT: Prabhakara Atreya or Christina Vert, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Silver Spring, MD 20993–0002, 240–506–4946, *CBERVRBPAC@fda.hhs.gov;* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION: Consistent with FDA's regulations, this notice is being published with less than 15 days prior to the date of the meeting based on a determination that convening a meeting of the Vaccines and Related Biological Products Advisory Committee as soon as possible is warranted. This notice could not be published 15 days prior to the date of the meeting due to the need for prompt discussion regarding considerations for use of COVID–19 vaccine booster doses and the process for COVID–19 vaccine strain selection to address current and emerging variants given the COVID–19 pandemic.

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. On April 6, 2022, the committee will meet in open session to discuss considerations for use of additional COVID–19 vaccine booster doses and the process for COVID–19 vaccine strain selection to address current and emerging variants.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the time of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: On April 6, 2022, from 8:30 a.m. to 5 p.m. Eastern Time, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before March 31, 2022, will be provided to the committee. Comments received after March 31, 2022, and by April 5, 2022, will be taken into consideration by FDA. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and email addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 29, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 30, 2022.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Prabhakara Atreya or Christina Vert (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 15, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–06053 Filed 3–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–D–3462]

Verification Systems Under the Drug Supply Chain Security Act for Certain Prescription Drugs; Draft Guidance for Industry; Correction

AGENCY: Food and Drug Administration, Department of Health and Human Services (HHS).

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice entitled ''Verification Systems Under the Drug Supply Chain Security Act for Certain Prescription Drugs; Draft Guidance for Industry'' that appeared in the **Federal Register** of March 10, 2022. The document omitted the date by which comments on the draft guidance should be submitted to FDA. This error is corrected in this document for clarity.

FOR FURTHER INFORMATION CONTACT: Sarah Venti, Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3130, *drugtrackandtrace@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 10, 2022 (87 FR 13738), appearing on page 13738, in FR Doc. 2022–05018, in the second column, the **DATES** section is corrected to read as follows:

DATES: The announcement of the guidance is published in the **Federal Register** on March 10, 2022. Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 9, 2022.

Dated: March 17, 2022.

Andi Lipstein Fristedt,

Deputy Commissioner for Policy, Legislation, and International Affairs, U.S. Food and Drug Administration.

[FR Doc. 2022–06006 Filed 3–21–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, March 23, 2022, 09:00 a.m. to March 24, 2022, 04:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on February 25, 2022, 308582.

Dr. Kozel wants to change the date for his meeting. The meeting is closed to the public.

Dated: March 16, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05966 Filed 3–21–22; 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: Microbiology, Infectious Diseases and AIDS Initial Review Group; Acquired Immunodeficiency Syndrome Research Study Section; Acquired Immunodeficiency Syndrome Research Study Section (AIDS).

Date: April 20, 2022.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F40A, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Dimitrios Nikolaos Vatakis, 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, MSC–9823, Bethesda, MD 20892, (301) 761–7176, *dimitrios.vatakis@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 16, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05968 Filed 3–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Sleep Disorders Research Advisory Board, April 7, 2022, 12:00 p.m. to 5:00 p.m., Virtual Meeting, which was published in the **Federal Register** on March 09, 2022, V 87 Vol. 46, Page 13302, FR Doc No. 2022–04982.

Meeting is being amended to change the telephone call in number to 1–669–254–5252 (*Meeting ID:* 161 532 8417 *Passcode:* 330488). The meeting is open to the public.

Dated: March 16, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05969 Filed 3–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed 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 Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trials and Comparative Effectiveness Studies in Neurology.

Date: March 28–29, 2022.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities,

NINDS/NIH, NSC, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892, 301–435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 16, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–05967 Filed 3–21–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Proposed Project: Pretesting of Substance Abuse Prevention and Treatment and Mental Health Services Communications Messages—(OMB No. 0930–0196)—Reinstatement

As the federal agency responsible for developing and disseminating authoritative knowledge about substance abuse prevention, addiction treatment, and mental health services and for mobilizing consumer support and increasing public understanding to overcome the stigma attached to addiction and mental illness, SAMHSA is responsible for development and dissemination of a wide range of education and information materials for both the general public and the professional communities. This submission is for generic approval and will provide for formative and qualitative evaluation activities to; (1) assess audience knowledge, attitudes, behavior and other characteristics for the planning and development of messages, communication strategies and public information programs; and (2) test these messages, strategies and program components in developmental form to assess audience comprehension, reactions, and perceptions. Information obtained from testing can then be used to improve materials and strategies while revisions are still affordable and possible. The annual burden associated with these activities is summarized below.

Activity	Number of respondents	Responses/ respondent	Hours per response	Total hours	Hourly wage rate ($) [1]	Total Hour cost ($)
Individual In-depth Interviews:						
General Public	400	1	.75	300	$25.00	7,500
Service Providers	200	1	.75	150	35.00	5,250
Focus Group Interviews:						
General Public	3,000	1	1.5	4,500	25.00	112,500
Service Providers	1,500	1	1.5	2,250	35.00	78,750
Telephone Interviews:						
General Public	335	1	.08	27	25.00	675
Service Providers	165	1	.08	13	35.00	455
Self-Administered Questionnaires:						
General Public	2,680	1	.25	670	25.00	16,750
Service Providers	1,320	1	.25	330	35.00	11,550
Gatekeeper Reviews:						
General Public	1,200	1	.50	600	25.00	15,000
Service Providers	900	1	.50	450	35.00	15,750
Total	11,700			9,290		264,180

[1] The hourly wage of $25.00 for the general public was calculated based on weighted data from the 2019 NSDUH respondents' personal annual income. The $35 hourly wage rate for providers is an average across counselors and other service provider staff.

Written comments and recommendations concerning the proposed information collection should be sent by April 21, 2022 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). 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.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–06051 Filed 3–21–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0010]

Certificate of Registration (CBP Forms 4455 and 4457)

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; extension 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 May 23, 2022) to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0010 in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

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 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: Certificate of Registration.

OMB Number: 1651–0010.

Form Number: CBP Forms 4455 and 4457.

Current Actions: Extension without change of an existing information collection.

Type of Review: Extension (without change).

Affected Public: Businesses.

Abstract: Travelers who do not have proof of prior possession in the United States of foreign made articles and who do not want to be assessed duty on these items can register them prior to departing on travel. In order to register these articles, the traveler must complete CBP Form 4457, *Certificate of Registration for Personal Effects Taken Abroad,* and present it at the port at the time of export for examination of the articles of foreign origin and verification of the description. After the official has signed the document, it will be returned to the applicant for signature, for presentation to CBP upon return to United States, and for subsequent reuse. CBP Form 4457 is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=4457&=Apply.*

CBP Form 4455, *Certificate of Registration,* is used primarily for the registration, examination, and supervised lading of commercial shipments of articles exported for repair, alteration, or processing, which will subsequently be returned to the United States either duty free or at a reduced duty rate. The CBP Form 4455 may be required when a person, wishing to claim the status of a nonresident upon arrival for a short visit to the United States before returning abroad, imports articles free of duty under subheadings 9804.00.20, 9804.00.25, 9804.00.30, 9804.00.35, Harmonized Tariff Schedule of the United States (HTSUS) (19 U.S.C. 1202). It may also be used for the replacement of articles previously exempted from duty when the unsatisfactory articles are exported under the provisions 9804.00.75 and fall under the $800 or $1,00 exemption limits. The export and return of theatrical scenery, properties, motion-picture films and effects or tools of a trade occupation or employment of domestic or foreign origin must also be reported on CBP Form 4555. The CBP Form 4455, may also be required in any case in which CBP Form 4457 will not adequately serve the purpose of registration. CBP Form 4455 must be presented to CBP for examination of the articles and verification of the articles' description. After the official has signed the document, it will be returned to the applicant for signature, for presentation to CBP upon return to United States, and for subsequent reuse. CBP Form 4455 is accessible at: *https://www.cbp.gov/newsroom/publications/forms?title=4455&=Apply.*

CBP Forms 4457 and 4455 are used to provide a convenient means of showing proof of prior possession of a foreign made item taken on a trip abroad and later returned to the United States. This registration is restricted to articles with serial numbers or other distinctive, permanently affixed unique markings, and are valid for reuse as long as the document legible to identify the registered articles. CBP Forms 4457 and CBP Form 4455 are provided for by 19 CFR 10.8, 10.9, 10.68, 148.1, 148.8, 148.32 and 148.37.

Type of Information Collection: CBP Form 4455.

Estimated Number of Respondents: 60,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 60,000.

Estimated Time per Response: 10 minutes (0.166 hours).

Estimated Total Annual Burden Hours: 9,960.

Type of Information Collection: CBP Form 4457.

Estimated Number of Respondents: 140,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 140,000.

Estimated Time per Response: 3 minutes (0.05 hours).

Estimated Total Annual Burden Hours: 7,000.

Dated: March 17, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–06024 Filed 3–21–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0004]

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers, Notice of FY 2023 Arrangement

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency announces the Fiscal Year 2023 Financial Assistance/Subsidy Arrangement for private property insurers interested in participating in the National Flood Insurance Program's Write Your Own Program.

DATES: Interested insurers must submit intent to subscribe or re-subscribe to the Arrangement by June 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sarah Devaney Ice, Federal Insurance and Mitigation Administration, FEMA, 400 C St. SW, Washington, DC 20472 (mail); (202) 320–5577 (phone); or *sarah.devaney-ice@fema.dhs.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Background

The National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4001 *et seq.*) authorizes the Administrator of the Federal Emergency Management Agency (FEMA) to establish and carry out a National Flood Insurance Program (NFIP) to enable interested persons to purchase flood insurance. *See* 42 U.S.C. 4011(a). Under the NFIA, FEMA may use insurance companies and other insurers, insurance agents and brokers, and insurance adjustment organizations as fiscal agents of the United States to help it carry out the NFIP. *See* 42 U.S.C. 4071. To this end, FEMA may ''enter into any contracts, agreements, or other appropriate arrangements'' with private insurance companies to use their facilities and services in administering the NFIP on such terms and conditions as they agree upon. *See* 42 U.S.C. 4081(a).

Pursuant to this authority, FEMA enters into a standard Financial Assistance/Subsidy Arrangement (Arrangement) with private sector property insurers, also known as Write Your Own (WYO) companies, to sell NFIP flood insurance policies under their own names and adjust and pay claims arising under the Standard Flood Insurance Policy (SFIP). Each Arrangement entered into by a WYO company must be in the form and substance of the standard Arrangement, a copy of which is published in the **Federal Register** annually, at least 6 months prior to becoming effective. *See* 44 CFR 62.23(a). To learn more about FEMA's WYO Program, please visit *https://nfipservices.floodsmart.gov/write-your-own-program.*

II. Notice of Availability

Insurers interested in participating in the WYO Program for Fiscal Year 2023 must contact Sarah Devaney Ice at *sarah.devaney-ice@fema.dhs.gov* by June 21, 2022.

Prior participation in the WYO Program does not guarantee FEMA will approve continued participation. FEMA will evaluate requests to participate in light of publicly available information, industry performance data, and other criteria listed in 44 CFR 62.24 and the FY 2023 Arrangement, copied below. FEMA encourages private insurance companies to supplement this information with customer satisfaction surveys, industry awards or recognition, or other objective performance data. In addition, private insurance companies should work with their vendors and subcontractors involved in servicing and delivering their insurance lines to ensure FEMA receives the information necessary to effectively evaluate the criteria set forth in its regulations.

FEMA will send a copy of the offer for the FY 2023 Arrangement, together with related materials and submission instructions, to all private insurance companies successfully evaluated by the NFIP. If FEMA, after conducting its evaluation, chooses not to renew a Company's participation, FEMA, at its option, may require the continued performance of all or selected elements of the FY 2022 Arrangement for a period required for orderly transfer or cessation of the business and settlement of accounts, not to exceed 18 months. *See* FY 2022 Arrangement, Article II.C. All evaluations, whether successful or unsuccessful, will inform both an overall assessment of the WYO Program and any potential changes FEMA may consider regarding the Arrangement in future fiscal years.

Any private insurance company with questions may contact FEMA at: Sarah Devaney Ice, Federal Insurance and Mitigation Administration, FEMA, 400 C St. SW, Washington, DC 20472 (mail); (202) 320–5577 (phone); or *sarah.devaney-ice@fema.dhs.gov* (email).

III. Fiscal Year 2023 Arrangement

Pursuant to 44 CFR 62.23(a), FEMA must publish the Arrangement at least six months prior to the Arrangement becoming effective. The FY 2023 Arrangement provided below is substantially similar to the previous year's Arrangement, but includes the following substantive changes:

1. In Article II.C. (Commencement and Termination), FEMA is requiring applicants, who have never participated in the program, or who are returning after a period of non-participation to provide their operations plan at the time they submit their application to participate in the WYO Program.

2. In Article II.D. (Commencement and Termination), FEMA is providing additional guidance on the transfer of data and documentation.

3. In Article II.F. (Commencement and Termination), FEMA is providing additional guidance for companies and will require notice from any company that is assigned a financial strength rating that is downgraded by an independent financial rating company during the period of participation in the Arrangement, or is unable to operate as a result of a State department of insurance order or directive, including those companies that are in receivership or run-off status. Furthermore, FEMA has added an immediate notice requirement for such companies.

4. In Article III.A. (Undertakings of the Company), FEMA is requiring WYO companies to have a live customer service agent in order to be more accessible to policyholders.

5. Removal of Reimbursement for Services of a National Rating Organization from Article IV.B.4.

The Fiscal Year 2023 Arrangement reads as follows:

Financial Assistance/Subsidy Arrangement

Article I. General Provisions

A. Parties. The parties to the Financial Assistance/Subsidy Arrangement are the Federal Emergency Management Agency (FEMA) and the Company.

B. Purpose. The purpose of this Financial Assistance/Subsidy Arrangement is to authorize the Company to sell and service flood insurance policies made available through the National Flood Insurance Program (NFIP) and adjust and pay claims arising under such policies as fiscal agents of the Federal Government.

C. Authority. This Financial Assistance/Subsidy Arrangement is authorized under the National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4001 *et seq.*), and in particular, section

1345(a) of the NFIA (42 U.S.C. 4081(a)), as implemented by 44 CFR 62.23 and 62.24.

Article II. Commencement and Termination

A. The effective period of this Arrangement begins on October 1, 2022 and terminates no earlier than September 30, 2023, subject to extension pursuant to Articles II.D and II.H. FEMA may provide financial assistance only for policy applications and endorsements accepted by the Company during this period pursuant to the Program's effective date, underwriting, and eligibility rules.

B. Pursuant to 44 CFR 62.23(a), FEMA will publish the Arrangement and the terms for subscription or re-subscription for Fiscal Year 2024 in the **Federal Register** no later than April 1, 2023. Upon such publication, the Company must notify FEMA of its intent to re-subscribe or not re-subscribe to the WYO Program for the following term within ninety (90) calendar days.

C. Requesting Participation in WYO Program. Insurers interested in participating in the WYO Program, who have never participated in the program, or who are returning to the program after a period of non-participation, must submit a written request to participate.

1. Participation is then contingent on submission of both:

a. A completed application package, the requirements and contents of which FEMA will outline in its written response to the request to participate, and

b. A completed operations plan, whose requirements and contents are outlined at Article III.A.5 of this Arrangement.

2. Insurers who are already participating in the program must submit their operations plan within ninety (90) days as outlined in Article III.A.5 of this Arrangement.

D. In addition to the requirements of Article II.B, in order to ensure uninterrupted service to policyholders, the Company must notify FEMA within thirty (30) calendar days of when the Company elects not to re-subscribe to the WYO Program during the term of this Arrangement. If so notified, or if FEMA chooses not to renew the Company's participation, FEMA, at its option, may require the continued performance of all or selected elements of this Arrangement for the period required for orderly transfer or cessation of business and settlement of accounts, not to exceed eighteen (18) months after the end of this Arrangement (September 30, 2023), and may either require transfer of activities to FEMA under Article II.D.1 or allow transfer of activities to another WYO company under Article II.D.2:

1. FEMA may require the Company to transfer all activities under this Arrangement to FEMA. Within thirty (30) calendar days of FEMA's election of this option, the Company must deliver to FEMA the following:

a. A plan for the orderly transfer to FEMA of any continuing responsibilities in administering the policies issued by the Company under the Program including provisions for coordination assistance.

b. All data received, produced, and maintained through the life of the Company's participation in the Program, including certain data, as determined by FEMA, in a standard format and medium.

c. All claims and policy files, including those pertaining to receipts and disbursements that have occurred during the life of each policy. In the event of a transfer of the services provided, the Company must provide FEMA with a report showing, on a policy basis, any amounts due from or payable to policyholders, agents, brokers, and others as of the transition date.

d. All funds in its possession with respect to any policies transferred to FEMA for administration and the unearned expenses retained by the Company.

e. A point of contact within the Company responsible for addressing issues that may arise from the Company's previous participation under the WYO Program.

2. Within ninety (90) calendar days of receiving the Company's data and supporting documentation, FEMA will notify the Company of the date that FEMA will complete the transfer.

3. FEMA may allow the Company to transfer all activities under this Arrangement to one or more other WYO companies. Prior to commencing such transfer, the Company must submit, and FEMA must approve, a formal request. Such request must include the following:

a. An assurance of uninterrupted service to policyholders.

b. A detailed transfer plan providing for either: (1) The renewal of the Company's NFIP policies by one or more other WYO companies; or (2) the transfer of the Company's NFIP policies to one or more other WYO companies.

c. A description of who the responsible party will be for liabilities relating to losses incurred by the Company in this or preceding Arrangement years.

d. A point of contact within the Company responsible for addressing issues that may arise from the Company's previous participation under the WYO Program.

E. Cancellation by FEMA.

1. FEMA may cancel financial assistance under this Arrangement in its entirety upon thirty (30) calendar days written notice to the Company stating one or more of the following reasons for such cancellation:

a. Fraud or misrepresentation by the Company subsequent to the inception of the Arrangement; or

b. Nonpayment to FEMA of any amount due; or

c. Material failure to comply with the requirements of this Arrangement or with the written standards, procedures, or guidance issued by FEMA relating to the NFIP and applicable to the Company.

d. Failure to maintain compliance with WYO company participation criteria at 44 CFR 62.24.

e. Any other cause so serious or compelling a nature that affects the Company's present responsibility.

2. If FEMA cancels this Arrangement pursuant to Article II.E.1, FEMA may require the transfer of administrative responsibilities and the transfer of data and records as provided in Article II.D.1.a–d. If transfer is required, the Company must remit to FEMA the unearned expenses retained by the Company. In such event, FEMA will assume all obligations and liabilities owed to policyholders under such policies, arising before and after the date of transfer.

3. As an alternative to the transfer of the policies to FEMA pursuant to Article II.E.2, FEMA will consider a proposal, if it is made by the Company, for the assumption of responsibilities by another WYO company as provided in Article II.D.3.

F. In the event that the Company is unable or otherwise fails to carry out its obligations under this Arrangement by reason of any order or directive duly issued by the Department of Insurance of any jurisdiction to which the Company is subject, including but not limited to being placed in receivership or run-off status by a State Department of Insurance, the Company agrees to transfer, and FEMA will accept, any and all WYO policies issued by the Company and in force as of the date of such inability or failure to perform. In such event FEMA will assume all obligations and liabilities within the scope of the Arrangement owed to policyholders arising before and after the date of transfer, and the Company will immediately transfer to FEMA all

needed records and data and all funds in its possession with respect to all such policies transferred and the unearned expenses retained by the Company. As an alternative to the transfer of the policies to FEMA, FEMA will consider a proposal, if it is made by the Company, for the assumption of responsibilities by another WYO company as provided by Article II.D.2. The Company shall immediately notify FEMA if:

1. An independent financial rating company downgrades its financial strength during its period of performance under this Arrangement; or

2. It receives a State department of insurance order or directive making it unable to carry out its obligations under this Arrangement, including but not limited to being placed in receivership or run-off status by a State department of insurance.

G. In the event the Act is amended, repealed, expires, or if FEMA is otherwise without authority to continue the Program, FEMA may cancel financial assistance under this Arrangement for any new or renewal business, but the Arrangement will continue for policies in force that shall be allowed to run their term under the Arrangement.

H. If FEMA does not publish the Fiscal Year 2024 Arrangement in the **Federal Register** on or before April 1, 2023, then FEMA may require the continued performance of all or selected elements of this Arrangement through December 31, 2024, but such extension may not exceed the expiration of the six (6) month period following publication of the Fiscal Year 2024 Arrangement in the **Federal Register**.

Article III. Undertakings of the Company

A. Responsibilities of the Company.

1. Policy Issuance and Maintenance. The Company must meet all requirements of the Financial Control Plan and any guidance issued by FEMA. The Company is responsible for the following:

a. Compliance with Rating Procedures.

b. Eligibility Determinations.

c. Policy Issuances.

d. Policy Endorsements.

e. Policy Cancellations.

f. Policy Correspondence.

g. Payment of Agents' Commissions.

h. Fund Management, including the receipt, recording, disbursement, and timely deposit of NFIP funds.

2. The Company must provide a live customer service agent that (1) is accessible to all policyholders via telephone during business days, and (2) can resolve commonplace customer service issues.

3. Claims Processing.

a. In general. The Company must process all claims consistent with the Standard Flood Insurance Policy, Financial Control Plan, Claims Manual, other guidance adopted by FEMA, and as much as possible, with the Company's standard business practices for its non-NFIP policies.

b. Adjuster registration. The Company may not use an independent adjuster to adjust a claim unless the independent adjuster:

i. Holds a valid Flood Control Number issued by FEMA; or

ii. Participates in the Flood Adjuster Capacity Program.

c. Claim reinspections. The Company must cooperate with any claim reinspection by FEMA.

4. Reports. The Company must certify its business under the WYO Program through monthly financial reports in accordance with the requirements of the Pivot Use Procedures. The Company must follow the Financial Control Plan and the WYO Accounting Procedures Manual. FEMA will validate and audit, in detail, these data and compare the results against Company reports.

5. Operations Plan. Within ninety (90) calendar days of the commencement of this Arrangement, the Company must submit a written Operations Plan to FEMA describing its efforts to perform under this Arrangement. The plan must include the following:

a. Private Flood Insurance Separation Plan. If applicable, a description of the Company's policies, procedures, and practices separating their NFIP flood insurance lines of business from their non-NFIP flood insurance lines of business, including its implementation of Article III.E.

b. Marketing Plan. A marketing plan describing the Company's forecasted growth, efforts to achieve that growth, and ability to comply with any marketing guidelines provided by FEMA.

c. Customer Service Plan. A description of overall customer service practices, including ongoing and planned improvement efforts.

d. Distribution Plan. A description of the Company's NFIP flood insurance distribution network, including anticipated numbers of agents, efforts to train those agents, and an average rate of commissions paid to producers by state.

e. Catastrophic Claims Handling Plan. A catastrophic claims handling plan describing how the Company will respond and maintain service standards in catastrophic flood events, including:

i. Deploying mobile or temporary claims centers to provide immediate policyholder assistance, including submission of notice of loss and claim status information.

ii. Preparing people, processes, and tools for claims processing in remote work scenarios.

iii. Preparing communications in advance for readiness throughout the year including a suite of printed and digital materials (*e.g.,* advertisements, educational materials, social media messaging, website blogs and announcements) that provide key messaging to stakeholders, including policyholders, agents, and the public following a catastrophic flood event.

iv. Identifying the core areas of information technology that need to be scaled pre-event or are scalable post-event.

f. Business Continuity Plan. A business continuity plan identifying threats and risks facing the Company's NFIP-related operations and how the Company will maintain operations in the event of a disaster affecting its operational capabilities.

g. Privacy Protection Plan. A privacy protection plan that describes the Company's standards for using and maintaining personally identifiable information.

h. System Security Plan. A system security plan that describes system boundaries, system environments of operation, how security requirements are implemented, and the relationships with or connections to other systems, including plans of action that describe how unimplemented security requirements will be met and how any planned mitigations will be implemented, prepared in accordance with either:

i. National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 ''Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations'', Revision 2, *https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final*; or

ii. Another comparable standard deemed acceptable by FEMA.

B. Time Standards. WYO companies must meet the time standards provided below. Time will be measured from the date of receipt through the date the task is completed. In addition to the standards set forth below, all functions performed by the Company must be in accordance with the highest reasonably attainable quality standards generally used in the insurance and data processing field. Applicable time standards are:

1. Application Processing—fifteen (15) business days (Note: if the policy cannot be sent due to insufficient or erroneous information or insufficient funds, the Company must send a request for correction or added moneys within ten (10) businessdays).

2. Renewal processing—seven (7) business days.

3. Endorsement processing—fifteen (15) business days.

4. Cancellation processing—fifteen (15) business days.

5. File examination—seven (7) business days from the day the Company receives the final report.

6. Claims draft processing—seven (7) business days from completion of file examination.

7. Claims adjustment—forty-five (45) calendar days average from the receipt of Notice of Loss (or equivalent) through completion of examination.

8. Upload transactions to Pivot—one (1) business day.

C. Policy Issuance.

1. The flood insurance subject to this Arrangement must be only that insurance written by the Company in its own name pursuant to the Act.

2. The Company must issue policies under the regulations prescribed by FEMA, in accordance with the Act, on a form approved by FEMA.

3. The Company must issue all policies in consideration of such premiums and upon such terms and conditions and in such states or areas or subdivisions thereof as may be designated by FEMA and only where the Company is licensed by State law to engage in the property insurance business.

D. Lapse of Authority or Appropriation. FEMA may require the Company to discontinue issuing policies subject to this Arrangement immediately in the event Congressional authorization or appropriation for the NFIP is withdrawn.

E. Separation of Finances and Other Lines of Flood Insurance.

1. The Company must separate Federal flood insurance funds from all other Company accounts, at a bank or banks of its choosing for the collection, retention and disbursement of Federal funds relating to its obligation under this Arrangement, less the Company's expenses as set forth in Article IV. The Company must remit all funds not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual.

2. Other Undertakings of the Company.

a. Clear communication. If the Company also offers insurance policies covering the peril of flood outside of the NFIP in any geographic area in which Program authorizes the purchase of flood insurance, the Company must ensure that all public communications (whether written, recorded, electronic, or other) regarding non-NFIP insurance lines would not lead a reasonable person to believe that the NFIP, FEMA, or the Federal Government in any way endorses, sponsors, oversees, regulates, or otherwise has any connection with the non-NFIP insurance line. The Company may assure compliance with this requirement by prominently including in such communications the following statement: ''This insurance product is not affiliated with the National Flood Insurance Program.''

b. Data protection. The company may not use non-public data, information, or resources obtained in course of executing this Arrangement to further or support any activities outside the scope of this Arrangement.

F. Claims. The Company must investigate, adjust, settle, and defend all claims or losses arising from policies issued under this Arrangement. Payment of flood insurance claims by the Company bind FEMA, subject to appeal.

G. Compliance with Agency Standards and Guidelines.

1. The Company must comply with the Act, regulations, written standards, procedures, and guidance issued by FEMA relating to the NFIP and applicable to the Company, including, but not limited to the following:

a. WYO Program Financial Control Plan.

b. Pivot Use Procedures.

c. NFIP Flood Insurance Manual.

d. NFIP Claims Manual.

e. NFIP Litigation Manual.

f. WYO Accounting Procedures Manual.

g. WYO Bulletins.

2. The Company must market flood insurance policies in a manner consistent with marketing guidelines established by FEMA.

3. FEMA may require the Company to collect customer service information to monitor and improve their program delivery.

4. The Company must notify its agents of the requirement to comply with State regulations regarding flood insurance agent education, notify agents of flood insurance training opportunities, and assist FEMA in periodic assessment of agent training needs.

H. Compliance with Appeals Process.

1. In general. FEMA will notify the Company when a policyholder files an appeal. After notification, the Company must provide FEMA the following information:

a. All records created or maintained pursuant to this Arrangement requested by FEMA; and

b. A comprehensive claim file synopsis, redacted of personally identifiable information, that includes a summary of the appeal issues, the Company's position on each issue, and any additional relevant information. If, in the process of writing the synopsis, the Company determines that it can address the issue raised by the policyholder on appeal without further direction, it must notify FEMA. The Company will then work directly with the policyholder to achieve resolution and update FEMA upon completion. The Company may have a claims examiner review the file who is independent from the original decision and who possesses the authority to overturn the original decision if the facts support it.

2. Cooperation. The Company must cooperate with FEMA throughout the appeal process until final resolution. This includes adhering to any written appeals guidance issued by FEMA.

3. Resolution of Appeals. FEMA will close an appeal when:

a. FEMA upholds the denial by the Company;

b. FEMA overturns the denial by the Company and all necessary actions that follow are completed;

c. The Company independently resolves the issue raised by the policyholder without further direction;

d. The policyholder voluntarily withdraws the appeal; or

e. The policyholder files litigation.

4. Processing of Additional Payments from Appeal. The Company must follow established NFIP adjusting practices and claim handling procedures for appeals that result in additional payment to a policyholder when FEMA does not explicitly direct such payment during the review of the appeal.

5. Time Standards.

a. Provide FEMA with requested files pursuant to Article III.H.1.a—ten (10) business days after request.

b. Provide FEMA with comprehensive claim file synopsis pursuant to Article III.H.1.b—ten (10) business days after request.

c. Responding to inquiries from FEMA regarding an appeal—ten (10) business days after inquiry.

d. Inform FEMA of any litigation filed by a policyholder with a current appeal—ten (10) business days of notice.

I. Subrogation.

1. In general. Consistent with Federal law and guidance, the Company must use its customary business practices when pursuing subrogation.

2. Referral to FEMA. Pursuant to 44 CFR 62.23(i)(8), in lieu of the Company pursuing a subrogation claim, WYO companies may refer such claims to FEMA.

3. Notification. No more than ten (10) calendar days after either the Company identifies a possible subrogation claim or FEMA notifies the Company of a possible subrogation claim, the Company must notify FEMA of its intent to pursue the claim or refer the claim to FEMA.

4. Cooperation. Pursuant to 44 CFR 62.23(i)(11), the Company must extend reasonable cooperation to FEMA's Office of the Chief Counsel on matters related to subrogation.

J. Access to Records. The Company must furnish to FEMA such summaries and analysis of information including claim file information and property address, location, and/or site information in its records as may be necessary to carry out the purposes of the Act, in such form as FEMA, in cooperation with the Company, will prescribe.

K. System for Award Management (SAM). The Company must be registered in the System for Award Management. Such registration must have an active status during the period of performance under this Arrangement. The Company must ensure that its SAM registration is accurate and up to date.

L. Cybersecurity.

1. In general. Unless the Company uses a compliance alternative pursuant to Article III.L.2, the Company must implement the security requirements specified by National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 ''Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations'', Revision 2 (*https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final*) for any system that processes, stores, or transmits information that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, this Arrangement, or other applicable requirements, including information protected pursuant to Article XII.C and personally identifiable information of NFIP applicants and policyholders. Such implementation must be validated by a third-party assessment organization.

2. Compliance alternatives. In lieu of compliance with Article IV.L.1, the Company may either:

a. Provide FEMA with documentation that the Company is securing the systems subject to the requirements of Article III.L.1 with either:

i. ISO/IEC 27001, *https://www.iso.org/isoiec-27001-information-security.html*;

ii. NIST Cybersecurity Framework, *https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final*;

iii. Cybersecurity Maturity Model Certification (CMMC 2.0), *https://www.acq.osd.mil/cmmc/*;

iv. Service and Organization Controls (SOC) 2, *https://www.aicpa.org/interestareas/frc/assuranceadvisoryservices/sorhome.html*; or

v. Another comparable standard deemed acceptable by FEMA;

b. Provide a plan of action that describes how unimplemented security requirements of NIST SP 800–171, rev. 2, (*https://csrc.nist.gov/publications/detail/sp/800-171/rev-2/final*) will be met and how any planned mitigations will be implemented as part of the system security plan required under Article III.A.4.h.

Article IV. Loss Costs, Expenses, Expense Reimbursement, and Premium Refunds

A. The Company is liable for operating, administrative, and production expenses, including any State premium taxes, dividends, agents' commissions or any other expense of whatever nature incurred by the Company in the performance of its obligations under this Arrangement but excluding other taxes or fees, such as municipal or county premium taxes, surcharges on flood insurance premium, and guaranty fund assessments.

B. Payment for Selling and Servicing Policies.

1. Operating and Administrative Expenses. The Company may withhold, as operating and administrative expenses, other than agents' or brokers' commissions, an amount from the Company's written premium on the policies covered by this Arrangement in reimbursement of all of the Company's marketing, operating, and administrative expenses, except for allocated and unallocated loss adjustment expenses described in Article IV.C. This amount will equal the sum of the average industry expenses ratios for ''Other Act.'', ''Gen. Exp.'' And ''Taxes'' calculated by aggregating premiums and expense amounts for each of five property coverages using direct premium and expense information to derive weighted average expense ratios. For this purpose, FEMA will use data for the property/casualty industry published, as of March 15 of the prior Arrangement year, in Part III of the Insurance Expense Exhibit in A.M. Best Company's Aggregates and Averages for the following five property coverages: Fire, Allied Lines, Farmowners Multiple Peril, Homeowners Multiple Peril, and Commercial Multiple Peril (non-liability portion).

2. Agent Compensation. The Company may retain fifteen (15) percent of the Company's written premium on the policies covered by this Arrangement as the commission allowance to meet the commissions or salaries of insurance agents, brokers, or other entities producing qualified flood insurance applications and other related expenses.

3. Growth Bonus. FEMA may increase the amount of expense allowance retained by the Company depending on the extent to which the Company meets the marketing goals for the Arrangement year contained in marketing guidelines established pursuant to Article III.G.2. The total growth bonuses paid to companies pursuant to this Arrangement may not exceed two (2) percent of the aggregate net written premium collected by all WYO companies. FEMA will pay the Company the amount of any increase after the end of the Arrangement year.

C. FEMA will reimburse Loss Adjustment Expenses as follows:

1. FEMA will reimburse unallocated loss adjustment expenses to the Company pursuant to a ''ULAE Schedule'' coordinated with the Company and provided by FEMA.

2. FEMA will reimburse allocated loss adjustment expenses to the Company pursuant to a ''Fee Schedule'' coordinated with the Company and provided by FEMA. To ensure the availability of qualified insurance adjusters during catastrophic flood events, FEMA may, in its sole discretion, temporarily authorize the use of an alternative Fee Schedule with increased amounts during the term of this Arrangement for losses incurred during a time frame and geographic area established by FEMA.

3. FEMA will reimburse special allocated loss expenses and subrogation expenses reimbursable under 44 CFR 62.23(i)(8) to the Company in accordance with guidelines issued by FEMA.

D. Loss Payments.

1. The Company must make loss payments for flood insurance policies from federal funds retained in the bank account(s) established under Article III.E.1 and, if such funds are depleted, from Federal funds withdrawn from the National Flood Insurance Fund pursuant to Article V.

2. Loss payments include payments because of litigation that arises under the scope of this Arrangement, and the Authorities set forth herein. All such

loss payments and related expenses must meet the documentation requirements of the Financial Control Plan and of this Arrangement, and the Company must comply with the litigation documentation and notification requirements established by FEMA. Failure to meet these requirements may result in FEMA's decision not to provide reimbursement.

3. Oversight of Litigation.

a. Any litigation resulting from, related to, or arising from the Company's compliance with the written standards, procedures, and guidance issued by FEMA arises under the National Flood Insurance Act of 1968 or regulations, and such legal issues raise a Federal question.

b. The Company must conduct litigation arising out of the Company's participation in the NFIP in accordance with the National Flood Insurance Program Litigation Manual.

c. FEMA will not reimburse the Company for any award or judgment for damages and any costs to defend litigation that is either:

i. Grounded in actions by the Company that are significantly outside the scope of this Arrangement; or

ii. Involves issues of agent negligence.

d. Customary Business Practices. Unless otherwise directed by FEMA, the Company must oversee litigation arising under this Arrangement using its customary business practices for the oversight of litigation arising under the Company's property and casualty lines of insurance not sold under this Arrangement, including billing rates and standards.

E. Refunds. The Company must make premium refunds required by FEMA to applicants and policyholders from Federal flood insurance funds referred to in Article III.E.1, and, if such funds are depleted, from funds derived by withdrawing from the National Flood Insurance Fund pursuant to Article V. The Company may not refund any premium to applicants or policyholders in any manner other than as specified by FEMA since flood insurance premiums are funds of the Federal Government.

F. Suspension and Debarment.

1. In general. The Company may not contract with or employ any person who is suspended or debarred from participating in federal transactions pursuant to 2 CFR part 180 (covering federal nonprocurement transactions) or 48 CFR part 9, subpart 9.4 (covering federal procurement transactions) in relation to this Arrangement.

2. Reimbursement. FEMA will not reimburse the company for any expenses incurred in violation of Article IV.F.1.

3. Compliance. The Company may ensure compliance with Article IV.F.1 by:

a. Checking the System for Awards Management at *sam.gov*;

b. Collecting a certification from that person; or

c. Adding a clause or condition to the transaction with that person.

Article V. Undertakings of the Government

A. FEMA must enable the Company to withdraw funds from the National Flood Insurance Fund daily, if needed, pursuant to prescribed procedures implemented by FEMA. FEMA will increase the amounts of the authorizations as necessary to meet the obligations of the Company under Article IV.C–E. The Company may only request funds when net premium income has been depleted. The timing and amount of cash advances must be as close as is administratively feasible to the actual disbursements by the recipient organization for allowable expenses. Request for payment may not ordinarily be drawn more frequently than daily. The Company may withdraw funds from the National Flood Insurance Fund for any of the following reasons:

1. Payment of claims, as described in Article IV.D;

2. Refunds to applicants and policyholders for insurance premium overpayment, or if the application for insurance is rejected or when cancellation or endorsement of a policy results in a premium refund, as described in Article IV.E; and

3. Allocated and unallocated loss adjustment expenses, as described in Article IV.C.

B. FEMA must provide technical assistance to the Company as follows:

1. NFIP policy and history.

2. Clarification of underwriting, coverage, and claims handling.

3. Other assistance as needed.

C. FEMA must provide the Company with a copy of all formal written appeal decisions conducted in accordance with Section 205 of the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004, Public Law 108–264 and 44 CFR 62.20.

D. Prior to the end of the Arrangement period, FEMA may provide the Company a statistical summary of their performance during the signed Arrangement period. This summary will detail the Company's performance individually, as well as compare the Company's performance to the aggregate performance of all WYO companies and the NFIP Direct Servicing Agent.

Article VI. Cash Management and Accounting

A. FEMA must make available to the Company during the entire term of this Arrangement the ability to withdraw funds from the National Flood Insurance Fund provided for in Article V. The Company may withdraw funds from the National Flood Insurance Fund for reimbursement of its expenses as set forth in Article V.A that exceed net written premiums collected by the Company from the effective date of this Arrangement or continuation period to the date of the draw. In the event that adequate funding is not available to meet current Company obligations for flood policy claim payments issued, FEMA must direct the Company to immediately suspend the issuance of loss payments until such time as adequate funds are available. The Company is not required to pay claims from their own funds in the event of such suspension.

B. The Company must remit all funds, including interest, not required to meet current expenditures to the United States Treasury, in accordance with the provisions of the WYO Accounting Procedures Manual or procedures approved in writing by FEMA.

C. In the event the Company elects not to participate in the Program in this or any subsequent fiscal year, or is otherwise unable or not permitted to participate, the Company and FEMA must make a provisional settlement of all amounts due or owing within three (3) months of the expiration or termination of this Arrangement. This settlement must include net premiums collected, funds withdrawn from the National Flood Insurance Fund, and reserves for outstanding claims. The Company and FEMA agree to make a final settlement, subject to audit, of accounts for all obligations arising from this Arrangement within eighteen (18) months of its expiration or termination, except for contingent liabilities that must be listed by the Company. At the time of final settlement, the balance, if any, due FEMA or the Company must be remitted by the other immediately and the operating year under this Arrangement must be closed.

D. Upon FEMA's request, the Company must provide FEMA with a true and correct copy of the Company's Fire and Casualty Annual Statement, and Insurance Expense Exhibit or amendments thereof as filed with the State Insurance Authority of the Company's domiciliary State.

E. The Company must comply with the requirements of the False Claims Act (41 U.S.C. 3729–3733), which prohibits submission of false or fraudulent claims for payment to the Federal Government.

Article VII. Arbitration

If any misunderstanding or dispute arises between the Company and FEMA with reference to any factual issue under any provisions of this Arrangement or with respect to FEMA's nonrenewal of the Company's participation, other than as to legal liability under or interpretation of the Standard Flood Insurance Policy, such misunderstanding or dispute may be submitted to arbitration for a determination that will be binding upon approval by FEMA. The Company and FEMA may agree on and appoint an arbitrator who will investigate the subject of the misunderstanding or dispute and make a determination. If the Company and FEMA cannot agree on the appointment of an arbitrator, then two arbitrators will be appointed, one to be chosen by the Company and one by FEMA.

The two arbitrators so chosen, if they are unable to reach an agreement, must select a third arbitrator who must act as umpire, and such umpire's determination will become final only upon approval by FEMA. The Company and FEMA shall bear in equal shares all expenses of the arbitration. Findings, proposed awards, and determinations resulting from arbitration proceedings carried out under this section, upon objection by FEMA or the Company, shall be inadmissible as evidence in any subsequent proceedings in any court of competent jurisdiction.

This Article shall indefinitely succeed the term of this Arrangement.

Article VIII. Errors and Omissions

A. In the event of negligence by the Company that has not resulted in litigation but has resulted in a claim against the Company, FEMA will not consider reimbursement of the Company for costs incurred due to that negligence unless the Company takes all reasonable actions to rectify the negligence and to mitigate any such costs as soon as possible after discovery of the negligence. The Company may choose not to seek reimbursement from FEMA.

B. If the Company has made a claim payment to an insured without including a mortgagee (or trustee) of which the Company had actual notice prior to making payment, and subsequently determines that the mortgagee (or trustee) is also entitled to any part of said claim payment, any additional payment may not be paid by the Company from any portion of the premium and any funds derived from any Federal funds deposited in the bank account described in Article III.E.1. In addition, the Company agrees to hold the Federal Government harmless against any claim asserted against the Federal Government by any such mortgagee (or trustee), as described in the preceding sentence, by reason of any claim payment made to any insured under the circumstances described above.

Article IX. Officials Not To Benefit

No Member or Delegate to Congress, or Resident Commissioner, may be admitted to any share or part of this Arrangement, or to any benefit that may arise therefrom; but this provision may not be construed to extend to this Arrangement if made with a corporation for its general benefit.

Article X. Offset

At the settlement of accounts, the Company and FEMA have, and may exercise, the right to offset any balance or balances, whether on account of premiums, commissions, losses, loss adjustment expenses, salvage, or otherwise due one party to the other, its successors or assigns, hereunder or under any other Arrangements heretofore or hereafter entered into between the Company and FEMA. This right of offset shall not be affected or diminished because of insolvency of the Company.

All debts or credits of the same class, whether liquidated or unliquidated, in favor of or against either party to this Arrangement on the date of entry, or any order of conservation, receivership, or liquidation, shall be deemed to be mutual debts and credits and shall be offset with the balance only to be allowed or paid. No offset shall be allowed where a conservator, receiver, or liquidator has been appointed and where an obligation was purchased by or transferred to a party hereunder to be used as an offset.

Although a claim on the part of either party against the other may be unliquidated or undetermined in amount on the date of the entry of the order, such claim will be regarded as being in existence as of the date of such order and any credits or claims of the same class then in existence and held by the other party may be offset against it.

Article XI. Equal Opportunity

A. Age Discrimination Act of 1975. The Company must comply with the requirements of the Age Discrimination Act of 1975, Public Law 94–135 (42 U.S.C. 6101 *et seq.*) which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

B. Americans with Disabilities Act. The Company must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Public Law 101–336 (42 U.S.C. 12101–12213), which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

C. Civil Rights Act of 1964—Title VI. The Company must comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. Department of Homeland Security implementing regulations for the Act are found at 6 CFR part 21 and 44 CFR part 7.

D. Civil Rights Act of 1968. The Company must comply with Title VIII of the Civil Rights Act of 1968, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex as implemented by the U.S. Department of Housing and Urban Development at 24 CFR part 100.

E. Rehabilitation Act of 1973. The Company must comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

Article XII. Access to Books and Records

A. Audits. FEMA, the Department of Homeland Security, and the Comptroller General of the United States, or their duly authorized representatives, for the purpose of investigation, audit, and examination shall have access to any books, documents, papers and records of the Company that are pertinent to this Arrangement. The Company shall keep records that fully disclose all matters

pertinent to this Arrangement, including premiums and claims paid or payable under policies issued pursuant to this Arrangement. Records of accounts and records relating to financial assistance shall be retained and available for three (3) years after final settlement of accounts, and to financial assistance, three (3) years after final adjustment of such claims. FEMA shall have access to policyholder and claim records at all times for purposes of the review, defense, examination, adjustment, or investigation of any claim under a flood insurance policy subject to this Arrangement.

B. Nondisclosure by FEMA. FEMA, to the extent permitted by law and regulation, will safeguard and treat information submitted or made available by the Company pursuant to this Arrangement as confidential where the information has been marked ''confidential'' by the Company and the Company customarily keeps such information private or closely-held. To the extent permitted by law and regulation, FEMA will not release such information to the public pursuant to a Freedom of Information Act (FOIA) request, 5 U.S.C. 552, without prior notification to the Company. FEMA may transfer documents provided by the Company to any department or agency within the Executive Branch or to either house of Congress if the information relates to matters within the organization's jurisdiction. FEMA may also release the information submitted pursuant to a judicial order from a court of competent jurisdiction.

C. Nondisclosure by Company.

1. In general. The Company, to the extent permitted by law, must safeguard and treat information submitted or made available by FEMA pursuant to this Arrangement as confidential where the information has been marked or identified as ''confidential'' by FEMA and FEMA customarily keeps such information private or closely-held. The Company may not disclose such confidential information to a third-party without the express written consent of FEMA or as otherwise required by law.

2. Other protections. Article XII.C.1 shall not be construed as to limit the effect of any other requirement on the Company to protect information from disclosure, including a joint defense agreement or under the Privacy Act.

Article XIII. Compliance With Act and Regulations

This Arrangement and all policies of insurance issued pursuant thereto are subject to Federal law and regulations.

Article XIV. Relationship Between the Parties and the Insured

Inasmuch as the Federal Government is a guarantor hereunder, the primary relationship between the Company and the Federal Government is one of a fiduciary nature, that is, to ensure that any taxpayer funds are accounted for and appropriately expended. The Company is a fiscal agent of the Federal Government, but is not a general agent of the Federal Government. The Company is solely responsible for its obligations to its insured under any policy issued pursuant hereto, such that the Federal Government is not a proper party to any lawsuit arising out of such policies.

Authority: 42 U.S.C. 4071, 4081; 44 CFR 62.23.

David I. Maurstad,

Deputy Associate Administrator for Insurance and Mitigation, Federal Emergency Management Agency.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2022–0008; FXIA16710900000—223–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by April 21, 2022.

ADDRESSES: *Obtaining Documents:* The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2022–0008.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2022–0008.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2022–0008; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, by phone at 703–358–2185, via email at *DMAFR@fws.gov,* or via the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email or fax, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *https://www.regulations.gov,* your entire comment, including any personal identifying information, will be posted on the website. If you submit a hardcopy comment that includes personal identifying information, such as your address, phone number, or email address, 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. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Endangered Species

Applicant: Oklahoma City Zoological Park, dba Oklahoma City Zoo, Oklahoma City, OK; Permit No. 85481D

The applicant requests a permit to export one male captive-bred Sumatran tiger (*Panthera tigris sumatrae*) to Auckland Zoo, Auckland, New Zealand, for the purpose of enhancing the propagation or survival of the species. This notification is for a single export.

Applicant: Eastern Connecticut State University, Willimantic, CT; Permit No. PER0026582

The applicant requests a permit to import biological samples from roseate terns (*Sterna dougallii*) from Mr. David Wingate and Mr. Miguel Mejias, of Bermuda, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Smithsonian National Zoo and Conservation Biology Institute; Permit No. PER0028414

The applicant requests a permit to import three female captive-bred Przewalski's horses (*Equus przewalskii*) from the Calgary Zoo, Calgary, Canada, for the purpose of enhancing the propagation or survival of the species. This notification is for a single import.

Applicant: Florida Fish and Wildlife Conservation Commission—Fish and Wildlife Research Institute, Saint Petersburg, Florida; Permit No. PER0032046

The applicant requests a permit to import biological samples from Hawksbill sea turtle (*Eretmochelys imbricata*) and green sea turtle (*Chelonia mydas)* from the Aldabra Atoll for the purpose of scientific research. This notification is for a single import.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to regulations.gov and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2022–06001 Filed 3–21–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–33352; PPNEGATEB0, PPMVSCS1Z.Y00000]

Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice that the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee (Committee) will meet as indicated below.

DATES: The virtual meeting will take place on Wednesday, April 13, 2022. The meeting will begin at 9:00 a.m. until 1:00 p.m., with a public comment period at 11:00 a.m. to 11:30 a.m. (EASTERN), with advance registration required. Please contact Daphne Yun (see **FOR FURTHER INFORMATION CONTACT**) no later than April 11, 2022, to receive instructions for accessing the meeting. The alternate meeting date is Wednesday, April 27, 2022.

FOR FURTHER INFORMATION CONTACT: This will be a virtual meeting. Anyone interested in attending should contact Daphne Yun, Acting Public Affairs Officer, Gateway National Recreation Area, 210 New York Avenue, Staten Island, New York 10305, by telephone (718) 815–3651, or by email *daphne_yun@nps.gov.*

SUPPLEMENTAL INFORMATION: The Committee was established on April 18, 2012, by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906 and is regulated by the Federal Advisory Committee Act. The Committee provides advice to the Secretary, through the Director of the NPS, on matters relating to the Fort Hancock Historic District of Gateway National Recreation Area. All meetings are open to the public.

Purpose of the Meeting: The Gateway National Recreation Area will discuss leasing updates, and a presentation from the Chief of Resource Management. The final agenda will be posted on the Committee's website at *https://www.forthancock21.org.* The website includes meeting minutes from all prior meetings.

Interested persons may present, either orally or through written comments, information for the Committee to consider during the public meeting. Written comments will be accepted

prior to, during, or after the meeting. Members of the public may submit written comments by mailing them to Daphne Yun (see **FOR FURTHER INFORMATION CONTACT**).

Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public Committee meeting will be limited to no more than three minutes per speaker. All comments will be made part of the public record and will be electronically distributed to all Committee members. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment including your personal identifying information will be publicly available. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 5 U.S.C. Appendix 2)

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2022–06050 Filed 3–21–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1259]

Certain Toner Supply Containers and Components Thereof (I); Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on March 15, 2022, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. The ALJ also issued a Recommended Determination (''RD'') on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public only.

FOR FURTHER INFORMATION CONTACT: Lynde Herzbach, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3228. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States:

unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry.

19 U.S.C. 1337(d)(1). A similar provision applies to cease and desist orders. 19 U.S.C. 1337(f)(1).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. Specifically, the RD recommends issuance of a general exclusion order directed to certain toner supply containers and components thereof imported, sold for importation, and/or sold after importation. The RD also recommends issuance of cease and desist orders directed to the following respondents: Ninestar Corporation and Ninestar Image Tech Limited of Guangdong, China; Ninestar Technology Company, Ltd. of Chino, California; Static Control Components, Inc. of Sanford, North Carolina; Copier Repair Specialists, Inc. of Lewisville, Texas; Digital Marketing Corporation d/b/a Digital Buyer Marketing Company of Los Angeles, California; Do It Wiser, Inc. d/b/a Image Toner of Wilmington, Delaware; Easy Group, LLC of Irwindale, California; Ink Technologies Printer Supplies, LLC of Dayton, Ohio; Kuhlmann Enterprises, Inc. d/b/a Precision Roller of Phoenix, Arizona; LD Products, Inc. of Long Beach, California; NAR Cartridges of Burlingame, California; The Supplies Guys, Inc. of Lancaster, Pennsylvania; MITOCOLOR INC. of Rowland Heights, California; Zinyaw LLC d/b/a TonerPirate.com and Supply District of Houston, Texas; Sichuan XingDian Technology Co., Ltd. of Sichuan, China; Sichuan Wiztoner Technology Co., Ltd. of Sichuan, China; Anhuiyatengshangmaoyouxiangongsi of Ganyuqu, China; ChengDuXiangChangNanShi YouSheBeiYouXianGongSi of SiChuanSheng, China; and Hefeierlandianzishangwuyouxiangongsi of Chengdushi, China. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on March 15, 2022. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on April 14, 2022.

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 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1259'') 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. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). 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.

This action is taken under the authority of 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 16, 2022

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–05952 Filed 3–21–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Resource Conservation and Recovery Act and the Clean Water Act

On March 16, 2022, the Department of Justice lodged a proposed Consent Decree (''Decree'') with the United States District Court for the District of Alaska in the lawsuit entitled *United States* v. *North Slope Borough,* Civil Action No. 3:22–cv–00059–JWS.

The proposed Decree will resolve alleged violations of the Resource Conservation and Recovery Act arising from North Slope Borough's (''NSB'') solid and hazardous waste management practices, as well as alleged violations of the Clean Water Act, including failure to implement Spill Prevention Control and Countermeasure (''SPCC'') plans at 70 facilities and two unauthorized discharges. Under the terms of the Decree, NSB will close all unpermitted hazardous waste storage facilities; minimize generation and ensure proper tracking and management of solid and hazardous waste; build or retrofit a permitted hazardous waste storage facility; revise its SPCC plans; install adequate secondary containment around oil storage containers; and develop an integrity testing program for oil storage containers. NSB will pay a civil penalty of $6.5 million, and a third-party auditor will monitor its compliance with the terms of the Decree.

The publication of this notice opens a period for public comment on the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *North Slope Borough,* D.J. Ref. No. 90–5–1–1–12099. All comments must be submitted no later than sixty (60) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $26.00 (25 cents per page reproduction cost) payable to the United States Treasury.

Susan M. Akers,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–06003 Filed 3–21–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On March 16, 2022, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Ohio in the lawsuit entitled *United States* v. *Austin Powder Co.,* Civil Action No. 2:22–cv–1645.

The United States' Complaint in this matter alleges violations of the Clean Water Act (CWA) at Austin Powder's Red Diamond Plant explosives manufacturing facility in McArthur, Ohio. The alleged CWA violations include hundreds of exceedances of the effluent limits in Austin Powder's NPDES Permit. Under the proposed Consent Decree, Austin Powder would pay a $2.3 million civil penalty and improve two of its wastewater treatment plants, including implementing comprehensive operation and maintenance plans designed to bring the company into compliance with its NPDES Permit and ensure future compliance.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Austin Powder Co.,* D.J. Ref. No. 90–5–1–1–12117. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $69.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $10.25.

Karen S. Dworkin,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–06035 Filed 3–21–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0080]

Agency Information Collection Activities: Extension of a Currently Approved Collection: Annuity Broker Declaration Form

ACTION: 30-Day notice of information collection under review.

SUMMARY: The Department of Justice (DOJ), Civil Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 30 days until April 21, 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 agency, including whether the information will have practical utility;

—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;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annuity Broker Qualification Declaration Form.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* U.S. Department of Justice, Civil Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Abstract: This declaration is to be submitted annually to determine whether a broker meets the qualifications to be listed as an annuity broker pursuant to Section 111015(b) of Public Law 107–273.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 300 respondents will complete the form annually within approximately 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete the certification form is 300 hours.

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, Suite 3E.405B, Washington, DC 20530.

Dated: March 16, 2022.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2022–05895 Filed 3–21–22; 8:45 am]

BILLING CODE 4410–12–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0080]

Agency Information Collection Activities: Extension of a Currently Approved Collection: Annuity Broker Declaration Form

ACTION: 30-Day notice of information collection under review.

SUMMARY: The Department of Justice (DOJ), Civil Division, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 30 days until April 21, 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 agency, including whether the information will have practical utility;

—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;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annuity Broker Qualification Declaration Form.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* U.S. Department of Justice, Civil Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Abstract: This declaration is to be submitted annually to determine whether a broker meets the qualifications to be listed as an annuity broker pursuant to Section 111015(b) of Public Law 107–273.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 300 respondents will complete the form annually within approximately 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete the certification form is 300 hours.

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, Suite 3E.405B, Washington, DC 20530.

Dated: March 17, 2022.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2022–06044 Filed 3–21–22; 8:45 am]

BILLING CODE 4410–12–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 21, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0013 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0013.
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, §§ 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–004–C.

Petitioner: Century Mining, LLC, 7004 Buckhannon Road, Volga, West Virginia 26238.

Mine: Longview Mine, MSHA ID No. 46–09447, located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 18.35(a)(5)(i), Portable (trailing) cables and cords.

Modification Request: The petitioner seeks modification of the existing standard to permit 995-volt, 575-volt, and 480-volt trailing cable lengths up to 1,000 feet providing power to section equipment including continuous mining machine, roof bolters, shuttle cars, and auxiliary fans during: Initial bottom development; mains, sub-mains, and three-entry sections development; bleeder and recovery entries development; and mining around gas wells.

The petitioner states that:

(a) The mine is currently under construction.

(b) The mine will utilize the room and pillar and longwall mining methods to extract coal and will employ approximately 375 coal miners.

(c) A modification to the existing standard would enhance the safety of the miners by minimizing the number of power center moves, thereby reducing exposure to electrical hazards associated with cable handling.

(d) Use of 1,000-foot cables would reduce the chance of a fire on a working section by allowing power centers to be farther from the working face.

The petitioner proposes the following alternative method:

(a) The maximum length of the 995-volt, 575-volt, and 480-volt trailing cables will be 1,000 feet.

(b) The section equipment's trailing cables will not be smaller than No. 6 American Wire Gauge (AWG). At no time will a trailing cable be smaller than specified in the approval documentation for the machine.

(c) All circuit breakers used to protect trailing cables exceeding the maximum length specified in 30 CFR 18.35(a)(5)(i) will have instantaneous trip units properly calibrated and adjusted to trip at no more than the smallest of the following values:

(1) The setting specified in 30 CFR 75.601–1;

(2) the setting specified in the approval documentation for the machine; or

(3) 70 percent of the minimum phase-to-phase short-circuit current available at the end of the trailing cable.

(d) The calibrated trip setting of the circuit breakers will be sealed, locked, or protected so that the setting cannot be changed.

(e) The circuit breakers will have permanent, legible labels indicating the circuit, cable size, maximum cable length, and the maximum instantaneous trip unit setting. If the trailing cable sizes are intermixed at a section power center, the plugs will be constructed or designed, for example, keyed or sized, to permit only the proper type and length of cable to be plugged into the receptacle with the proper settings.

(f) Replacement instantaneous trip units used to protect trailing cables affected by this petition will be calibrated and set in accordance with alternative method item (c). This setting will be sealed, locked, or protected.

(g) All components providing short-circuit protection will have a sufficient interruption rating in accordance with the maximum calculated fault currents available.

(h) Any trailing cable not in safe operating condition will be removed from service immediately and repaired or replaced.

(i) If the mining methods or operating procedures cause or contribute to trailing cable damage, the cable will be removed from service immediately and repaired or replaced. Additional precautions will be taken to ensure that, in the future, the cable is protected and maintained in safe operating condition.

(j) Each trailing cable splice or repair will be made in a workmanlike manner and in accordance with the instructions of the manufacturer of the splice or repair kit. The outer jacket of each splice will be vulcanized with flame resistant material or made with material that has been approved by MSHA as flame resistant. Splices will comply with the requirements of 30 CFR 75.603 and 75.604.

(k) At the beginning of each production shift, persons designated by the mine operator will visually examine trailing cables to ensure that they are in safe operating condition. The instantaneous trip unit settings of the specially calibrated circuit breakers will also be visually examined to ensure that the seals or locks have not been removed and that they are set in accordance with alternative method item (c).

(l) Permanent warning labels will be installed and maintained on the cover(s) of the power center or distribution box identifying the location of each sealed short-circuit protection device. The labels will warn miners not to change or alter the sealed short-circuit settings.

(m) This petition will apply to the initial bottom development of the mine, working sections that mine around gas wells, and working sections developing mains, submains, three entry panels, and bleeder and recovery entries.

(n) This petition will not be implemented until miners designated to examine the integrity of the seals or locks, to verify the short-circuit settings, and to examine trailing cables for defects and damage have received training.

(o) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved part 48 training plan to the District Manager. The proposed revisions will include initial and refresher training regarding compliance with the terms and conditions of the PDO.

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. 2022–05995 Filed 3–21–22; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of an Existing Mandatory Safety Standard

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice includes the 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 21, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0008 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0008.

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.

MSHA will consider only comments postmarked by the U.S. Postal Service or proof of delivery from another delivery service such as UPS or Federal Express on or before the deadline for comments.

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 (facsimile). [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 (Secretary) 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, §§ 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–003–C.

Petitioner: Rosebud Mining Company, 301 Market Street, Kittanning, PA 16201.

Mine: Dutch Run Mine, Mine ID No. 36–08701, located in Armstrong County, PA; Parkwood Mine, Mine ID No. 36–08785, located in Armstrong County, PA; Madison Mine, Mine ID No. 36–09127, located in Cambria County, PA;

Lowry Mine, Mine ID No. 36–09287, located in Indiana County, PA; Cresson Mine, Mine ID No. 36–09308, located in Cambria County, PA; Barrett Mine, Mine ID No. 36–09342, located in Indiana County, PA; Penfield Mine, Mine ID No. 36–09355, located in Clearfield County, PA; Mine 78, Mine ID No. 36–09371, located in Somerset County, PA; Kocjancic Mine, Mine ID No. 36–09436, located in Jefferson County, PA; Brush Valley Mine, Mine ID No. 36–09437, located in Indiana County, PA; Harmony Mine, Mine ID No. 36–09477, located in Clearfield County, PA; Crooked Creek Mine, Mine ID No. 36–09972, located in Indiana County, PA.

Regulation Affected: 30 CFR 75.1700 Oil and Gas Wells.

Modification Request: The petitioner requests a modification of the existing standard, 30 CFR 75.1700, as it relates to oil and gas wells at the mine. Specifically, the petitioner is proposing: Procedures for cleaning out and preparing oil and gas wells prior to plugging or re-plugging; procedures for plugging or re-plugging oil or gas wells to the surface; procedures for plugging or re-plugging oil or gas wells for use as degasification boreholes; alternative procedures for preparing and plugging or re-plugging oil or gas wells; and mandatory procedures after approval has been granted to mine through a plugged or re-plugged well.

The petitioner states:

(a) District Manager Approval Required:

(1) The type of oil or gas well subject to this petition includes wells that have been depleted of oil or gas production, wells that have not produced oil or gas and may have been plugged, and active wells. Marcellus and Utica wells may not be mined through. No Marcellus or Utica wells are contained within the petition mine permits and are not subject to this modification.

(2) A safety barrier of 300 feet in diameter (150 feet between any mined area and a well) shall be maintained around all oil and gas wells (defined herein to include all active, inactive, abandoned, shut-in, or previously plugged wells, water injection wells, and carbon dioxide sequestration wells) until the District Manager has given approval to proceed with mining. Wells drilled into potential oil or gas producing formations that did not produce commercial quantities of either gas or oil (exploratory wells, wildcat wells or dry holes) are classified as oil or gas wells by MSHA. If the District Manager determines that the procedures have been complied with as described in subparagraphs 2(a) and (b), he will provide his approval, and the mine operator may then mine within the safety barrier of the well, subject to the terms of this Order. If well intersection is not planned, the mine operator may request a permit to reduce the 300-foot diameter of the safety barrier that does not include intersection of the well. The District Manager may require documents and information that help verify the accuracy of the location of the well with respect to the mine maps and mining projections. This information may include survey closure data, down-hole well deviation logs, historical well intersection location data and any additional data required by the District Manager. If the District Manager determines that the proposed barrier reduction is reasonable, he will provide his approval, and the mine operator may then mine within the safety barrier of the well.

(3) Prior to mining within the safety barrier around any well that the mine plans to intersect, the mine operator shall provide to the District Manager a sworn affidavit or declaration executed by a company official with appropriate authority stating that all mandatory procedures for cleaning out, preparing, and plugging each gas or oil well have been completed as described by the terms and conditions of this order.

(4) The affidavit or declaration must be accompanied by all logs described in (b)(8) and (b)(9) and any other records, described in those subparagraphs, the District Manager may request. The District Manager will review the affidavit or declaration, the logs and any other records provided, and may inspect the well itself, and will then determine if the operator has complied with the procedures for cleaning out, preparing, and plugging each well as described by the terms and conditions of this Order.

(5) The terms and conditions of this petition apply to all types of underground coal mining.

(b) The petitioner proposes to use the following mandatory procedures for cleaning out and preparing vertical oil and gas wells prior to plugging or re-plugging.

(1) The mine operator shall test for gas emissions inside the hole before cleaning out, preparing, plugging, and re-plugging oil and gas wells. The District Manager shall be contacted if gas is being produced.

(2) A diligent effort shall be made to clean the well to the original total depth. The mine operator shall contact the District Manager prior to stopping the operation to pull casing or clean out the total depth of the well.

(3) If the total depth of the well is less than 4,000 feet and the total depth cannot be reached, the operator shall completely clean out the well from the surface to at least 200 feet below the base of the lowest mineable coal seam, unless the District Manager requires cleaning to a greater depth based on his judgment as to what is required due to the geological strata, or due to the pressure within the well.

(4) The operator shall provide the District Manager with all information it possesses concerning the geological nature of the strata and the pressure of the well.

(5) If the total depth of the well is 4,000 feet or greater, the operator shall completely clean out the well from the surface to at least 400 feet below the base of the lowest mineable coal seam to provide a higher degree of protection for miners, in light of the greater pressure on wells of greater depth. The operator shall remove all material from the entire diameter of the well, wall to wall.

(6) If the total depth of the well is unknown and there is no historical information, the mine operator must contact the District Manager before proceeding.

(7) The operator shall prepare down-hole logs for each well. Logs shall consist of a caliper survey, a gamma log, a bond log and a deviation survey for determining the top, bottom, and thickness of all coal seams down to the lowest minable coal seam, potential hydrocarbon producing strata and the location of any existing bridge plug. In addition, a journal shall be maintained describing the depth of each material encountered; the nature of each material encountered; bit size and type used to drill each portion of the hole; length and type of each material used to plug the well; length of casing(s) removed, perforated or ripped or left in place; any sections where casing was cut or milled; and other pertinent information concerning cleaning and sealing the well. Invoices, work-orders, and other records relating to all work on the well shall be maintained as part of this journal and provided to MSHA upon request.

(8) When cleaning out the well as provided for in (b)(2), the operator shall make a diligent effort to remove all of the casing from the well. After the well is completely cleaned out and all the casing removed, the well should be plugged to the total depth by pumping expanding cement slurry and pressurizing to at least 200 pounds per square inch (psi). If the casing cannot be removed, it must be cut, milled, perforated or ripped at all mineable coal seam levels to facilitate the removal of any remaining casing in the coal seam by the mining equipment. Any casing

which remains shall be perforated or ripped to permit the injection of cement into voids within and around the well.

(9) All casing remaining at mineable coal seam levels shall be perforated or ripped at least every 5 feet from 10 feet below the coal seam to 10 feet above the coal seam. Perforations or rips are required at least every 50 feet from 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the lowest mineable coal seam up to 100 feet above the uppermost mineable coal seam. The mine operator must take appropriate steps to ensure that the annulus between the casing and the well walls are filled with expanding (minimum 0.5% expansion upon setting) cement and contain no voids.

(10) If it is not possible to remove all of the casing, the operator shall notify the District Manager before any other work is performed. If the well cannot be cleaned out or the casing cannot be removed, the operator shall prepare the well as described, from the surface to at least 200 feet below the base of the lowest mineable coal seam, for wells less than 4,000 feet in depth, and 400 feet below the lowest mineable coal seam, for wells 4,000 feet or greater, unless the District Manager requires cleaning out and removal of casing to a greater depth in consideration of geological strata, or due to the pressure within the well.

(11) If the operator, using a casing bond log, can demonstrate to the satisfaction of the District Manager that all annuli in the well are already adequately sealed with cement, then the operator will not be required to perforate or rip the casing for that particular well. When multiple casing and tubing strings are present in the coal horizon(s), any casing that remains shall be ripped or perforated and filled with expanding cement as indicated above. An acceptable casing bond log for each casing and tubing string is needed if used, in lieu of ripping or perforating multiple strings.

(12) If the District Manager concludes that the completely cleaned-out well is emitting excessive amounts of gas, the operator must place a mechanical bridge plug in the well. It must be placed in a competent stratum at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the lowest mineable coal seam, but above the top of the uppermost hydrocarbon-producing stratum, unless the District Manager requires a greater distance based on his judgment that it is required due to the geological strata, or due to the pressure within the well. The operator shall provide the District Manager with all information the operator possesses concerning the geological nature of the strata and the pressure of the well. If it is not possible to set a mechanical bridge plug, an appropriately sized packer may be used. The mine operator shall document what has been done to ''kill the well'' and plug the carbon producing strata.

(13) If the upper-most hydrocarbon-producing stratum is within 300 feet of the base of the lowest minable coal seam, the operator shall properly place mechanical bridge plugs as described in (b)(11) to isolate the hydrocarbon-producing stratum from the expanding cement plug. Nevertheless, the operator shall place a minimum of 200 vertical feet (400 feet if the total well depth is 4,000 feet or greater) of expanding cement below the lowest mineable coal seam, unless the District Manager requires a greater distance based on his judgment that it is required due to the geological strata, or due to the pressure within the well.

(c) Mandatory Procedures for Plugging or Re-Plugging Oil or Gas Wells to the Surface. After completely cleaning out the well as specified in (b), the following procedures shall be used to plug or re-plug wells:

(1) The operator shall pump expanding cement slurry down the well to form a plug which runs from at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the lowest mineable coal seam (or lower if required by the District Manager based on his judgment that a lower depth is required due to the geological strata, or due to the pressure within the well) to the surface. The expanding cement will be placed in the well under a pressure of at least 200 psi. Portland cement or a lightweight cement mixture may be used to fill the area from 100 feet above the top of the uppermost mineable coal seam (or higher if required by the District Manager based on his judgment that a higher distance is required due to the geological strata, or due to the pressure within the well) to the surface.

(2) The operator shall embed steel turnings or other small magnetic particles in the top of the cement near the surface to serve as a permanent magnetic monument of the well. In the alternative, a 4-inch or larger diameter casing, set in cement, shall extend at least 36 inches above the ground level with the American Petroleum Institute (API) well number engraved or welded on the casing. When the hole cannot be marked with a physical monument (*e.g.,* prime farmland), high-resolution GPS coordinates (one-half meter resolution) are required.

(d) The petitioner proposes to use the following mandatory procedures for plugging or re-plugging oil and gas wells for use as degasification wells. After completely cleaning out the well as specified in (b), the following procedures shall be utilized when plugging or re-plugging wells that are to be used as degasification wells:

(1) The operator shall set a cement plug in the well by pumping an expanding cement slurry down the tubing to provide at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) of expanding cement below the lowest mineable coal seam, unless the District Manager requires a greater depth based on his judgment that a greater depth is required due to the geological strata, or due to the pressure within the well.

(i) The expanding cement will be placed in the well under a pressure of at least 200 psi.

(ii) The top of the expanding cement shall extend at least 50 feet above the top of the coal seam being mined, unless the District Manager requires a greater distance due to the geological strata, or due to the pressure within the well.

(2) The operator shall securely grout into the bedrock of the upper portion of the degasification well a suitable casing in order to protect it. The remainder of this well may be cased or uncased.

(3) The operator shall fit the top of the degasification casing with a wellhead equipped as required by the District Manager in the approved ventilation plan. Such equipment may include check valves, shut-in valves, sampling ports, flame arrestor equipment, and security fencing.

(4) Operation of the degasification well shall be addressed in the approved ventilation plan. This may include periodic tests of methane levels and limits on the minimum methane concentrations that may be extracted.

(5) After the area of the coal mine that is degassed by a well is sealed or the coal mine is abandoned, the operator must plug all degasification wells using the following procedures:

(i) The operator shall insert a tube to the bottom of the well or, if not possible, to within 100 feet above the coal seam being mined. Any blockage must be removed to ensure that the tube can be inserted to this depth.

(ii) The operator shall set a cement plug in the well by pumping Portland cement or a lightweight cement mixture down the tubing until the well is filled to the surface.

(iii) The operator shall embed steel turnings or other small magnetic particles in the top of the cement near the surface to serve as a permanent

magnetic monument of the well. In the alternative, a 4-inch or larger casing, set in cement, shall extend at least 36 inches above the ground level with the API well number engraved or welded on the casing.

(e) The petitioner proposes to use the following mandatory alternative procedures for preparing and plugging or re-plugging oil or gas wells. The following provisions apply to all wells which the operator determines, and with which the MSHA District Manager agrees, cannot be completely cleaned out due to damage to the well.

(1) The operator shall drill a hole adjacent and parallel to the well, to a depth of at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the lowest mineable coal seam, unless the District Manager requires a greater distance due to the geological strata, or due to the pressure within the well.

(2) The operator shall use a geophysical sensing device to locate any casing which may remain in the well.

(3) If the well contains casing(s), the operator shall drill into the well from the parallel hole. From 10 feet below the coal seam to 10 feet above the coal seam, the operator shall perforate or rip all casings at least every 5 feet. Beyond this distance, the operator shall perforate or rip at least every 50 feet from at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the lowest mineable coal seam up to 100 feet above the seam being mined, unless the District Manager requires a greater distance based on his judgment that a greater distance is required due to the geological strata, or due to the pressure within the well. The operator shall fill the annulus between the casings and between the casings and the well wall with expanding (minimum 0.5% expansion upon setting) cement and shall ensure that these areas contain no voids. If the operator, using a casing bond log, can demonstrate to the satisfaction of the District Manager that the annulus of the well is adequately sealed with cement, then the operator will not be required to perforate or rip the casing for that particular well, or fill these areas with cement. When multiple casing and tubing strings are present in the coal horizon(s), any casing, which remain, shall be ripped or perforated and filled with expanding cement as indicated above. An acceptable casing bond log for each casing and tubing string is needed if used in lieu of ripping or perforating multiple strings.

(4) Where the operator determines, and the District Manager agrees, that there is insufficient casing in the well to allow use of the method outlined in subparagraph (e)(3), then the operator shall use a horizontal hydraulic fracturing technique to intercept the original well. From at least 200 feet (400 feet if the total well depth is 4,000 feet or greater) below the base of the lowest mineable coal seam to a point at least 50 feet above the seam being mined, the operator shall fracture in at least six places, at intervals agreed upon by the operator and the District Manager after considering the geological strata and the pressure within the well. The operator shall then pump expanding cement into the fractured well in sufficient quantities and in a manner which fills all intercepted voids.

(5) The operator shall prepare down-hole logs for each well. Logs shall consist of a caliper survey, a gamma log, a bond log and a deviation survey for determining the top, bottom, and thickness of all coal seams down to the lowest minable coal seam, potential hydrocarbon producing strata and the location of any existing bridge plug. The operator may obtain the logs from the adjacent hole rather than the well if the condition of the well makes it impractical to insert the equipment necessary to obtain the log.

(6) A journal shall be maintained describing the depth of each material encountered; the nature of each material encountered; bit size and type used to drill each portion of the hole; length and type of each material used to plug the well; length of casing(s) removed, perforated or ripped or left in place; any sections where casing was cut or milled; other pertinent information concerning sealing the well. Invoices, work orders, and other records relating to all work on the well shall be maintained as part of this journal and provided to MSHA upon request.

(7) After the operator has plugged the well as described in (e)(3) and/or (e)(4), the operator shall plug the adjacent hole, from the bottom to the surface, with Portland cement or a lightweight cement mixture. The operator shall embed steel turnings or other small magnetic particles in the top of the cement near the surface to serve a permanent magnetic monument of the well. In the alternative, a 4-inch or larger casing, set in cement, shall extend at least 36 inches above the ground level. A combination of the methods outlined in (e)(3) and (e)(4) may have to be used in a single well, depending upon the conditions of the hole and the presence of casings. The operator and the District Manager shall discuss the nature of each hole. The District Manager may require that more than one method be utilized. The mine operator may submit an alternative plan to the District Manager for approval to use different methods to address wells that cannot be completely cleaned out. The District Manager may require additional documentation and certification by a registered petroleum engineer to support the proposed alternative methods.

(f) The petitioner proposes to use the following mandatory when mining within a 100-foot diameter barrier around a well.

(1) A representative of the operator, a representative of the miners, the appropriate State agency, or the MSHA District Manager may request that a conference be conducted prior to intersecting any plugged or re-plugged well. Upon receipt of any such request, the District Manager shall schedule such a conference. The party requesting the conference shall notify all other parties listed above within a reasonable time prior to the conference to provide opportunity for participation. The purpose of the conference shall be to review, evaluate, and accommodate any abnormal or unusual circumstance related to the condition of the well or surrounding strata when such conditions are encountered.

(2) The operator shall intersect a well on a shift approved by the District Manager. The operator shall notify the District Manager and the miners' representative in sufficient time prior to intersecting a well in order to provide an opportunity to have representatives present.

(3) When using continuous mining methods, the operator shall install drivage sights at the last open crosscut near the place to be mined to ensure intersection of the well. The drivage sites shall not be more than 50 feet from the well.

(4) The operator shall ensure that fire-fighting equipment including fire extinguishers, rock dust, and sufficient fire hose to reach the working face area of the well intersection (when either the conventional or continuous mining method is used) is available and operable during all well intersections. The fire hose shall be located in the last open crosscut of the entry or room. The operator shall maintain the water line to the belt conveyor tailpiece along with a sufficient amount of fire hose to reach the farthest point of penetration on the section.

(5) The operator shall ensure that sufficient supplies of roof support and ventilation materials shall be available and located at the last open crosscut. In addition, emergency plugs and suitable sealing materials shall be available in

the immediate area of the well intersection.

(6) Within 12 hours prior to intersecting the well, the operator shall service all equipment and check it for permissibility. Water sprays, water pressures, and water flow rates used for dust and spark suppression shall be examined and any deficiencies corrected.

(7) The operator shall calibrate the methane monitor(s) on the longwall, continuous mining machine, or cutting machine and loading machine within 12 hours prior to intersecting the well.

(8) When mining is in progress, the operator shall perform tests for methane with a handheld methane detector at least every 10 minutes, from the time that mining with the continuous mining machine is within 30 feet of the well until the well is intersected. During the actual cutting process, no individual shall be allowed on the return side until the well intersection has been completed, and the area has been examined and declared safe. The operator's most current Approved Ventilation Plan will be followed at all times unless the District Manager deems a greater air velocity for the intersect is necessary.

(9) When using continuous or conventional mining methods, the working place shall be free from accumulations of coal dust and coal spillages, and rock dust shall be placed on the roof, rib, and floor to within 20 feet of the face when intersecting the well. When the well is intersected, the operator shall deenergize all equipment, and thoroughly examine and determine the area to be safe before permitting mining to resume.

(10) After a well has been intersected and the working place determined to be safe, mining shall continue inby the well a sufficient distance to permit adequate ventilation around the area of the well.

(11) If the casing is cut or milled at the coal seam level, the use of torches should not be necessary. However, in rare instances, torches may be used for inadequately or inaccurately cut or milled casings. No open flame shall be permitted in the area until adequate ventilation has been established around the well bore and methane levels of less than 1.0% are present in all areas that will be exposed to flames and sparks from the torch. The operator shall apply a thick layer of rock dust to the roof, face, floor, ribs and any exposed coal within 20 feet of the casing prior to the use of torches.

(12) Non-sparking (brass) tools will be located on the working section and will be used exclusively to expose and examine cased wells.

(13) No person shall be permitted in the area of the well intersection except those actually engaged in the operation, including company personnel, representatives of the miners, personnel from MSHA, and personnel from the appropriate State agency.

(14) The operator shall alert all personnel in the mine to the planned intersection of the well prior to their going underground if the planned intersection is to occur during their shift. This warning shall be repeated for all shifts until the well has been mined through.

(15) The well intersection shall be under the direct supervision of a responsible person. Instructions concerning the well intersection shall be issued only by the certified individual in charge.

(16) If the mine operator cannot find the well in the middle of the panel or room and misses the anticipated intersection, mining shall cease and the District Manager shall be notified.

(17) The provisions of this Decision and Order do not impair the authority of representatives of MSHA to interrupt or halt the well intersection, and to issue a withdrawal order, when they deem it necessary for the safety of the miners. MSHA may order an interruption or cessation of the well intersection and/or a withdrawal of personnel by issuing either a verbal or written order to that effect to a representative of the operator, which order shall include the basis for the order. Operations in the affected area of the mine may not resume until a representative of MSHA permits resumption. The mine operator and miners shall comply with verbal or written MSHA orders immediately. All verbal orders shall be committed to writing within a reasonable time as conditions permit.

(18) A copy of this Petition shall be maintained at the mine and be available to the miners.

(19) If the well is not plugged to the total depth of all minable coal seams identified in the core hole logs, any coal seams beneath the lowest plug will remain subject to the barrier requirements of 30 CFR 75.1700, should those coal seams be developed in the future.

(20) All necessary safety precautions and safe practices required by MSHA regulation and by State agencies that have jurisdiction over the plugging site still apply and shall be followed to provide the upmost protection to the miners involved in the process.

(21) All miners involved in the plugging or re-plugging operation will be trained on the contents of this petition prior to starting the process and a copy of this petition will be posted at the well site until the plugging or re-plugging has been completed.

(22) Mechanical bridge plugs should incorporate the best available technologies that are either required or recognized by the State regulatory agency and/or oil and gas industry.

(23) Within 30 days after this Decision and Order becomes final, the operator shall submit proposed revisions for its approved 30 CFR part 48 training plan to the District Manager. These proposed revisions shall include initial and refresher training on compliance with the terms and conditions stated in the Decision and Order. The operator shall provide all miners involved in well intersection with training on the requirements of this Decision and Order prior to mining within 150 feet of the next well intended to be mined through.

(24) The responsible person required under 30 CFR 75.1501 Emergency Evacuations, is responsible for well intersection emergencies. The well intersection procedures should be reviewed by the responsible person prior to any planned intersection.

(25) Within 30 days after this Decision and Order becomes final, the operator shall submit proposed revisions for its approved mine emergency evacuation and firefighting program of instruction required under 30 CFR 75.1502. The operator will revise the program of instruction to include the hazards and evacuation procedures to be used for well intersections. All underground miners will be trained in this revised plan within 30 days of submittal. The procedure as specified in 30 CFR 48.3 for approval of proposed revisions to already approved training plans shall apply.

The petitioner asserts that the alternate method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the applicable standard.

Song-ae Aromie Noe,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–05997 Filed 3–21–22; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0150]

Proposed Extension of Information Collection; Pattern of Violations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: Requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Pattern of Violations.

DATES: All comments must be received on or before May 23, 2022.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions: Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0014. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket, with no changes. Because your comment will be made public, you are 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 your or anyone else's Social Security number or confidential business information.
- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. 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.
- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

Under the Mine Act, MSHA is required to issue a pattern of violations notice to any mine operator that demonstrates a disregard for the health and safety of miners through a pattern of significant and substantial violations. A significant and substantial violation is one that contributes to a safety or health hazard that is reasonably likely to result in a reasonably serious injury or illness. The pattern of violations provision helps to ensure that mine operators manage health and safety conditions at mines and find and fix the root causes of significant and substantial violations before they become a hazard to miners. The issuance of a pattern of violations notice provides additional incentive for chronic violators to comply with the Mine Act and MSHA's safety and health standards. In determining whether to issue a pattern of violations notice, MSHA reviews any mitigating circumstances, in accordance with paragraph 30 CFR 104.2(a)(8). Among the mitigating circumstances that MSHA could consider is an approved corrective action program that has succeeded in reducing significant and substantial violations.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Pattern of Violations. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns provisions for pattern of violations. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0150.

Affected Public: Business or other for-profit.

Number of Respondents: 6.

Frequency: On occasion.

Number of Responses: 12.

Annual Burden Hours: 304 hours.

Annual Respondent or Recordkeeper Cost: $800.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and

will be available at *https://www.reginfo.gov.*

Song-ae Aromie Noe,

Certifying Officer.

[FR Doc. 2022–05994 Filed 3–21–22; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0083]

Proposed Extension of Information Collection; Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection (Pertains to Surface Coal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance request for comment to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This request helps to ensure that: Requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection (pertains to surface coal mines).

DATES: All comments must be received on or before May 23, 2022.

ADDRESSES: You may submit comment as follows. Please note that late, untimely filed comments will not be considered.

Electronic Submissions: Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0001.
- Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket, with no changes. Because your comment will be made public, you are 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 your or anyone else's Social Security number or confidential business information.
- If your comment includes confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission.

Written/Paper Submissions: Submit written/paper submissions in the following way:

- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. 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.
- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Acting Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 813(h), authorizes MSHA to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

Section 77.1713, Title 30 of the Code of Federal Regulations requires coal mine operators to conduct examinations of each active working area of surface mines, active surface installations such as preparation plants for hazardous conditions during each shift. A number of potential hazards can exist at surface coal mines and facilities. Highwalls, mining equipment, travelways, and the handling of mining materials each present potentially hazardous conditions. A report of hazardous conditions detected must be entered into a record book along with a description of any corrective actions taken. By conducting an on-shift examination for hazardous conditions, mine operators can better ensure a safe working environment for the miners and a reduction in accidents.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection, Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection (pertains to surface coal mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden related to the information collection, including the validity of the methodology and assumptions used in the estimate;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the information collection 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.

Background documents related to this information collection request are available at *https://regulations.gov* and at DOL–MSHA located at 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

This information collection request concerns provisions for this information collection, Daily Inspection of Surface Coal Mine; Certified Person; Reports of Inspection (pertains to surface coal mines). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

Type of Review: Extension, without change, of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0083.

Affected Public: Business or other for-profit.

Number of Respondents: 796.

Frequency: On occasion.

Number of Responses: 248,880.

Annual Burden Hours: 373,320 hours.

Annual Respondent or Recordkeeper Cost: $0.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at *https://www.reginfo.gov.*

Song-ae Aromie Noe,

Certifying Officer.

[FR Doc. 2022–05996 Filed 3–21–22; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meetings

TIME AND DATE: The Legal Services Corporation's (LSC) Board of Directors and its six committees will meet April 4–5, 2022. On Monday, April 4, the first meeting will begin at 9:30 a.m. Eastern Daylight Time (EDT), with the next meeting commencing promptly upon adjournment of the immediately preceding meeting. On Tuesday, April 5, the first meeting will again begin at 9:30 a.m., EDT, with the next meeting commencing promptly upon adjournment of the immediately preceding meeting.

PLACE: *Public Notice of Virtual Meeting.*

LSC will conduct the April 4–5, 2022 meetings in-person and via Zoom.

Public Observation: Unless otherwise noted herein, the Board and all committee meetings will be open to public observation via Zoom. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

Directions for Open Sessions

Monday, April 4, 2022

- To join the Zoom meeting by computer, please use this link.
- *https://lsc-gov.zoom.us/j/91517015039?pwd=Zjh0ZStPVWR4Z0RvNzFsSm5ETWRXQT09*
  - *Meeting ID:* 915 1701 5039
  - *Passcode:* 116372
- To join the Zoom meeting with one tap from your mobile phone, please click dial:
  - +16468769923,,91517015039# US (New York)
  - +13017158592,,91517015039# US (Washington, DC)
- To join the Zoom meeting by telephone, please dial one of the following numbers:
  - +1 301 715 8592 US (Washington DC)
  - +1 646 876 9923 US (New York)
  - +1 312 626 6799 US (Chicago)
  - +1 346 248 7799 US (Houston)
  - +1 408 638 0968 US (San Jose)
  - +1 669 900 6833 US (San Jose)
  - +1 253 215 8782 US (Tacoma)
  - *Meeting ID:* 915 1701 5039
  - *Passcode:* 116372
  - If calling from outside the U.S., find your local number here: *https://lsc-gov.zoom.us/u/acCVpRj1FD*

Tuesday, April 5, 2022

- To join the Zoom meeting by computer, please use this link.
- *https://lsc-gov.zoom.us/j/96037231141?pwd=SUNnclEyM0k1Q0swV3MvUTRZUXU3dz09*
  - *Meeting ID:* 960 3723 1141
  - *Passcode:* 096210
- To join the Zoom meeting with one tap from your mobile phone, please click dial:
  - +13017158592,,96037231141# US (Washington DC)
  - +16468769923,,96037231141# US (New York)
- To join the Zoom meeting by telephone, please dial one of the following numbers:
  - +1 301 715 8592 US (Washington DC)
  - +1 646 876 9923 US (New York)
  - +1 312 626 6799 US (Chicago)
  - +1 346 248 7799 US (Houston)
  - +1 408 638 0968 US (San Jose)
  - +1 669 900 6833 US (San Jose)
  - +1 253 215 8782 US (Tacoma)
  - *Meeting ID:* 960 3723 1141
  - *Passcode:* 096210
  - If calling from outside the U.S., find your local number here: *https://lsc-gov.zoom.us/u/acCVpRj1FD*

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Board or Committee Chair may solicit comments from the public. To participate in the meeting during public comment, use the 'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

Status: Open, except as noted below.

Audit Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to discuss follow-up work by the Office of Compliance and Enforcement relating to open Office of Inspector General investigations and to receive a briefing on cybersecurity.

Combined Audit and Finance Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to receive a briefing from the Corporation's outside auditor and discuss the Fiscal Year 2021 Audited Financial Statements.

Governance and Performance Review Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to hear a report on the evaluation of LSC's officers, including Vice President for Grants Management, Vice President for Government Relations and Public Affairs, Vice President for Legal Affairs & General Counsel, Chief Financial Officer & Treasurer, and Chief of Staff & Corporate Secretary.

Institutional Advancement Committee—Open, except that, upon a vote of the Board of Directors, the meeting may be closed to the public to receive a briefing on development activities and to discuss prospective new members of the Leaders Council and Emerging Leaders Council.

Board of Directors—Open, except that, upon a vote of the Board of Directors, a portion of the meeting may be closed to the public for briefings by management and LSC's Inspector General, and to consider and act on the General Counsel's report on potential and pending litigation involving LSC, and prospective Leaders Council and Emerging Leaders Council members.

Any portion of the closed session consisting solely of briefings does not fall within the Sunshine Act's definition of the term ''meeting'' and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session.[1]

A verbatim written transcript will be made of the closed session of the Audit, Board, Combined Audit and Finance, Governance and Performance Review, and Institutional Advancement Committee meetings. The transcript of any portions of the closed sessions falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(6), (7), (9) and (10), will not be available for public inspection. A copy of the General Counsel's Certification that, in his opinion, the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

[1] 5 U.S.C. 552b (a) (2) and (b). See also 45 CFR 1622.2 & 1622.3.

MEETING SCHEDULE

	Start time (all EDT)
Monday, April 4, 2022	
1. Finance Committee Meeting 2. Combined Meeting of the Audit and Finance Committees. 3. Audit Committee Meeting. 4. Operations and Regulations Committee Meeting. 5. Delivery of Legal Services Committee Meeting.	9:30 a.m.
Tuesday, April 5, 2022	
1. Governance and Performance Review Committee Meeting 2. Institutional Advancement Committee (IAC) Meeting. 3. Meeting of the Communications Subcommittee of the IAC. 4. Open Board Meeting. 5. Closed Board Meeting.	9:30 a.m.

Monday, April 4, 2022

Finance Committee Meeting

Open Session

1. Approval of Agenda
2. Approval of the Minutes of the Committee's Open Session Meeting on January 27, 2022
3. Approval of Minutes of the Committee's Closed Session Meeting on January 27, 2022
4. Presentation of LSC's Financial Report for the First Five Months of FY 2022 (Oct. 1, 2021—Feb. 28, 2022)
   - Debbie Moore, Chief Financial Officer & Treasurer
5. Discussion of LSC's FY 2022 Appropriations
   - Carol Bergman, Vice President for Government Relations & Public Affairs
6. Consider and Act on Resolution 2022–XXX, Adopting LSC's Consolidated Operating Budget for FY 2022
7. Discussion of LSC's FY 2023 Appropriations Request
   - Carol Bergman, Vice President for Government Relations & Public Affairs
8. Discussion Regarding Process and Timetable for FY 2024 Budget Request
   - Carol Bergman, Vice President for Government Relations & Public Affairs
9. Public Comment
10. Consider and Act on Other Business
11. Consider and Act on Motion to Adjourn the Meeting

Combined Audit and Finance Committees Meeting

Open Session

1. Approval of Agenda
2. Presentation of Fiscal Year 2021 Annual Financial Audit
   - Roxanne Caruso, Assistant Inspector General for Audit
   - Marie Caputo, Principal, CliftonLarsonAllen
3. Consider and Act on Motion to Suspend the Open Session Meeting and Proceed to a Closed Session

Closed Session

4. Opportunity to Ask Auditors Questions without Management Present
   - Roxanne Caruso, Assistant Inspector General for Audit
   - Marie Caputo, Principal, CliftonLarsonAllen
5. Communication by Corporate Auditor with those Charged with Governance Under Statement on Auditing Standard 114
   - Roxanne Caruso, Assistant Inspector General for Audit
   - Marie Caputo, Principal, CliftonLarsonAllen
6. Consider and Act on Motion to Adjourn the Closed Session Meeting and Resume the Open Session Meeting

Open Session

7. Consider and Act on Resolution 2022–XXX, Acceptance of Draft Audited Financial Statements for Fiscal Years 2021and 2020
8. Public Comment
9. Consider and Act on Other Business
10. Consider and Act on Motion to Adjourn the Meeting

Audit Committee Meeting

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on January 27, 2022
3. Briefing by the Office of Inspector General
   - Roxanne Caruso, Assistant Inspector General for Audit
4. Management Update Regarding Risk Management
   - Will Gunn, Vice President for Legal Affairs and General Counsel
5. Briefing about Follow-Up by the Office of Compliance and Enforcement on Referrals by the Office of Inspector General Regarding Audit Reports and Annual Financial Statement Audits of Grantees
   - Lora Rath, Director, Office of Compliance and Enforcement
   - Roxanne Caruso, Assistant Inspector General for Audit
6. Public Comment
7. Consider and Act on Other Business
8. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session Meeting

Closed Session

1. Approval of Minutes of the Committee's Closed Session Meeting on January 27, 2022
2. Briefing on Cybersecurity for LSC and Grantees
   - Will Gunn, Vice President for Legal Affairs and General Counsel
   - Jada Breegle, Chief Information Officer
   - Debbie Moore, Chief Financial Officer, and Treasurer
   - Lynn Jennings, Vice President for Grants Management
   - Dan O'Rourke, Assistant Inspector General for Investigations
   - Roxanne Caruso, Assistant Inspector General for Audit
3. Briefing by Office of Compliance and Enforcement on Active Enforcement Matter(s) and Follow-Up on Open Investigation Referrals from the Office of Inspector General
   - Lora Rath, Director, Office of Compliance and Enforcement
4. Consider and Act on Motion to Adjourn the Meeting

Operations and Regulations Committee Meeting

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on January 27, 2022
3. Update on Financial Guide
   - Stuart Axenfeld, Deputy Director for Financial Compliance, Office of Compliance and Enforcement
4. Update on Regulatory Review Process
   - Stefanie Davis, Senior Associate General Counsel for Regulations and Ethics Officer
5. Briefing on Acquisition Management
   - Helen Gerostathos Guyton, Senior Associate General Counsel for Corporate Practice
   - Debbie Moore, Chief Financial Officer & Treasurer
6. Briefing on Professionalism, Conflicts of Interest, and Ethics Activities
   - Stefanie Davis, Senior Associate General Counsel for Regulations and Ethics Officer
7. Briefing on Performance and Talent Management
   - Traci Higgins, Director of Human Resources
8. Public Comment
9. Consider and Act on Other Business
10. Consider and Act on Motion to Adjourn the Meeting

Delivery of Legal Services Committee Meeting

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on January 27, 2022
3. Performance Criteria Update
   - Lynn Jennings, Vice President for Grants Management
   - Joyce McGee, Director, Office of Program Performance
4. Grants Management System (GrantEase) Implementation Update
   - Jada Breegle, Chief Information Officer
5. Presentation on LSC Grantee Oversight, Compliance and Data
   - Joyce McGee, Director, Office of Program Performance
   - Lora Rath, Director, Office of Compliance and Enforcement
   - Holly Stevens, Chief Data Officer, Office of Data Governance & Analysis
6. Public Comment
7. Consider and Act on Other Business
8. Consider and Act on a Motion to Adjourn the Meeting

Governance and Performance Review Committee

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Committee's Open Session Meeting on January 27, 2022
3. Consider and Act on Other Business
4. Public Comment
5. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session

Closed Session

1. Report on Evaluations of Vice President for Grants Management, Vice President for Government Relations & Public Affairs, Chief Financial Officer, Vice President for Legal Affairs and General Counsel, and Chief of Staff & Corporate Secretary
   - Ron Flagg, President
2. Consider and Act on Motion to Adjourn the Meeting

Institutional Advancement Committee Meeting

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Institutional Advancement Committee's Open Session Meeting on January 28, 2022
3. Update on Leaders Council and Emerging Leaders Council
   - John G. Levi, Chairman of the Board
4. Development Report
   - Nadia Elguindy, Director of Institutional Advancement
5. Consider and Act on Resolution 2022–XXX, Updating Institutional Advancement Protocols
6. Update on LSC's 50th Anniversary Fundraising Campaign
   - Nadia Elguindy, Director of Institutional Advancement
   - Leo Latz, President & Founder, Latz & Company
7. Update on Veterans Task Force and Opioid Task Force Implementation
   - Stefanie Davis, Senior Assistant General Counsel
8. Update on the Eviction Study
   - Lynn Jennings, Vice President for Grants Management
9. Update on Housing Task Force
   - Helen Guyton, Senior Assistant General Counsel
10. Update on Rural Justice Task Force
    - Jessica Wechter, Special Assistant to the President
11. Public Comment
12. Consider and Act on Other Business
13. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session

Closed Session

1. Approval of Minutes of the Institutional Advancement Committee's Closed Session Meeting on January 28, 2022
2. Development Activities Report
   - Nadia Elguindy, Director of Institutional Advancement
3. Consider and Act on Motion to Approve Leaders Council and Emerging Leaders Council Invitees
4. Consider and Act on Other Business
5. Consider and Act on Motion to Adjourn the Meeting

IAC Communications Subcommittee Meeting

Open Session

1. Approval of Agenda
2. Approval of Minutes of the Subcommittee's Open Session Meeting on January 28, 2022
3. Communications and Social Media Update
   - Carl Rauscher, Director of Communications and Media Relations
4. Public Comment
5. Consider and Act on Other Business
6. Consider and Act on Motion to Adjourn the Meeting

Board of Directors Meeting

Open Session

1. Pledge of Allegiance
2. Approval of Agenda
3. Approval of Minutes of the Board's Open Session Meeting on January 28, 2022
4. Consider and Act on Resolution 2022–XXX, In Recognition and Appreciation of Distinguished Service by Edgar S. Cahn
5. Chairman's Report
6. Members' Reports
7. President's Report
8. Inspector General's Report
9. Consider and Act on the Report of the Finance Committee
10. Consider and Act on the Report of the Combined Audit and Finance Committees
11. Consider and Act on the Report of the Audit Committee
12. Consider and Act on the Report of the Operations and Regulations Committee
13. Consider and Act on the Report of the Delivery of Legal Services Committee
14. Consider and Act on the Report of the Governance and Performance Review Committee
15. Consider and Act on the Report of the Institutional Advancement Committee
16. Public Comment
17. Consider and Act on Other Business
18. Consider and Act on Whether to Authorize a Closed Session of the Board to Address Items Listed Below

Closed Session

19. Approval of Minutes of the Board's Closed Session Meeting of January 28, 2022
20. Management Briefing
21. Inspector General Briefing
22. Consider and Act on General Counsel's Report on Potential and Pending Litigation Involving LSC
23. Consider and Act on List of Prospective Leaders Council and Emerging Council Invitees
24. Consider and Act on Motion to Adjourn the Meeting

CONTACT PERSON FOR MORE INFORMATION: Kaitlin Brown, Executive and Board Project Coordinator, at (202) 295–1555. Questions may also be sent by electronic mail to *brownk@lsc.gov. Non-Confidential Meeting Materials:* Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

Dated: March 18, 2022.

Kaitlin D. Brown,

Executive and Board Project Coordinator, Legal Services Corporation.

[FR Doc. 2022–06202 Filed 3–18–22; 4:15 pm]

BILLING CODE 7050–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 22–04]

Notice of Open Meeting

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Federal Advisory Committee Act, the Millennium Challenge Corporation (MCC) Economic Advisory Council was established as a discretionary advisory committee on October 5, 2018. Its charter was renewed for a second term on October 1, 2020. The MCC Economic Advisory Council serves MCC solely in an advisory capacity and provides advice and guidance to MCC economists, evaluators, leadership of the Department of Policy and Evaluation, and senior MCC leadership regarding relevant trends in development economics, applied economic and evaluation methods, poverty analytics, as well as modeling, measuring, and evaluating development interventions. In doing so, the MCC Economic Advisory Council helps sharpen MCC's analytical methods and capacity in support of the agency's economic development goals. It also serves as a sounding board and reference group for assessing and advising on strategic policy innovations and methodological directions at MCC.

DATES: Friday, April 8, 2022, from 10:00 a.m.–12:00 p.m. EDT.

ADDRESSES: The meeting will be held via conference call and/or WebEx.

FOR FURTHER INFORMATION CONTACT: Mesbah Motamed, 202.521.7874, *MCCEACouncil@mcc.gov,* or visit *www.mcc.gov/about/org-unit/economic-advisory-council.*

SUPPLEMENTARY INFORMATION:

Agenda. During this meeting of the MCC Economic Advisory Council, members will receive an overview of MCC's work and the context and function of the MCC Economic Advisory Council within MCC's mission. The MCC Economic Advisory Council will also discuss issues related to MCC's core functions, including a focus on MCC's work on policy and institutional reforms in partner countries.

Public Participation: The meeting will be open to the public. Members of the public may file written statement(s) before or after the meeting. If you plan to participate, please submit your name and affiliation no later than Friday, April 1, 2022 to *MCCEACouncil@mcc.gov* to receive dial-in instructions and to be placed on an attendee list.

Authority: Federal Advisory Committee Act, 5 U.S.C. App.

Dated: March 16, 2022.

Thomas G. Hohenthaner,

Acting VP/General Counsel and Corporate Secretary.

[FR Doc. 2022–05990 Filed 3–21–22; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Document Number NASA–22–013; Docket Number–NASA–2022–0001]

Requirement for NASA Recipients of Financial Assistance Awards To Obtain a Quotation From Small and/or Minority Businesses, Women's Business Enterprises and Labor Surplus Area Firms

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Request for public comment on new term and condition that requires recipients of NASA financial assistance to obtain a quotation from small and/or minority businesses, women's business enterprises or labor surplus area firms; correction.

SUMMARY: The National Aeronautics and Space Administration (NASA) published a document in the **Federal Register** of February 23, 2022, concerning a request for public comment on new term and condition that requires recipients of NASA financial assistance to obtain a quotation from small and/or minority businesses, women's business enterprises or labor surplus area firms. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Christiane S. Diallo, *Christiane.diallo@nasa.gov,* (202) 358–5179.

SUPPLEMENTARY INFORMATION:

In the **Federal Register** of February 23, 2022, in [FR Doc. 2022–03602], on page 10257, in the third column, correct the ''Dates'' caption to read:

DATES: Comments must be received by April 24, 2022.

Nanette Smith,

Team Lead, NASA Directives and Regulations.

[FR Doc. 2022–05954 Filed 3–21–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2021–027]

Privacy Act of 1974; System of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of a modified system of records.

SUMMARY: We propose revising Appendix A of our existing Privacy Act inventory of systems subject to the Privacy Act of 1974, which contains the common routine uses that apply to some or all of our systems of records. We propose to revise routine use H, which permits sharing information when there has been a data breach and it's necessary to respond to the breach. And we propose adding a new routine use for sharing information with other agencies that experience a data breach. Both of these changes are required by an OMB memorandum and these routine uses apply to all of our systems of records. Routine use H is already included in all of our SORNs, but we are now adding routine use I to them as well. In this notice, we publish the revised routine use H and the new routine use I for public notice and comment and add routine use I to all of our SORNs.

DATES: Submit comments on these routine uses by April 21, 2022. This revision to Appendix A is effective on May 2, 2022 unless we receive comments that necessitate revising the SORN.

ADDRESSES: You may submit comments, identified by ''SORN Appendix A'' by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- Due to COVID–19 restrictions, we do not have staff at the building to receive mail, so we are temporarily suspending the mailing option. If you are not able to submit comments using the eRulemaking portal and need to make other arrangements, please email us at *regulation_comments@nara.gov* and we will work with you on an alternative.

Instructions: All submissions must include SORN Appendix A so we can identify what the comment is responding to. We may publish any comments we receive without changes, including any personal information you include.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by

email at *regulation_comments@nara.gov* or by phone at 301.837.3151.

SUPPLEMENTARY INFORMATION: Appendix A is part of our system of records notices that cover systems containing information protected by the Privacy Act. Appendix A contains the routine uses that apply to all or many of our Privacy Act-covered systems and currently consists of uses A through H. Appendix A was last republished on December 20, 2013 (78 FR 77255, 77287). For the most up-to-date information, see the Appendix on our website at *www.archives.gov/privacy/inventory.*

The existing routine use H already covers disclosure of information in the system of records when necessary to facilitate responses to data breaches of the system. However, the Office of Management and Budget (OMB) issued a memorandum that included provisions relating to data breach routine uses that OMB required all agencies to incorporate into their SORNs. So we are updating routine use H to incorporate the required provisions from OMB M–17–12.

OMB M–17–12 also required agencies to incorporate provisions for another routine use, also related to data breaches, but designed to facilitate sharing information between agencies when appropriate so that another agency can better respond to its data breach. For example, this may include information that would assist the other agency in locating or contacting individuals potentially affected by a breach, or information that is related to the other agency's programs or information. So that we can disclose records in our systems of records that may reasonably be needed by another agency in responding to a breach, we are adding this routine use to all our systems of records.

The changes to routine use H will affect and be incorporated into all of our SORNs, and the new routine use I will be added to all of our SORNs based on this notice. To see the most current versions of our SORNs and Appendix A at any time, visit our website at *www.archives.gov/privacy/inventory.*

The Privacy Act of 1974, as amended (5 U.S.C. 552a) (''Privacy Act''), provides certain safeguards for an individual against an invasion of personal privacy. It requires Federal agencies that disseminate any record of personally identifiable information to do so in a manner that assures the action is for a necessary and lawful purpose, the information is current and accurate for its intended use, and the agency provides adequate safeguards to prevent misuse of such information. NARA intends to follow these principles when transferring information to another agency or individual as a ''routine use,'' including assuring that the information is relevant for the purposes for which it is transferred.

David S. Ferriero,

Archivist of the United States.

APPENDIX A

The following routine use statements apply to National Archives and Records Administration notices when indicated in the notice:

* * * * *

H. Routine Use—Data breach: A record from this system of records may be disclosed to appropriate agencies, entities, and people when (1) we suspect or confirm that there has been a breach of the system of records; (2) we determine that, as a result of the suspected or confirmed breach, there is a risk of harm to individuals, NARA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and people is reasonably necessary to assist our efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

I. Routine Use—Other agency data breach: A record from this system of records may be disclosed to another Federal agency or Federal entity, when we determine that information from this system of records is reasonably necessary to assist the recipient agency or entity to (1) respond to a suspected or confirmed breach or (2) prevent, minimize, or remedy 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.

HISTORY:

Last republished in full on December 20, 2013 (78 FR 77255).

[FR Doc. 2022–06007 Filed 3–21–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

[Docket No.: NTSB–2021–0010, OMB Control No. 3147–0028]

Proposed Information Collection; Comment Request

AGENCY: National Transportation Safety Board (NTSB).

ACTION: 30-Day Notice of Information Collection; request for comments.

SUMMARY: Under the Paperwork Reduction Act (PRA) of 1995, the National Transportation Safety Board (NTSB) offers the public and Federal agencies the opportunity to comment regarding the NTSB's submission of an Information Collection Request (ICR) for an extension of a currently-approved information collection (IC) for Office of Management and Budget (OMB) Control No. 3147–0028. The OMB number, which is currently assigned to the NTSB's Request for a Medical Exception to the COVID–19 Vaccination Requirement form, was obtained through emergency clearance in November 2021 and will expire on May 31, 2022. The NTSB published a 60-Day Notice in December 2021, soliciting comments until February 15, 2022. With no comments received, the NTSB is issuing this 30-Day Notice, informing the public and Federal agencies to submit comments directly to the Office of Information & Regulatory Affairs (OIRA) regarding this ICR.

DATES: Submit comments to OIRA regarding this proposed collection of information by April 21, 2022.

ADDRESSES: Send comments directly to OIRA within 30 days of the publication of this Notice to *https://www.reginfo.gov/public/do/PRAMain.*

FOR FURTHER INFORMATION CONTACT: Kathleen Silbaugh, General Counsel, (202) 314–6080, *rulemaking@ntsb.gov.*

SUPPLEMENTARY INFORMATION: To comply with the September 9, 2021, Executive Order (E.O.) 14043 (*Requiring Coronavirus Disease 2019 Vaccination for Federal Employees*) and October 2021 guidance from the Safer Federal Workforce Task Force, the NTSB created and received emergency clearance in November 2021 for the following form: Request for a Medical Exception to the COVID–19 Vaccination Requirement. This form is designed for agency employees requesting a medical exception to the vaccine requirements. This IC is necessary because when an agency employee requests a medical exception to the COVID–19 vaccine requirements, the NTSB will use the information on this form to determine

whether the employee provided sufficient information to justify the request.

Because the OMB number assigned to this form was obtained through emergency clearance, the OMB number is only valid for six months and will expire on May 31, 2022. In anticipation of future requests from its employees, the NTSB is specifically seeking an extension of this currently-approved collection.

Prior to submitting the ICR to OIRA, the NTSB published in December 2020, a 60-day Notice in the **Federal Register**, soliciting comments until February 15, 2022; however, no comments were received as of the close of the comment period. Accordingly, the NTSB is publishing this 30-Day Notice to inform the public that the agency is submitting an ICR to OIRA for review and that future comments are to be sent directly to OIRA.

The NTSB currently is soliciting public comments that include: (1) Whether the proposed collection is necessary for the NTSB to perform its mission; (2) the accuracy of the estimated burden; (3) ways for the NTSB to enhance the quality, usefulness, and clarity of the IC; and (4) ways to minimize burden without reducing the quality of the IC.

A Notice Regarding Injunctions

The vaccination requirement issued pursuant to E.O. 14043 is currently the subject of a nationwide injunction. While that injunction remains in place, the NTSB will not process requests for a medical exception from the COVID–19 vaccination requirement pursuant to E.O. 14043. The NTSB will also not request the submission of any medical information related to a request for an exception from the vaccination requirement pursuant to E.O. 14043 while the injunction remains in place. But the NTSB may nevertheless receive information regarding a medical exception. That is because, if the NTSB were to receive a request for an exception from the COVID–19 vaccination requirement pursuant to E.O. 14043 during the pendency of the injunction, the NTSB will accept the request, hold it in abeyance, and notify the employee who submitted the request that implementation and enforcement of the COVID–19 vaccination requirement pursuant to E.O. 14043 is currently enjoined and that an exception therefore is not necessary so long as the injunction is in place. In other words, during the pendency of the injunction, any information collection related to requests for medical exception from the COVID–19 vaccination requirement pursuant to E.O. 14043 is not undertaken to implement or enforce the COVID–19 vaccination requirement.

Title of Collection: Request for a Medical Exception to the COVID–19 Vaccination Requirement.

OMB Control Number: 3147–0028.

Form Number: Not applicable.

Type of Review: Extension of a currently-approved collection.

Affected Public: Private sector.

Total Estimated Annual Burden Hours: 20.

Estimated Average Burden Hours per Respondent: 1.

Frequency of Response: On occasion.

Total Estimated No. of Annual Responses: 20.

Jennifer Homendy,

Chair.

[FR Doc. 2022–06037 Filed 3–21–22; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–237 and 50–249; NRC–2022–0025]

Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to an October 28, 2021, request from Exelon Generation Company, LLC to allow the submittal of sufficient Dresden Nuclear Power Station, Units 2 and 3, subsequent license renewal applications no later than 3 years prior to expiration of the existing renewed operating licenses and still place the licenses in timely renewal under NRC regulations. On February 1, 2022, Exelon Generation Company, LLC was renamed Constellation Energy Generation, LLC.

DATES: The exemption was issued on March 15, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0025 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–2022–0025. 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.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* 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: Russell S. Haskell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1129, email: *Russell.Haskell@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: March 16, 2022.

For the Nuclear Regulatory Commission.

Russell S. Haskell,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption.

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–237 and 50–249

Constellation Energy Generation, LLC; Dresden Nuclear Power Station, Units 2 and 3

Exemption

I. Background

Constellation Energy Generation, LLC (the licensee), is the holder of Renewed Facility Operating License Nos. DPR–19 and DPR–25 which authorize operation of the Dresden Nuclear Power Station, Units 2 and 3, respectively. These units are boiling-water reactors located in Grundy County, Illinois. The licenses provide, among other things, that the

facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, Commission) now or hereafter in effect. The current operating licenses for Dresden Nuclear Power Station, Units 2 and 3, expire on December 22, 2029, and January 12, 2031, respectively.

II. Request/Action

By letter dated October 28, 2021, Exelon Generation Company, LLC requested an exemption from 10 CFR 2.109(b) to allow the subsequent license renewal applications (SLRAs) for Dresden Nuclear Power Station, Units 2 and 3, to be submitted no later than 3 years prior to the expiration of the existing licenses and still receive timely renewal protection under 10 CFR 2.109(b). On February 1, 2022 (ADAMS Accession No. ML22032A333), Exelon Generation Company, LLC was renamed Constellation Energy Generation, LLC.

Under 10 CFR 54.17(a), the NRC requires that the filing of an application for a renewed license be in accordance with, among other regulations, 10 CFR 2.109(b), ''Effect of timely renewal application.'' In turn, 10 CFR 2.109(b) states ''If the licensee of a nuclear power plant licensed under 10 CFR 50.21(b) or 50.22 files a sufficient application for renewal of either an operating license or a combined license at least 5 years before the expiration of the existing license, the existing license will not be deemed to have expired until the application has been finally determined.''

III. Discussion

Under 10 CFR 54.15, exemptions from the requirements of Part 54 are governed by 10 CFR 50.12. Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present, as defined in 10 CFR 50.12(a)(2). In its application, the licensee stated that three special circumstances apply to its request. The three special circumstances that the licensee included in its request are:

(1) Application of the regulation would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

(2) Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, or that are significantly in excess of those incurred by others similarly situated.

(3) It is in the public interest to grant the exemption based on new and material circumstances that did not exist when the NRC adopted Section 2.109(b).

A. The Exemption Is Authorized by Law

This exemption would allow the licensee to submit sufficient SLRAs for Dresden Nuclear Power Station, Units 2 and 3, no later than 3 years prior to the expiration of its existing licenses and the licenses would still be in timely renewal under 10 CFR 2.109(b). Section 2.109 implements Section 9(b) of the Administrative Procedure Act (APA), 5 U.S.C. 558(c), which states:

> When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The 5-year time period specified in 10 CFR 2.109 is the result of a discretionary agency rulemaking under Sections 161 and 181 of the Atomic Energy Act of 1954, as amended, and not required by the APA. As stated above, 10 CFR 54.17(a) requires that the filing of an application for a renewed license be in accordance with, among other regulations, 10 CFR 2.109(b). In addition, 10 CFR 54.15 allows the NRC to grant exemptions from the requirements of 10 CFR part 54. The NRC has determined that granting this exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, the APA, or the NRC's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents no Undue Risk to Public Health and Safety

The requested exemption to allow a 3-year time period, rather than the 5 years specified in 10 CFR 2.109(b), for the licensee to submit sufficient SLRAs and place the licenses in timely renewal is a scheduling change. The action does not change the manner in which the plant operates and maintains public health and safety because no additional changes are made as a result of the action. The NRC expects that a period of 3 years provides sufficient time for the NRC to perform a full and adequate safety and environmental review, and for the completion of the hearing process. Pending final action on the SLRAs, the NRC will continue to conduct all regulatory activities associated with licensing, inspection, and oversight, and will take whatever action may be necessary to ensure adequate protection of the public health and safety. The existence of this exemption does not affect NRC's authority, applicable to all licenses, to modify, suspend, or revoke a license for cause, such as a serious safety concern. Based on the above, the NRC finds that the action does not cause undue risk to public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The requested exemption to allow a 3-year time period, rather than the 5 years specified in 10 CFR 2.109(b), for the licensee to submit sufficient SLRAs and place the licenses in timely renewal is a scheduling change. The exemption does not change any site security matters. Therefore, the NRC finds that the action is consistent with the common defense and security.

D. Special Circumstances

The purpose of 10 CFR 2.109(b), as it is applied to nuclear power reactors licensed by the NRC, is to implement the ''timely renewal'' provision of Section 9(b) of the APA, 5 U.S.C. 558(c), which states:

> When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

The underlying purpose of this ''timely renewal'' provision in the APA is to protect a licensee who is engaged in an ongoing licensed activity and who has complied with agency rules in applying for a renewed or new license from facing license expiration as the result of delays in the administrative process.

On December 13, 1991, the NRC published the final license renewal rule, 10 CFR part 54, with associated changes to 10 CFR parts 2, 50, and 140, in the **Federal Register** (56 FR 64943). The statements of consideration discussed the basis for establishing the latest date for filing license renewal applications and the timely renewal doctrine (56 FR 64962). The statements of consideration stated that:

> Because the review of a renewal application will involve a review of many complex technical issues, the NRC estimates that the technical review would take approximately 2 years. Any necessary hearing could likely add an additional year or more. Therefore, in the proposed rule, the Commission modified § 2.109 to require that nuclear power plant operating license renewal applications be submitted at least 3 years prior to their expiration in order to take advantage of the timely renewal doctrine.

No specific comment was received concerning the proposal to add a 3-year provision for the timely renewal provision for license renewal. The current regulations require licensees to submit decommissioning plans and related financial assurance information on or about 5 years prior to the expiration of their operating licenses. The Commission has concluded that, for consistency, the deadline for submittal of a license renewal application should be 5 years prior to the expiration of the current operating license. The timely renewal provisions of § 2.109 now reflect the decision that a 5-year time limit is more appropriate.

Thus, the NRC originally estimated that 3 years was needed to review a renewal application and to complete any hearing that might be held on the application. The NRC changed its original deadline from 3 years to 5 years to have consistent deadlines for when licensees must submit their decommissioning plans and related financial assurance information and when they must submit their license renewal applications to place their licenses in timely renewal.

Application of the 5-year period in 10 CFR 2.109(b) is not necessary to achieve the underlying purpose of the timely renewal provision in the regulation if the licensee files sufficient Dresden Nuclear Power Station, Units 2 and 3, SLRAs no later than 3 years prior to expiration of the licenses. The NRC's current schedule for review of SLRAs is to complete its review and make a decision on issuing the renewed license within 18 months of receipt if there is no hearing. If a hearing is held, the NRC's model schedule anticipates completion of the NRC's review and of the hearing process, and issuance of a decision on the license renewal application within 30 months of receipt.

However, it is recognized that the estimate of 30 months for completion of a contested hearing is subject to variation in any given proceeding. A period of 3 years (36 months), nevertheless, is expected to provide sufficient time for performance of a full and adequate safety and environmental review, and completion of the hearing process. Meeting this schedule is based on a complete and sufficient application being submitted and on the review being completed in accordance with the NRC's established license renewal review schedule.

Based on the above, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(ii) is present in the particular circumstance of Dresden Nuclear Power Station, Units 2 and 3.

In addition, the NRC finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) is present in the circumstances of Dresden Nuclear Power Station, Units 2 and 3. Compliance with § 2.109(b) would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted. In its application, Exelon (now Constellation) stated that the decision to continue power operation at Dresden Nuclear Power Station, Units 2 and 3, depended on economic and legislative factors that evolved in a way that did not permit the preparation and submission of SLRAs 5 years prior to each unit's license expiration date. The licensee further stated that if the exemption is not granted, and it submits its SLRAs less than 5 years before license expiration, then the licensee would face the risk of being forced to shut down if the application is not approved before the current licenses expire. The impact of changes in economic and legislative conditions on licensees' decisions to pursue license renewal was not a factor considered at the time the timely renewal rule was issued. The NRC therefore finds that the special circumstance of 10 CFR 50.12(a)(2)(iii) also is present. Because the NRC staff finds that special circumstances exist under 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(iii), the NRC staff did not consider whether special circumstances also exist under 10 CFR 50.12(a)(2)(vi), as presented by the licensee in its exemption request.

E. Environmental Considerations

The NRC has determined that the issuance of the requested exemption meets the provisions of the categorical exclusion in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of chapter 10 qualifies as a categorical exclusion if (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involves one of several matters, including scheduling requirements (§ 51.22(c)(25)(iv)(G)). The basis for NRC's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)–(vi).

Requirements in 10 CFR 51.22(c)(25)(i)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemption must involve a no significant hazards consideration. The criteria for making a no significant hazards consideration determination are found in 10 CFR 50.92(c). The NRC has determined that the granting of the exemption request involves no significant hazards consideration because allowing the submittal of the license renewal application no later than 3 years before the expiration of the existing license and deeming the license in timely renewal under 10 CFR 2.109(b) does not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Therefore, the requirements of 10 CFR 51.22(c)(25)(i) are met.

Requirements in 10 CFR 51.22(c)(25)(ii) and (iii)

The exemption constitutes a change to the schedule by which the licensee must submit its SLRAs and still place the licenses in timely renewal, which is administrative in nature, and does not involve any change in the types or significant increase in the amounts of effluents that may be released offsite and does not contribute to any significant increase in occupational or public radiation exposure. Accordingly, there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, and no significant increase in individual or cumulative public or occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(25)(ii) and (iii) are met.

Requirements in 10 CFR 51.22(c)(25)(iv)

The exempted regulation is not associated with construction, and the exemption does not propose any changes to the site, alter the site, or change the operation of the site. Therefore, the requirements of 10 CFR 51.22(c)(25)(iv) are met because there is no significant construction impact.

Requirements in 10 CFR 51.22(c)(25)(v)

The exemption constitutes a change to the schedule by which the licensee must submit its SLRAs and still place the licenses in timely renewal, which is administrative in nature, and does not impact the probability or consequences of accidents. Thus, there is no significant increase in the potential for, or consequences of, a radiological

accident. Therefore, the requirements of 10 CFR 51.22(c)(25)(v) are met.

Requirements in 10 CFR 51.22(c)(25)(vi)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(vi)(G), the exemption must involve scheduling requirements. The exemption involves scheduling requirements because it would allow the licensee to submit SLRAs for Dresden Nuclear Power Station, Units 2 and 3, no later than 3 years prior to the expiration of the existing licenses, rather than the 5 years specified in 10 CFR 2.109(b), and still place the licenses in timely renewal under 10 CFR 2.109(b). Therefore, the requirements of 10 CFR 51.22(c)(25)(vi) are met.

Based on the above, the NRC concludes that the proposed exemption meets the eligibility criteria for a categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the approval of this exemption request.

IV. Conclusions

Accordingly, the NRC has determined that, pursuant to 10 CFR 54.15 and 10 CFR 50.12, the requested exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances, as defined in 10 CFR 50.12(a)(2), are present. Therefore, the NRC hereby grants the licensee a one-time exemption for Dresden Nuclear Power Station, Units 2 and 3, from 10 CFR 2.109(b) to allow the submittal of the Dresden Nuclear Power Station, Units 2 and 3, SLRAs no later than 3 years prior to expiration of the operating licenses.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 15th day of March 2022.

For the Nuclear Regulatory Commission.

/RA/

Gregory F. Suber,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–05998 Filed 3–21–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0065]

Monthly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Monthly notice.

SUMMARY: Pursuant to section 189.a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular monthly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person. This monthly notice includes all amendments issued, or proposed to be issued, from February 4, 2022, to March 3, 2022. The last monthly notice was published on February 22, 2022.

DATES: Comments must be filed by April 21, 2022. A request for a hearing or petitions for leave to intervene must be filed by May 23, 2022.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0065. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the ''For Further Information Contact'' section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kathleen Entz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2464, email: *Kathleen.Entz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0065, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0065.
- *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.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* 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.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0065, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the

comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown in this notice, the Commission finds that the licensees' analyses provided, consistent with section 50.91 of title 10 of *the Code of Federal Regulations* (10 CFR), are sufficient to support the proposed determinations that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facilities in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determinations.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination for any of these amendments, any hearing will take place after issuance. The Commission expects that the need to take action on any amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions that the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion that support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of NSHC, the Commission will make a final determination on the issue of NSHC. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves NSHC, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the

''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a petition is submitted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as discussed in this notice, is granted. Detailed guidance on electronic submissions is located in the Guidance for Electronic Submissions to the NRC (ADAMS Accession No. ML13031A056) and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system timestamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensees' proposed NSHC determinations. For further details with respect to these license amendment applications, see the applications for amendment, which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT REQUEST(S)

Omaha Public Power District; Fort Calhoun Station Unit, No. 1; Washington County, NE	
Docket No(s)	50–285.
Application date	August 3, 2021, as supplemented by letter dated January 13, 2022.
ADAMS Accession No	ML21271A178 (Package), ML22034A559.
Location in Application of NSHC	Enclosure 1—pages 11–13.
Brief Description of Amendment(s)	The proposed amendment would approve the License Termination Plan (LTP) and add a license condition that establishes the criteria for determining when changes to the LTP require prior NRC approval.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Stephen M. Bruckner, Attorney, Fraser Stryker PC LLO, 500 Energy Plaza, 409 South 17th Street, Omaha, NE 68102.
NRC Project Manager, Telephone Number	Jack Parrott, 301–415–6634.
Constellation Energy Generation, LLC; Braidwood Station, Unit 2; Will County, IL	
Docket No(s)	50–456, 50–457.
Application date	December 9, 2021.
ADAMS Accession No	ML21343A427.
Location in Application of NSHC	Attachment 1, Pages 6–8.
Brief Description of Amendment(s)	The proposed amendment revises the Renewed Facility Operating License (RFOL) for Braidwood Station, Unit 2, to remove License Condition 2.C.(12)(d). The license condition, which requires repair of reactor head closure stud hole location No. 35, is no longer applicable because the Pressure Temperature and Limits Curves have been updated for the Period of Extended Operations. The RFOL for Braidwood Station, Unit 1, amendment number is incremented to keep Unit 1 and Unit 2 amendment numbers the same. No other changes are proposed for Unit 1.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tamra Domeyer Associate General Counsel Constellation Energy Generation, LLC, 4300 Winfield Road, Warrenville, IL 60565.
NRC Project Manager, Telephone Number	Joel Wiebe, 301–415–6606.
Duke Energy Florida, LLC; Crystal River Unit 3 Nuclear Generating Station; Citrus County, FL	
Docket No(s)	50–302.
Application date	January 26, 2022.
ADAMS Accession No	ML22026A433.
Location in Application of NSHC	Enclosure—page 3.
Brief Description of Amendment(s)	The proposed amendment would remove Appendix B, ''Environmental Protection Plan (Non-Radiological) Technical Specifications'' from the Crystal River Unit 3 (CR3) Operating License. Some of the requirements are duplicated in the plant compliance procedure and others are no longer needed as CR3 has permanently ceased operation eliminating those non-radiological environmental effects.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Gregory Di Carlo, Vice President/General Counsel, NorthStar Group Services, Inc., 2760 South Falkenburg Rd., Riverview, FL 33578.
NRC Project Manager, Telephone Number	Jack Parrott, 301–415–6634.
Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Davis-Besse Nuclear Power Station, Unit No. 1; Ottawa County, OH	
Docket No(s).	50–346.
Application date	January 3, 2022.
ADAMS Accession No.	ML22003A147.
Location in Application of NSHC	Enclosure—pages 7–8.
Brief Description of Amendment(s)	The amendment would change the design basis for the facility to allow laminar concrete cracking of a limited width in the outer reinforcement layer of the shield building containment structure.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Rick Giannantonio, General Counsel, Energy Harbor Nuclear Corp.,168 E Market Street, Akron, OH 44308–2014.
NRC Project Manager, Telephone Number	Blake Purnell, 301–415–1380.
Energy Harbor Nuclear Corp. and Energy Harbor Nuclear Generation LLC; Davis-Besse Nuclear Power Station, Unit No. 1; Ottawa County, OH	
Docket No(s).	50–346.
Application date	January 19, 2022.
ADAMS Accession No.	ML22019A236.
Location in Application of NSHC	Enclosure—pages 32–34.
Brief Description of Amendment(s)	The proposed amendment would revise the emergency plan for Davis-Besse Nuclear Power Station, Unit No. 1, by changing the emergency response organization staffing requirements.
Proposed Determination	NSHC.

LICENSE AMENDMENT REQUEST(S)—Continued

Name of Attorney for Licensee, Mailing Address	Rick Giannantonio, General Counsel, Energy Harbor Nuclear Corp.,168 E Market Street, Akron, OH 44308–2014.
NRC Project Manager, Telephone Number	Blake Purnell, 301–415–1380.

Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Appling County, GA

Docket No(s)	50–321, 50–366.
Application date	February 4, 2022.
ADAMS Accession No	ML22038A205.
Location in Application of NSHC	Pages E–1—E–3 of Enclosure.
Brief Description of Amendment(s)	Southern Nuclear Operating Company requests adoption of TSTF–580, ''Provide Exception from Entering Mode 4 With No Operable RHR [Residual Heat Removal] Shutdown Cooling.'' The proposed change provides a technical specification exception to entering Mode 4 if both required RHR shutdown cooling subsystems are inoperable.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
NRC Project Manager, Telephone Number	Dawnmathews Kalathiveettil, 301–415–5905.

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL; Tennessee Valley Authority; Sequoyah Nuclear Plant, Units 1 and 2; Hamilton County, TN; Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN

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Docket No(s)	50–259, 50–260, 50–296, 50–327, 50–328, 50–390, 50–391.
Application date	January 27, 2022.
ADAMS Accession No	ML22027A835.
Location in Application of NSHC	Pages E1–6 and E1–7 of the Enclosure.
Brief Description of Amendment(s)	The proposed amendments would revise the Tennessee Valley Authority Radiological Emergency Plan to make an exception in Initiating the Condition HU2 Emergency Action Level to provide an additional method to declare the event if the operating basis earthquake alarm is out of service.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902.
NRC Project Manager, Telephone Number	Kimberly Green, 301–415–1627.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last monthly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated in the safety evaluation for each amendment.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated in the safety evaluation for the amendment.

For further details with respect to each action, see the amendment and associated documents such as the Commission's letter and safety evaluation, which may be obtained using the ADAMS accession numbers indicated in the following table. The safety evaluation will provide the ADAMS accession numbers for the application for amendment and the **Federal Register** citation for any environmental assessment. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

LICENSE AMENDMENT ISSUANCE(S)

Constellation Energy Generation, LLC; LaSalle County Station, Units 1 and 2; LaSalle County, IL

Docket No(s)	50–373, 50–374.
Amendment Date	February 4, 2022.
ADAMS Accession No	ML21362A721.
Amendment No(s)	255 (Unit 1) and 241 (Unit 2).
Brief Description of Amendment(s)	The amendments revised LaSalle's technical specifications (TSs) to incorporate licensing topical report, ''GNF CRDA Application Methodology,'' NEDE–33885P–A, Revision 1, by modifying TS Sections 3.1.3, ''Control Rod Operability,'' 3.1.6, ''Rod Pattern Control,'' and 3.3.2.1, ''Control Rod Block Instrumentation,'' to allow for greater flexibility in rod control operations during various stages of reactor power operation at LaSalle.

LICENSE AMENDMENT ISSUANCE(S)—Continued

Public Comments Received as to Proposed NSHC (Yes/No).	No.

Constellation Energy Generation, LLC; Peach Bottom Atomic Power Station, Units 2 and 3; York County, PA

Docket No(s)	50–277, 50–278.
Amendment Date	February 14, 2022.
ADAMS Accession No	ML22004A258.
Amendment No(s).	341 (Unit 2) and 344 (Unit 3).
Brief Description of Amendment(s)	The amendments modified Technical Specifications 5.5.7, ''Ventilation Filter Testing Program [VFTP],'' for certain testing requirements for Peach Bottom Atomic Power Station, Units 2 and 3. Specifically, the revisions changed the frequency for performing certain testing requirements from 12 months to 24 months.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Unit No. 3; New London County, CT

Docket No(s)	50–423.
Amendment Date	February 16, 2022.
ADAMS Accession No	ML22007A151.
Amendment No(s)	282.
Brief Description of Amendment(s)	The amendment modified the technical specifications (TS) by revising TS 3.1.3.2 to provide an alternative monitoring option for the condition where a maximum of one digital rod position indicator per bank is inoperable. Specifically, as an alternative to determining the position of the non-indicating rod(s) indirectly by the movable incore detectors at a frequency of once per 8 hours, the change allows rod position verification to be performed based on the occurrence of rod movement or power level change. This revision is consistent with Technical Specification Task Force Traveler 547, Revision 1, and provides alternate TS Actions to allow the position of the rod to be monitored by a means other than movable incore detectors. The amendment also revised TS 3.1.3.5 to replace shutdown ''rods'' with shutdown ''banks'' and makes conforming changes to TS 3.1.3.5 Actions and Surveillance Requirements, consistent with wording in the standard TSs for Westinghouse Plants as provided in NUREG–1431, Revision 4. Finally, the amendment included administrative changes to revise the title of TS 3.1.3.6, to reflect that the requirements apply to control ''banks'' and modifies TS 6.9.1.6.a and TS 6.9.1.6.b to cite the revised titles of TS 3.1.3.5 and TS 3.1.3.6.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Duke Energy Progress, LLC; Shearon Harris Nuclear Power Plant, Unit 1; Wake and Chatham Counties, NC

Docket No(s)	50–400.
Amendment Date	February 10, 2022.
ADAMS Accession No	ML21351A472.
Amendment No(s).	190.
Brief Description of Amendment(s)	The amendment revised the surveillance frequency associated with containment spray nozzle testing specified by Surveillance Requirement 4.6.2.1.d. Specifically, the change replaced the current testing frequency, as specified by the Surveillance Frequency Control Program, with an event-based frequency by verifying each spray nozzle being unobstructed following activities that could result in nozzle blockage.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Holtec Decommissioning International, LLC and Holtec Indian Point 3, LLC; Indian Point Station Unit No. 3; Westchester County, NY

Docket No(s)	50–286.
Amendment Date	February 28, 2022.
ADAMS Accession No	ML21091A305.
Amendment No(s).	272.
Brief Description of Amendment(s)	The amendment revised the current licensing basis in the Updated Final Safety Analysis Report with regard to the design, installation and use of a new single-failure-proof auxiliary lifting device, termed HI–LIFT, in the Indian Point 3 Fuel Storage Building.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

PSEG Nuclear LLC; Hope Creek Generating Station; Salem County, NJ; PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit No. 1; Salem County, NJ; PSEG Nuclear LLC; Salem Nuclear Generating Station, Unit No. 2; Salem County, NJ

Docket No(s)	50–272, 50–311, 50–354.
Amendment Date	February 14, 2022.
ADAMS Accession No	ML22012A435.
Amendment No(s)	230 (Hope Creek), 342 (Salem, Unit 1), and 323 (Salem, Unit 2).

LICENSE AMENDMENT ISSUANCE(S)—Continued

Brief Description of Amendment(s)	The amendments revised the Hope Creek and Salem technical specifications (TSs) to remove TS definitions for Member(s) of the Public, Site Boundary, and Unrestricted Area which are already present in the definitions found in the Offsite Dose Calculation Manual for each site as well as 10 CFR, part 20, section 1003. The amendments also removed figures of the site and surrounding area from the TSs.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Virginia Electric and Power Company, Dominion Nuclear Company; North Anna Power Station, Unit Nos. 1 and 2; Louisa County, VA

Docket No(s)	50–338, 50–339.
Amendment Date	February 23, 2022.
ADAMS Accession No	ML21361A006.
Amendment No(s)	290 (Unit 1) and 273 (Unit 2).
Brief Description of Amendment(s)	The amendments added a new requirement to isolate primary grade water from the reactor coolant system within 1 hour following a reactor shutdown from Mode 2. Additionally, these amendments made an editorial change to Technical Specification 5.6.5, ''Core Operating Limits Report (COLR).''
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Vistra Operations Company LLC; Comanche Peak Nuclear Power Plant, Unit Nos. 1 and 2; Somervell County, TX

Docket No(s).	50–445, 50–446.
Amendment Date	February 24, 2022.
ADAMS Accession No	ML21321A349.
Amendment No(s)	182 (Unit 1) and 182 (Unit 2).
Brief Description of Amendment(s)	The amendments adopted Technical Specifications Task Force (TSTF) Traveler TSTF–577, Revision 1, ''Revised Frequencies for Steam Generator Tube Inspections.'' The amendments modified the technical specification requirements related to steam generator tube inspections and reporting based on operating history.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Wolf Creek Nuclear Operating Corporation; Wolf Creek Generating Station, Unit 1; Coffey County, KS

Docket No(s)	50–482.
Amendment Date	February 23, 2022.
ADAMS Accession No	ML22021B598.
Amendment No(s)	231.
Brief Description of Amendment(s)	The amendment revised Technical Specification 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' by adding a new Required Action N.1 to require restoration of an inoperable balance of plant ESFAS train to operable status within 24 hours.
Public Comments Received as to Proposed NSHC (Yes/No).	No.

Dated: March 10, 2022.

For the Nuclear Regulatory Commission.

Bo M. Pham,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2022–05478 Filed 3–21–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Transfer of Post Office Box Service in Selected Locations to the Competitive Product List: Postal Service™

ACTION: Notice.

SUMMARY: The Postal Service hereby provides notice it has filed a request with the Postal Regulatory Commission to reassign Post Office Box™ service for approximately 297 locations from their market-dominant fee groups to competitive fee groups.

DATES: March 16, 2022.

FOR FURTHER INFORMATION CONTACT: Valerie Pelton, 202–487–4341.

SUPPLEMENTARY INFORMATION: Locations providing Post Office Box service are classified as competitive or market dominant and assigned to fee groups based upon the Post Office location and other criteria. Competitive fee groups provide more services than market dominant ones and have somewhat higher fees. Competitive Post Office Box service includes several enhancements such as: Electronic notification of the receipt of mail, use of an alternate street address format, signature on file for delivery of certain accountable mail, and additional hours of access and/or earlier availability of mail in some locations.

Pursuant to 39 CFR 3040.130 et seq and 39 U.S.C. 3642, the Postal Service has filed a request with the PRC to transfer 297 Post Office Box service locations to competitive classification. The Postal Service's request would expand the Postal Regulatory Commission's current five-mile criterion for assessing competitiveness by an additional three miles, to extend the mileage range from five miles to eight miles. The proposed eight-mile criterion is based on survey data that the Postal Service has filed with the Postal Regulatory Commission alongside its request. The survey data show that many customers either currently travel longer distances for mailbox service or are willing to do so. The proposed transfer would cover approximately 297 Post Office Box service locations, out of a total of approximately 32,788 locations offering Post Office Box service.

Documents pertinent to this request are available at *http://www.prc.gov,* Docket No. MC2022–46. A list of affected locations, with the associated ZIP Codes, is provided in the Appendix to this notice.

Joshua Hofer,

Attorney, Ethics & Legal Compliance.

Appendix

Transfer of Additional Post Office Box Locations to Competitive Fee Group—ZIP Code Listing

The following is a list of the locations covered by the Postal Service's request to the Postal Regulatory Commission described in the Notice. The list is sorted by ZIP Code in ascending numerical order with geographical breaks and headers. As indicated by the column headings, this list provides the ZIP Code of the affected PO Boxes (ZIP), the office name of the location (OFFICE NAME), the city where the PO Boxes are located (CITY), the current market dominant fee group (CFG), and the new competitive fee group (NFG). Please note that there are more ZIP Codes than locations covered by the request, because some locations serve more than one ZIP Code. These locations can be identified whenever multiple ZIP Codes are listed for a single office name.

ZIP	Facilities name	City	St	CFG	NFG
		ALABAMA			
36064	PIKE ROAD	PIKE ROAD	AL	5	35
35903	EAST GADSDEN	GADSDEN	AL	4	34
36350	MIDLAND CITY	MIDLAND CITY	AL	5	35
35954	ATTALLA		AL	3	33
35645	KILLEN	KILLEN	AL	5	35
36877	SMITHS STATION	SMITHS STATION	AL	5	35
35661	MUSCLE SHOALS	MUSCLE SHOALS	AL	4	34
36549	LILLIAN	LILLIAN	AL	4	34
35660	SHEFFIELD	SHEFFIELD	AL	4	34
35673	TRINITY	TRINITY	AL	5	35
		ARKANSAS			
72718	CAVE SPRINGS	CAVE SPRINGS	AR	5	35
72858	POTTSVILLE	POTTSVILLE	AR	6	36
72053	COLLEGE STATION	COLLEGE STATION	AR	5	35
		ARIZONA			
85613	FORT HUACHUCA	FORT HUACHUCA	AZ	3	33
86325	CORNVILLE	CORNVILLE	AZ	5	35
86351	SEDONA VILLAGE OF OAK CREEK	SEDONA	AZ	5	35
85616	HUACHUCA CITY	HUACHUCA CITY	AZ	5	35
		CALIFORNIA			
93223	FARMERSVILLE	FARMERSVILLE	CA	3	33
93601	AHWAHNEE	AHWAHNEE	CA	5	35
95693	WILTON	WILTON	CA	4	34
93227	GOSHEN	GOSHEN	CA	5	35
94037	MONTARA	MONTARA	CA	3	33
93614	COARSEGOLD	COARSEGOLD	CA	6	36
94511	BETHEL ISLAND	BETHEL ISLAND	CA	3	33
93604	BASS LAKE	BASS LAKE	CA	5	35
95442	GLEN ELLEN	GLEN ELLEN	CA	5	35
93606	BIOLA	BIOLA	CA	5	35
93924	CARMEL VALLEY	CARMEL VALLEY	CA	4	34
95315	DELHI	DELHI	CA	5	35
95418	CALPELLA	CALPELLA	CA	4	34
95465	OCCIDENTAL	OCCIDENTAL	CA	4	34
95245	MOKELUMNE HILL	MOKELUMNE HILL	CA	5	35
94038	MOSS BEACH	MOSS BEACH	CA	4	34
95519	MC KINLEYVILLE	MCKINLEYVILLE	CA	1	31
95462	MONTE RIO	MONTE RIO	CA	3	33
95379	TUOLUMNE	TUOLUMNE	CA	5	35
96064	MONTAGUE	MONTAGUE	CA	5	35
93434	GUADALUPE	GUADALUPE	CA	3	33
95452	KENWOOD	KENWOOD	CA	4	34
		COLORADO			
80513	BERTHOUD	BERTHOUD	CO	5	35
81526	PALISADE	PALISADE	CO	5	35
80454	INDIAN HILLS	INDIAN HILLS	CO	5	35
80136	STRASBURG	STRASBURG	CO	5	35

ZIP	Facilities name	City	St	CFG	NFG
80809	CASCADE	CASCADE	CO	3	33
	CONNECTICUT				
06238	COVENTRY	COVENTRY	CT	5	35
06798	WOODBURY	WOODBURY	CT	4	34
06088	EAST WINDSOR	EAST WINDSOR	CT	5	35
06029	ELLINGTON	ELLINGTON	CT	3	33
	FLORIDA				
33849	KATHLEEN	KATHLEEN	FL	5	35
32187	SAN MATEO	SAN MATEO	FL	5	35
32130	DE LEON SPRINGS	DE LEON SPRINGS	FL	4	34
33825	AVON PARK	AVON PARK	FL	4	34
33042	SUMMERLAND KEY	SUMMERLAND KEY	FL	5	35
33851	LAKE HAMILTON	LAKE HAMILTON	FL	5	35
32764	OSTEEN	OSTEEN	FL	4	34
32179	OCKLAWAHA	OCKLAWAHA	FL	5	35
32643	HIGH SPRINGS	HIGH SPRINGS	FL	4	34
32732	GENEVA	GENEVA	FL	7	37
33920	ALVA	ALVA	FL	4	34
32658	LA CROSSE	LA CROSSE	FL	4	34
33834	BOWLING GREEN	BOWLING GREEN	FL	4	34
32754	MIMS	MIMS	FL	3	33
	GEORGIA				
31008	BYRON	BYRON	GA	5	35
31213	MACON	MACON	GA	4	34
31326	RINCON	RINCON	GA	5	35
30436	LYONS	LYONS	GA	4	34
31333	WALTHOURVILLE	WALTHOURVILLE	GA	5	35
30813	GROVETOWN	GROVETOWN	GA	3	33
30179	TEMPLE	TEMPLE	GA	6	36
31201	MULBERRY	MACON	GA	4	34
30107	BALL GROUND	BALL GROUND	GA	6	36
30541	EPWORTH	EPWORTH	GA	5	35
30183	WALESKA	WALESKA	GA	6	36
	ILLINOIS				
62236	COLUMBIA	COLUMBIA	IL	2	32
60081	SPRING GROVE	SPRING GROVE	IL	7	37
61802	URBANA	URBANA	IL	3	33
62966	MURPHYSBORO	MURPHYSBORO	IL	4	34
61568	TREMONT	TREMONT	IL	5	35
62948	HERRIN	HERRIN	IL	4	34
	INDIANA				
47803	ROSE	TERRE HAUTE	IN	4	34
46507	BRISTOL	BRISTOL	IN	6	36
	KANSAS				
67052	GODDARD	GODDARD	KS	5	35
67216	RIVER CITY	WICHITA	KS	5	35
66442	FORT RILEY	FORT RILEY	KS	4	34
66104	ROBERT L ROBERTS	KANSAS CITY	KS	3	33
66007	BASEHOR	BASEHOR	KS	4	34
67060	HAYSVILLE	HAYSVILLE	KS	4	34
	KENTUCKY				
42440	MORTONS GAP	MORTONS GAP	KY	5	35
42345	GREENVILLE	GREENVILLE	KY	4	34
40067	SIMPSONVILLE	SIMPSONVILLE	KY	6	36
	LOUISIANA				
70075	MERAUX	MERAUX	LA	6	36
70127	LAKE FOREST STATION	NEW ORLEANS	LA	6	36
71047	KEITHVILLE	KEITHVILLE	LA	5	35
70039	BOUTTE	BOUTTE	LA	4	34

ZIP	Facilities name	City	St	CFG	NFG
70719	BRUSLY	BRUSLY	LA	6	36
70711	ALBANY	ALBANY	LA	6	36
70462	SPRINGFIELD	SPRINGFIELD	LA	5	35
71281	SWARTZ	SWARTZ	LA	5	35
70734	GEISMAR	GEISMAR	LA	5	35
	MASSACHUSETTS				
02720	HIGHLAND	FALL RIVER	MA	1	31
01519	GRAFTON	GRAFTON	MA	4	34
01516	DOUGLAS	DOUGLAS	MA	4	34
02768	RAYNHAM CENTER	RAYNHAM CENTER	MA	5	35
01541	PRINCETON	PRINCETON	MA	4	34
01085	WESTFIELD	WESTFIELD	MA	4	34
02653	ORLEANS	ORLEANS	MA	5	35
02333	EAST BRIDGEWATER	EAST BRIDGEWATER	MA	1	31
01056	LUDLOW	LUDLOW	MA	3	33
01543	RUTLAND	RUTLAND	MA	4	34
	MARYLAND				
20688	SOLOMONS	SOLOMONS	MD	4	34
21921	ELKTON	ELKTON	MD	3	33
21811	BERLIN	BERLIN	MD	3	33
20650	LEONARDTOWN	LEONARDTOWN	MD	4	34
20711	LOTHIAN	LOTHIAN	MD	5	35
	MAINE				
04963	OAKLAND	OAKLAND	ME	2	32
04090	WELLS	WELLS	ME	5	35
04858	SOUTH THOMASTON	SOUTH THOMASTON	ME	3	33
04694	BAILEYVILLE	BAILEYVILLE	ME	4	34
	MICHIGAN				
48601	CUMBERLAND	SAGINAW	MI	3	33
48139	HAMBURG	HAMBURG	MI	7	37
48174	ROMULUS	ROMULUS	MI	3	33
49071	MATTAWAN	MATTAWAN	MI	7	37
	MISSOURI				
65740	ROCKAWAY BEACH	ROCKAWAY BEACH	MO	6	36
65441	BOURBON	BOURBON	MO	6	36
63825	BLOOMFIELD	BLOOMFIELD	MO	7	37
	MISSISSIPPI				
38826	BELDEN	BELDEN	MS	5	35
39272	BYRAM	BYRAM	MS	4	34
39212	CANDLESTICK PARK	JACKSON	MS	4	34
38862	PLANTERSVILLE	PLANTERSVILLE	MS	5	35
39209	WESTLAND	JACKSON	MS	4	34
38879	VERONA	VERONA	MS	6	36
	MONTANA				
59828	CORVALLIS	CORVALLIS	MT	5	35
	NORTH CAROLINA				
27358	SUMMERFIELD	SUMMERFIELD	NC	6	36
27505	BROADWAY	BROADWAY	NC	5	35
28715	CANDLER	CANDLER	NC	5	35
28723	CULLOWHEE	CULLOWHEE	NC	5	35
27593	WILSONS MILLS	WILSONS MILLS	NC	4	34
28355	LEMON SPRINGS	LEMON SPRINGS	NC	5	35
27807	BAILEY	BAILEY	NC	5	35
27299	LINWOOD	LINWOOD	NC	5	35
27921	CAMDEN	CAMDEN	NC	4	34
28749	LITTLE SWITZERLAND	LITTLE SWITZERLAND	NC	4	34
28638	HUDSON	HUDSON	NC	2	32
28630	GRANITE FALLS	GRANITE FALLS	NC	3	33
28766	PENROSE	PENROSE	NC	5	35

ZIP	Facilities name	City	St	CFG	NFG
27568	PINE LEVEL	PINE LEVEL	NC	5	35
28787	WEAVERVILLE	WEAVERVILLE	NC	4	34
27243	EFLAND	EFLAND	NC	5	35
28716	CANTON	CANTON	NC	2	32
28666	ICARD	ICARD	NC	5	35
27868	RED OAK	RED OAK	NC	4	34
28371	PARKTON	PARKTON	NC	6	36
27043	PINNACLE	PINNACLE	NC	6	36
28748	LEICESTER	LEICESTER	NC	5	35
27370	TRINITY	TRINITY	NC	5	35
28730	FAIRVIEW	FAIRVIEW	NC	5	35
27263	ARCHDALE	ARCHDALE	NC	4	34
28618	DEEP GAP	DEEP GAP	NC	5	35
28368	OLIVIA	OLIVIA	NC	5	35
28463	TABOR CITY	TABOR CITY	NC	3	33
28443	HAMPSTEAD	HAMPSTEAD	NC	5	35
NEBRASKA					
68731	DAKOTA CITY	DAKOTA CITY	NE	5	35
68028	GRETNA	GRETNA	NE	4	34
NEW HAMPSHIRE					
03755	HANOVER	HANOVER	NH	3	33
03226	CENTER HARBOR	CENTER HARBOR	NH	5	35
03469	WEST SWANZEY	WEST SWANZEY	NH	5	35
03033	BROOKLINE	BROOKLINE	NH	4	34
NEW JERSEY					
08733	LAKEHURST	LAKEHURST	NJ	3	33
NEW MEXICO					
87317	GAMERCO	GAMERCO	NM	4	34
87060	TOME	TOME	NM	5	35
87311	CHURCH ROCK	CHURCH ROCK	NM	4	34
87059	TIJERAS	TIJERAS	NM	6	36
NEVADA					
89439	VERDI	VERDI	NV	3	33
NEW YORK					
14738	FREWSBURG	FREWSBURG	NY	5	35
12962	MORRISONVILLE	MORRISONVILLE	NY	5	35
11947	JAMESPORT	JAMESPORT	NY	4	34
12571	RED HOOK	RED HOOK	NY	1	31
13607	ALEXANDRIA BAY	ALEXANDRIA BAY	NY	3	33
10969	PINE ISLAND	PINE ISLAND	NY	5	35
11940	EAST MORICHES	EAST MORICHES	NY	4	34
11949	MANORVILLE	MANORVILLE	NY	4	34
12414	CATSKILL	CATSKILL	NY	3	33
11948	LAUREL	LAUREL	NY	4	34
12491	WEST HURLEY	WEST HURLEY	NY	4	34
13029	BREWERTON	BREWERTON	NY	4	34
11959	QUOGUE	QUOGUE	NY	4	34
OHIO					
44119	BEACHLAND	CLEVELAND	OH	2	32
43606	KENWOOD	TOLEDO	OH	3	33
44266	RAVENNA	RAVENNA	OH	4	34
43023	GRANVILLE	GRANVILLE	OH	4	34
45122	GOSHEN	GOSHEN	OH	5	35
45050	MONROE	MONROE	OH	3	33
44028	COLUMBIA STATION	COLUMBIA STATION	OH	5	35
45387	YELLOW SPRINGS	YELLOW SPRINGS	OH	3	33
OKLAHOMA					
73066	NICOMA PARK	NICOMA PARK	OK	5	35
74039	KELLYVILLE	KELLYVILLE	OK	6	36

ZIP	Facilities name	City	St	CFG	NFG
74434	FORT GIBSON	FORT GIBSON	OK	6	36
74033	GLENPOOL	GLENPOOL	OK	7	37
73443	LONE GROVE	LONE GROVE	OK	5	35
74021	COLLINSVILLE	COLLINSVILLE	OK	3	33
73065	NEWCASTLE	NEWCASTLE	OK	5	35
	OREGON				
97362	MOUNT ANGEL	MOUNT ANGEL	OR	5	35
97305	BROOKS	SALEM	OR	4	34
97044	ODELL	ODELL	OR	4	34
97388	GLENEDEN BEACH	GLENEDEN BEACH	OR	4	34
97368	OTIS	OTIS	OR	4	34
	PENNSYLVANIA				
19374	TOUGHKENAMON	TOUGHKENAMON	PA	4	34
18917	DUBLIN	DUBLIN	PA	5	35
19518	DOUGLASSVILLE	DOUGLASSVILLE	PA	4	34
17038	JONESTOWN	JONESTOWN	PA	5	35
18428	HAWLEY	HAWLEY	PA	3	33
18321	BARTONSVILLE	BARTONSVILLE	PA	5	35
18337	MILFORD	MILFORD	PA	3	33
19311	AVONDALE	AVONDALE	PA	5	35
17550	MAYTOWN	MAYTOWN	PA	5	35
19501	ADAMSTOWN	ADAMSTOWN	PA	5	35
18328	DINGMANS FERRY	DINGMANS FERRY	PA	5	35
	PUERTO RICO				
00720	OROCOVIS	OROCOVIS	PR	2	32
	RHODE ISLAND				
02871	PORTSMOUTH	PORTSMOUTH	RI	3	33
02837	LITTLE COMPTON	LITTLE COMPTON	RI	3	33
	SOUTH CAROLINA				
29816	BATH	BATH	SC	5	35
29673	PIEDMONT	PIEDMONT	SC	4	34
29439	FOLLY BEACH	FOLLY BEACH	SC	4	34
29677	SANDY SPRINGS	SANDY SPRINGS	SC	6	36
29040	DALZELL	DALZELL	SC	5	35
29016	BLYTHEWOOD	BLYTHEWOOD	SC	4	34
29809	NEW ELLENTON	NEW ELLENTON	SC	4	34
29851	WARRENVILLE	WARRENVILLE	SC	5	35
29349	INMAN	INMAN	SC	4	34
29669	PELZER	PELZER	SC	4	34
29829	GRANITEVILLE	GRANITEVILLE	SC	2	32
	SOUTH DAKOTA				
57064	TEA	TEA	SD	6	36
57718	BLACK HAWK	BLACK HAWK	SD	5	36
	TENNESSEE				
37341	HARRISON	HARRISON	TN	5	35
37865	SEYMOUR	SEYMOUR	TN	5	35
37658	HAMPTON	HAMPTON	TN	6	36
37329	ENGLEWOOD	ENGLEWOOD	TN	6	36
37330	ESTILL SPRINGS	ESTILL SPRINGS	TN	6	36
37826	NIOTA	NIOTA	TN	6	36
37877	TALBOTT	TALBOTT	TN	6	36
37764	KODAK	KODAK	TN	5	35
	TEXAS				
77484	WALLER	WALLER	TX	6	36
75076	POTTSBORO	POTTSBORO	TX	6	36
75791	WHITEHOUSE	WHITEHOUSE	TX	6	36
77639	ORANGEFIELD	ORANGEFIELD	TX	6	36
77445	HEMPSTEAD	HEMPSTEAD	TX	5	35
75158	SCURRY	SCURRY	TX	5	35

ZIP	Facilities name	City	St	CFG	NFG
76061	LILLIAN	LILLIAN	TX	4	34
78147	POTH	POTH	TX	7	37
78123	MC QUEENEY	MC QUEENEY	TX	5	35
76058	JOSHUA	JOSHUA	TX	3	33
77447	HOCKLEY	HOCKLEY	TX	6	36
78559	LA FERIA	LA FERIA	TX	5	35
77640	PORT ARTHUR	PORT ARTHUR	TX	5	35
78583	RIO HONDO	RIO HONDO	TX	6	36
75688	SCOTTSVILLE	SCOTTSVILLE	TX	6	36
77590	TEXAS CITY	TEXAS CITY	TX	6	36
78362	INGLESIDE	INGLESIDE	TX	5	35
77611	BRIDGE CITY	BRIDGE CITY	TX	4	34
	UTAH				
84655	SANTAQUIN	SANTAQUIN	UT	5	35
	VIRGINIA				
23805	WALNUT HILL	PETERSBURG	VA	5	35
22060	FORT BELVOIR	FORT BELVOIR	VA	2	32
23234	AMPTHILL	NORTH CHESTERFIELD	VA	5	35
23062	GLOUCESTER POINT	GLOUCESTER POINT	VA	5	35
23075	HIGHLAND SPRINGS	HENRICO	VA	4	34
22963	PALMYRA	PALMYRA	VA	5	35
24330	FRIES	FRIES	VA	5	35
24064	BLUE RIDGE	BLUE RIDGE	VA	5	35
22655	STEPHENS CITY	STEPHENS CITY	VA	4	34
22821	DAYTON	DAYTON	VA	5	35
22947	KESWICK	KESWICK	VA	4	34
24482	VERONA	VERONA	VA	5	35
22945	IVY	IVY	VA	5	35
24574	MONROE	MONROE	VA	5	35
22642	LINDEN	LINDEN	VA	4	34
23005	ASHLAND	ASHLAND	VA	3	33
22553	SPOTSYLVANIA	SPOTSYLVANIA	VA	5	35
23875	PRINCE GEORGE	PRINCE GEORGE	VA	7	37
	VERMONT				
05829	DERBY	DERBY	VT	5	35
05059	QUECHEE	QUECHEE	VT	3	33
05055	NORWICH	NORWICH	VT	4	34
	WASHINGTON				
98546	GRAPEVIEW	GRAPEVIEW	WA	4	34
98384	SOUTH COLBY	SOUTH COLBY	WA	3	33
98239	COUPEVILLE	COUPEVILLE	WA	4	34
98840	OKANOGAN	OKANOGAN	WA	4	34
99005	COLBERT	COLBERT	WA	4	34
	WISCONSIN				
53157	PELL LAKE	PELL LAKE	WI	5	35
53191	WILLIAMS BAY	WILLIAMS BAY	WI	5	35
54650	ONALASKA	ONALASKA	WI	4	34
	WEST VIRGINIA				
25526	HURRICANE	HURRICANE	WV	4	34
26301	DOWNTOWN CLARKSBURG	CLARKSBURG	WV	4	34
25313	CROSS LANES	CHARLESTON	WV	4	34
25177	SAINT ALBANS	SAINT ALBANS	WV	4	34
25143	NITRO	NITRO	WV	4	34
25547	PECKS MILL	PECKS MILL	WV	5	35
25535	LAVALETTE	LAVALETTE	WV	5	35
25427	HEDGESVILLE	HEDGESVILLE	WV	4	34

[FR Doc. 2022–05971 Filed 3–21–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Sunshine Act Meetings

TIME AND DATE: March 30, 2022, at 9:00 a.m.

PLACE: Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Wednesday, March 30, 2022, at 9:00 a.m.

1. Strategic Issues.
2. Financial and Operational Issues.
3. Executive Session.
4. Administrative Items.

General Counsel Certification: The General Counsel of the United States Postal Service has certified that the meeting may be closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Michael J. Elston, Secretary of the Board of Governors, U.S. Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1000. Telephone: (202) 268–4800.

Michael J. Elston,

Secretary.

[FR Doc. 2022–06144 Filed 3–18–22; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94430; File No. SR–FINRA–2022–004]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Expiration Date of the Temporary Amendments Set Forth in SR–FINRA–2020–015 and SR–FINRA–2020–027

March 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 7, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to extend the expiration date of the temporary amendments set forth in SR–FINRA–2020–015 and SR–FINRA–2020–027 from March 31, 2022, to July 31, 2022.[4] The proposed rule change would not make any changes to the text of FINRA rules.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

In response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities, FINRA filed proposed rule changes, SR–FINRA–2020–015 and SR–FINRA–2020–027, which respectively provide temporary relief from some timing, method of service and other procedural requirements in FINRA rules and allow FINRA's Office of Hearing Officers (''OHO'') and the National Adjudicatory Council (''NAC'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. In December 2021, FINRA filed a proposed rule change, SR–FINRA–2021–031, to extend the expiration date of the temporary amendments in both SR–FINRA–2020–015 and SR–FINRA–2020–027 from December 31, 2021, to March 31, 2022.[5]

While there are material signs of improvement, uncertainty still remains for the coming months. The continued presence of COVID–19 variants, dissimilar vaccination rates throughout the United States, and the current medium to high COVID–19 community levels in many states indicate that COVID–19 remains an active and real public health concern.[6] Due to the uncertainty and the lack of a clear timeframe for a sustained and widespread abatement of COVID–19-related health concerns and corresponding restrictions,[7] FINRA believes there is a continued need for temporary relief beyond March 31, 2022. Accordingly, FINRA proposes to extend the expiration date of the temporary rule amendments in SR–FINRA–2020–015 and SR–FINRA–2020–027 from March 31, 2022, to July 31, 2022.[8]

i. SR–FINRA–2020–015

As stated in its previous filings, FINRA proposed, and subsequently extended, the changes set forth in SR–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] If FINRA seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond July 31, 2022, FINRA will submit a separate rule filing to further extend the temporary extension of time. The amended FINRA rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

[5] *See* Securities Exchange Act Release No. 93758 (December 13, 2021), 86 FR 71695 (December 17, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–031).

[6] For example, on February 18, 2022, President Joe Biden continued the national emergency concerning COVID–19 beyond March 1, 2022, because COVID–19 ''continues to cause significant risk to the public health and safety'' of the United States. *See* Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID–19) Pandemic, 87 FR 10289 (February 23, 2022).

[7] For instance, the Centers for Disease Control and Prevention (''CDC'') recommends that people wear a mask in public indoor settings in areas with a high COVID–19 community level regardless of vaccination status or individual risk. *See https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/about-face-coverings.html.* Furthermore, numerous states currently have COVID–19 restrictions in place. Hawaii requires most people to wear masks in indoor public places regardless of vaccination status and several other states have mask mandates in certain settings, such as healthcare and correctional facilities.

[8] As a further basis for extending the expiration date to July 31, 2022, FINRA notes that its Board has approved the submission of a rule proposal to the Commission to make permanent the temporary service and filing rules originally set forth in SR–FINRA–2020–015. *See https://www.finra.org/about/governance/finra-board-governors/meetings/update-finra-board-governors-meeting-december-2021.* FINRA contemplates filing the rule proposal with the Commission in the near future and the extension of the temporary rule amendments would help to avoid the rules reverting to their original form before the permanent rules, if approved by the Commission, become effective. FINRA notes that the proposal approved by its Board does not include the temporary rule amendments pertaining to video conference hearings originally set forth in SR–FINRA–2020–027.

FINRA–2020–015 to temporarily amend some timing, method of service and other procedural requirements in FINRA rules during the period in which FINRA's operations are impacted by the outbreak of COVID–19.[9] Among other things, the need for FINRA staff, with limited exceptions, to work remotely and restrict in-person activities–consistent with the recommendations of public health officials–have made it challenging to meet some procedural requirements and perform some functions required under FINRA rules. For example, working remotely makes it difficult to send and receive hard copy documents and conduct in-person oral arguments. The temporary amendments have addressed these concerns by easing logistical and other issues and providing FINRA with needed flexibility for its operations during the COVID–19 outbreak, allowing FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its staff.

FINRA staff, with limited exceptions, continue to work remotely to protect their health and safety. As indicated in its previous filings, FINRA has established a COVID–19 task force to develop a data-driven, staged plan for FINRA staff to safely return to working in FINRA office locations and resume other in-person activities. Based on its assessment of current COVID–19 conditions, FINRA does not believe the COVID–19-related health concerns necessitating this relief will meaningfully subside by March 31, 2022, and therefore proposes to extend the expiration date of the temporary rule amendments originally set forth in SR–FINRA–2020–015 [10] from March 31, 2022, to July 31, 2022.[11]

ii. SR–FINRA–2020–027

The same public health concerns and restrictions, along with a corresponding backlog of disciplinary cases,[12] led FINRA to file, and subsequently extend to March 31, 2022, SR–FINRA–2020–027 to temporarily amend FINRA Rules 1015, 9261, 9524, and 9830 to grant OHO and the NAC authority [13] to conduct hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the COVID–19-related public health risks posed by an in-person hearing.[14]

As set forth in the previous filings, FINRA also relies on the guidance of its health and safety consultant, in conjunction with COVID–19 data and guidance issued by public health authorities, to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference.[15] Based on that guidance and data, FINRA does not believe the COVID–19-related health concerns necessitating this relief will meaningfully subside by March 31, 2022, and believes there will be a continued need for this temporary relief beyond that date.[16] Accordingly, FINRA proposes to extend the expiration date of the temporary rule amendments originally set forth in SR–FINRA–2020–027 from March 31, 2022, to July 31, 2022.[17] The extension of these temporary amendments allowing for specified OHO and NAC hearings to proceed by video conference will allow FINRA's critical adjudicatory functions to continue to operate effectively in these extraordinary circumstances–enabling FINRA to fulfill its statutory obligations to protect investors and maintain fair and orderly markets–while also protecting the health and safety of hearing participants.[18]

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

[9] *See* Securities Exchange Act Release No. 88917 (May 20, 2020), 85 FR 31832 (May 27, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–015); Securities Exchange Act Release No. 89055 (June 12, 2020), 85 FR 36928 (June 18, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–017); Securities Exchange Act Release No. 89423 (July 29, 2020), 85 FR 47278 (August 4, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–022); Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–042); Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–006); Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–019); *supra* note 5.

[10] *See supra* note 9 (outlining the filing history of SR–FINRA–2020–015 and its prior extensions).

[11] As noted above, FINRA plans to submit a rule proposal to the Commission to make permanent the temporary service and filing rules originally set forth in SR–FINRA–2020–015. *See supra* note 8.

[12] For example, FINRA began temporarily postponing in-person hearings as a result of the COVID–19 impacts on March 16, 2020.

[13] For OHO hearings under FINRA Rules 9261 and 9830, the proposed rule change temporarily grants authority to the Chief or Deputy Chief Hearing Officer to order that a hearing be conducted by video conference. For NAC hearings under FINRA Rules 1015 and 9524, this temporary authority is granted to the NAC or the relevant Subcommittee.

[14] *See* Securities Exchange Act Release No. 89739 (September 2, 2020), 85 FR 55712 (September 9, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–027); Securities Exchange Act Release No. 90619 (December 9, 2020), 85 FR 81250 (December 15, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–042); Securities Exchange Act Release No. 91495 (April 7, 2021), 86 FR 19306 (April 13, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–006); Securities Exchange Act Release No. 92685 (August 17, 2021), 86 FR 47169 (August 23, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–019); *supra* note 5.

[15] As noted in SR–FINRA–2020–027, the temporary proposed rule change grants discretion to OHO and the NAC to order a video conference hearing. In deciding whether to schedule a hearing by video conference, OHO and the NAC may consider a variety of other factors in addition to COVID–19 trends. In SR–FINRA–2020–027, FINRA provided a non-exhaustive list of other factors OHO and the NAC may take into consideration, including a hearing participant's individual health concerns and access to the connectivity and technology necessary to participate in a video conference hearing.

[16] FINRA notes that the proposed extension of the temporary amendments does not mean a video conference hearing will be ordered in every case. FINRA strives to hold in-person hearings when it is safe to do so and began to hold such hearings at a single location last year. Specifically, FINRA held its first in-person hearing since the temporary rule change was implemented in July 2021. A subsequent surge in case numbers for the Delta variant of the COVID–19 virus caused FINRA's outside health and safety consultant to recommend in early August against in-person hearings. Accordingly, the Chief Hearing Officer converted hearings scheduled after mid-September from in-person to video conference on a case-by-case basis. In addition to creating a safe environment in which an in-person hearing may be held, as mentioned above, a number of other considerations inform whether any given case will be held in-person or by video conference.

[17] *See supra* note 5.

[18] Since the temporary amendments were implemented, OHO and the NAC have conducted several hearings by video conference. As of February 24, 2022, OHO has conducted 15 disciplinary hearings by video conference (decisions have been issued in 11 of these cases). In five of these disciplinary hearings, all of the parties agreed to proceed by video conference; the other 10 were ordered to proceed by video conference by the Chief Hearing Officer. OHO currently has hearings scheduled in seven additional disciplinary matters. OHO has ordered that four proceed by video conference. No determination has yet been made regarding whether the other hearings will be in-person or by video conference. Also, as of February 23, 2022, the NAC, through the relevant Subcommittee, has conducted 14 oral arguments by video conference in connection with appeals of FINRA disciplinary proceedings pursuant to FINRA Rule 9341(d), as temporarily amended. Furthermore, the NAC has conducted via video conference a one-day evidentiary hearing in a membership application proceeding pursuant to FINRA Rule 1015, as temporarily amended.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is also consistent with Section 15A(b)(8) of the Act,[20] which requires, among other things, that FINRA rules provide a fair procedure for the disciplining of members and persons associated with members.

The proposed rule change, which extends the expiration date of the temporary amendments to FINRA rules set forth in SR–FINRA–2020–015, will continue to provide FINRA, and in some cases another party to a proceeding, temporary modifications to its procedural requirements in order to allow FINRA to maintain fair processes and protect investors while operating in a remote work environment and with corresponding restrictions on its activities. It is in the public interest, and consistent with the Act's purpose, for FINRA to operate pursuant to this temporary relief. The temporary amendments allow FINRA to specify filing and service methods, extend certain time periods, and modify the format of oral argument for FINRA disciplinary and eligibility proceedings and other review processes to cope with the current pandemic conditions. In addition, extending this temporary relief will further support FINRA's disciplinary and eligibility proceedings and other review processes that serve a critical role in providing investor protection and maintaining fair and orderly markets.

The proposed rule change, which also extends the expiration date of the temporary amendments to FINRA rules set forth in SR–FINRA–2020–027, will continue to aid FINRA's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given the current and frequently changing COVID–19 conditions and the uncertainty around when those conditions will see meaningful, widespread and sustained improvement, without this relief allowing OHO and NAC hearings to proceed by video conference, FINRA might be required to postpone some or almost all hearings indefinitely. FINRA must be able to perform its critical adjudicatory functions to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to FINRA's ability to fulfill its statutory obligations and allows hearing participants to avoid the serious COVID–19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow OHO to conduct temporary cease and desist proceedings by video conference so that FINRA can take immediate action to stop ongoing customer harm and will allow the NAC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in the original filing, this temporary relief allowing OHO and NAC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID–19-related public health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the temporary proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR–FINRA–2020–015 and SR–FINRA–2020–027, the proposed rule change is intended solely to extend temporary relief necessitated by the continued impacts of the COVID–19 outbreak and the related health and safety risks of conducting in-person activities. FINRA believes that the proposed rule change will prevent unnecessary impediments to FINRA's operations, including its critical adjudicatory processes, and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on March 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[21] and Rule 19b–4(f)(6) thereunder.[22]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. As FINRA requested in connection with SR–FINRA–2020–015 and related extensions,[23] FINRA has also asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing.

FINRA has indicated that extending the relief provided originally in SR–FINRA–2020–015 and SR–FINRA–2020–027 will continue to ease logistical and other issues by providing FINRA with needed flexibility for its operations during the COVID–19 outbreak. Importantly, extending the relief provided in these prior rule changes immediately upon filing and without a 30-day operative delay will allow FINRA to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of its employees.[24] The Commission also notes that this proposal, like SR–FINRA–2020–015 and SR–FINRA–2020–027, provides only temporary relief during the period in which FINRA's operations are impacted by COVID–19. As proposed, the changes would be in place through July 31, 2022.[25] FINRA also noted in both SR–FINRA–2020–015 and SR–FINRA–2020–027 that the amended rules will revert back to their original state at the

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] 15 U.S.C. 78*o*–3(b)(8).

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(6).

[23] *See* SR–FINRA–2020–015, 85 FR at 31836. Although FINRA did not request that the Commission waive the 30-day operative delay for SR–FINRA–2020–027, FINRA did request that the Commission waive the 30-day operative delay for SR–FINRA–2020–042, FINRA–2021–006, FINRA–2021–019, and FINRA–2021–031, which extended the expiration date of the temporary amendments originally set forth in SR–FINRA–2020–027.

[24] *See supra* Item II.A.1; *see also* SR–FINRA–2020–015, 85 FR at 31833.

[25] As noted above, *see supra* note 4, FINRA stated that if it requires temporary relief from the rule requirements identified in this proposal beyond July 31, 2022, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

conclusion of the temporary relief period unless, if applicable, there is any extension thereof,[26] or, as FINRA notes in this filing, it proposes to make any amended rule permanent in connection with a separate proposed rule change filing.[27] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[28]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2022–004 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–FINRA–2022–004. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2022–004 and should be submitted on or before April 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

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[26] *See* SR–FINRA–2020–015, 85 FR at 31833; *see also* SR–FINRA–2020–027, 85 FR at 55712.

[27] Any such proposed rule change to make an amended rule permanent would require notice and comment, as well as Commission approval, before becoming effective. *See supra* note 8.

[28] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94428; File No. SR–FINRA–2022–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Pilot Period Related to FINRA Rule 6121.02 (Market-Wide Circuit Breakers in NMS Stocks)

March 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to extend the pilot period related to FINRA Rule 6121.02 (Market-wide Circuit Breakers in NMS Stocks) to the close of business on April 18, 2022.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

FINRA proposes to extend the pilot related to the market-wide circuit breaker in Rule 6121.02 to the close of business on April 18, 2022.

Background

The Market-Wide Circuit Breaker (''MWCB'') rules, including FINRA Rule 6121.02, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, FINRA and all U.S. cash equity exchanges amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* for FINRA, Rule 6121.02).[4] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[5] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[6] including any extensions to the pilot period for the LULD Plan.[7] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[8] In conjunction with the proposal to make the LULD Plan permanent, FINRA amended Rule 6121.02 to untie Rule 6121.02's effectiveness from that of the LULD Plan and to extend Rule 6121.02's effectiveness to the close of business on October 18, 2019.[9] FINRA subsequently amended Rule 6121.02 to extend Rule 6121.02's effectiveness for an additional year to the close of business on October 18, 2020,[10] then until the close of business on October 18, 2021.[11] Most recently, FINRA extended the pilot until the close of business on March 18, 2022.[12]

FINRA now proposes to amend Rule 6121.02 to extend the pilot to the close of business on April 18, 2022. This filing does not propose any substantive or additional changes to Rule 6121.02.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC'') and the securities industry, and conducted several organizational meetings in December 2019 and January 2020.

In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[13]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020.

In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of an MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[14] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the

[4] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[5] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equity exchanges invoke a MWCB Halt. *See, e.g.,* NYSE Arca Rule 6.65–O(d)(4).

[6] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (the ''Limit Up-Limit Down Release''). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[7] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (Order Approving File No. SR–FINRA–2011–054); and 68778 (January 31, 2013), 78 FR 8668 (February 6, 2013) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2013–011) (Proposed Rule Change to Delay the Operative Date of FINRA Rule 6121.02).

[8] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (Order Approving the Eighteenth Amendment to the National Market System Plan To Address Extraordinary Market Volatility).

[9] *See* Securities Exchange Act Release No. 85547 (April 8, 2019), 84 FR 14981 (April 12, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–010).

[10] *See* Securities Exchange Act Release No. 87078 (September 24, 2019), 84 FR 51669 (September 30, 2019) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2019–023).

[11] *See* Securities Exchange Act Release No. 90160 (October 13, 2020), 85 FR 67072 (October 21, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–033).

[12] *See* Securities Exchange Act Release No. 93300 (October 13, 2021), 86 FR 57867 (October 19, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–027).

[13] *See https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_1.pdf; https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_2.pdf.*

[14] *See* Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events, submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[15]

Proposal To Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the NYSE's Filing To Make the Pilot Rules Permanent

On July 16, 2021, the NYSE proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[16] On August 27, 2021, the Commission extended its time to consider the NYSE's proposed rule change to October 20, 2021.[17] On September 30, 2021, the Commission instituted proceedings to determine whether to approve or disapprove the NYSE's proposed rule change.[18] On January 7, 2022, the Commission extended its time to act on the proceedings to determine whether to approve or disapprove the NYSE's proposed rule change to March 19, 2022.[19] FINRA now proposes to extend the expiration date of FINRA Rule 6121.02 to the end of business on April 18, 2022 to provide additional time to permit FINRA to prepare a proposed rule change to make the market-wide circuit breaker pilot under Rule 6121.02 permanent if the Commission approves the NYSE's proposed rule change to make the Pilot Rules permanent.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days from the date of filing, so that FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that its proposal is consistent with Section 15A(b) of the Act,[20] in general, and furthers the objectives of Section 15A(b)(6) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 6121.02 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot under Rule 6121.02 for an additional month would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while FINRA prepares a proposed rule change to make the market-wide circuit breaker pilot under Rule 6121.02 permanent if the Commission approves the NYSE's proposed rule change to make the Pilot Rules permanent.

FINRA also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, FINRA believes the benefits to market participants under Rule 6121.02 should continue on a pilot basis because they will promote fair and orderly markets and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while FINRA prepares a proposed rule change to make the market-wide circuit breaker pilot under Rule 6121.02 permanent if the Commission approves the NYSE's proposed rule change to make the Pilot Rules permanent.

Further, FINRA understands that other SROs will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[22] and Rule 19b–4(f)(6)(iii) thereunder.[23]

A proposed rule change filed under Rule 19b–4(f)(6)[24] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[25] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on April 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day

[15] *See* the Study, *supra* note 14, at 46.

[16] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (Notice of Filing File No. SR–NYSE–2021–40).

[17] *See* Securities Exchange Act Release No. 92785A (August 27, 2021), 86 FR 50202 (September 7, 2021) (Notice of Designation of a Longer Period for Commission Action on File No. SR–NYSE–2021–40).

[18] *See* Securities Exchange Act Release No. 93212 (September 30, 2021), 86 FR 55066 (October 5, 2021) (Order Instituting Proceedings to Determine Whether to Approve or Disapprove File No. SR–NYSE–2021–40).

[19] *See* Securities Exchange Act Release No. 93933 (January 7, 2022), 87 FR 2189 (January 13, 2022) (Notice of Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove File No. SR–NYSE–2021–40).

[20] 15 U.S.C. 78*o*–3(b).

[21] 15 U.S.C. 78*o*–3(b)(6).

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4 requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. FINRA has fulfilled this requirement.

[24] 17 CFR 240.19b–4(f)(6).

[25] 17 CFR 240.19b–4(f)(6)(iii).

operative delay and designates the proposed rule change as operative upon filing.[26]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2022–005 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–FINRA–2022–005. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2022–005 and should be submitted on or before April 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05975 Filed 3–21–22; 8:45 am]

BILLING CODE 8011–01–P

[26] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94429; File No. SR–MEMX–2022–05]

Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Continuing Education Requirements

March 16, 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 10, 2022, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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 is filing with the Commission a proposed rule change to amend Exchange Rule 2.5 (Restrictions). The proposed rule change is based on recent changes to continuing education requirements made by the Financial Industry Regulatory Authority, Inc. (''FINRA''), including a change to require that the Regulatory Element of continuing education be completed annually rather than every three years and to provide a path through continuing education for individuals to maintain their qualification following the termination of a registration. The text of the proposed rule change is provided in Exhibit 5.

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

Background

The Exchange sets forth certain continuing education (''CE'') requirements for its ''Members,'' [5] including requirements to participate in the Regulatory Element of training, which are generally based on certain FINRA Rules.[6] The Regulatory Element of CE is administered to industry participants by FINRA and focuses on regulatory requirements and industry standards. The Exchange has codified its general registration requirements under Interpretation and Policy .01 to Exchange Rule 2.5 (''Rule 2.5.01'') and its CE program, including implementation of the Regulatory Element under Interpretation and Policy .02 to Exchange Rule 2.5 (''Rule 2.5.02''). The Exchange seeks to amend its rules to more closely mirror FINRA Rules, as amended.[7] Consistent with this goal, the Exchange also seeks to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Exchange Rules define a Member to mean any registered broker or dealer that has been admitted to membership in the Exchange. *See* Exchange Rule 1.5(p).

[6] *See* FINRA Rule 1210 (Registration Requirements) and 1240 (Continuing Education Requirements).

[7] *See* Securities Exchange Act Release No. 34–93097 (September 21, 2021), 86 FR 53358 (September 27, 2021) (Order Approving File No. SR–FINRA–2021–015) (the ''Approval Order'').

adopt provisions of FINRA Rules regarding the ''Firm Element,'' as further discussed below.

Tracking FINRA Rule 1240(a) (Regulatory Element), Rule 2.5.02 currently requires Registered Representatives [8] to complete the applicable Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date.[9] The Exchange may extend these time frames for good cause shown.[10] Any Registered Representative that does not complete the Regulatory Element within the prescribed time frames will have their respective registrations deemed inactive, and therefore would be prohibited from performing, or being compensated for, any activities requiring such registration, including supervisory duties.

The Regulatory Element consists of a subprogram for registered persons generally, and a subprogram for principals and supervisors.[11] While some of the current Regulatory Element content is unique to particular registration categories, most of the content has broad application to both representatives and principals.[12] Currently, Registered Representatives who have been terminated for two or more years may reregister as representatives or principals only if they requalify by retaking and passing the applicable representative- or principal-level examination or if they obtain a waiver of such examination(s) (the ''two-year qualification period'').[13] The two-year qualification period was adopted prior to the creation of the CE Program and was intended to ensure that individuals who reregister are relatively current on their regulatory and securities knowledge.

Proposed Rule Change

The Exchange has participated in extensive work with the Securities Industry/Regulatory Council on Continuing Education (''CE Council'') and discussions with stakeholders, including other industry participants and the North American Securities Administrators Association (''NASAA''), that has resulted in amendments to FINRA Rules 1210 and 1240.[14] Following these changes, the Exchange seeks to align its Rules to the FINRA CE Program by making the following changes to the Exchange Rule 2.5.01 and Rule 2.5.02.

Transition to Annual Regulatory Element for Registered Representatives

Currently, the Regulatory Element prescribed in Rule 2.5.02 sets forth that training must be completed every three years, and the content is broad in nature. Based on changes in technology and learning theory, the Regulatory Element content can be updated and delivered in a timelier fashion and tailored to each registration category, which would further the goals of the Regulatory Element.[15] Therefore, to align the Exchange's Rules with changes made by FINRA and to provide registered persons with more timely and relevant training on significant regulatory developments, the Exchange proposes amending Rule 2.5.02(a) to require registered persons to complete the Regulatory Element annually by December 31, with the first compliance date December 31, 2023.[16] The proposed amendment would also require registered persons to complete Regulatory Element content for each representative or principal registration category that they hold, which would also further the goals of the Regulatory Element.[17] Under the proposed rule change, Registered Representatives will have the flexibility to complete the Regulatory Element sooner than December 31 of each year.[18]

Registered Representatives who would be registering as a representative or principal for the first time on or after the implementation date of the proposed rule change would be required to complete their initial Regulatory Element for that registration category in the next calendar year following their registration.[19] In addition, subject to specified conditions, Registered Representatives who would be reregistering as a representative or principal on or after the implementation date of the proposed rule change would also be required to complete their initial Regulatory Element for that registration category in the next calendar year following their reregistration.[20]

Consistent with current requirements, Registered Representatives who fail to complete their Regulatory Element within the prescribed period would be automatically designated as inactive. However, the proposed rule change preserves the Exchange's ability to extend the time by which a Registered Representative must complete the Regulatory Element for good cause shown.[21]

The Exchange also proposes amending Rule 2.5.02 to clarify that: (1) Individuals who are designated as inactive would be required to complete all of their pending and upcoming annual Regulatory Element, including any annual Regulatory Element that becomes due during their CE inactive period, to return to active status; [22] (2) the two-year CE inactive period is calculated from the date individuals become CE inactive, and it continues to run regardless of whether individuals terminate their registrations; [23] (3) individuals who become subject to a significant disciplinary action may be required to complete assigned continuing education content as

[8] As defined in Exchange Rule 2.5.02, a ''Registered Representative'' is any Authorized Trader, Principal, or Financial/Operations Principal, as each is defined separately in the Exchange Rules.

[9] *See* Rule 2.5.02(a) (Requirements) and Rule 2.5.02(d) (Reassociation in a Registered Capacity). An individual's registration anniversary date is generally the date they initially registered with FINRA in the Central Registration Depository (''CRD®'') system. However, an individual's registration anniversary date would be reset if the individual has been out of the industry for two or more years and is required to requalify by examination, or obtain an examination waiver, in order to reregister. An individual's registration anniversary date would also be reset if the individual obtains a conditional examination waiver that requires them to complete the Regulatory Element by a specified date.

[10] *See* Rule 2.5.02(b) (Failure to Complete).

[11] The S101 (General Program for Registered Persons) and the S201 (Registered Principals and Supervisors).

[12] The current content is presented in a single format leading individuals through a case that provides a story depicting situations that they may encounter in the course of their work.

[13] *See supra* note 10. Individuals must complete the entire Regulatory Element session to be considered to have ''completed'' the Regulatory Element; partial completion is the same as non-completion. As described below, the Exchange also proposes to adopt additional language based on FINRA Rule 1210, Supplementary Material .08 as new paragraph (j) to Rule 2.5.01.

[14] *See* Approval Order, *supra* note 7.

[15] When the FINRA CE Program was originally adopted in 1995, registered persons were required to complete the Regulatory Element on their second, fifth and 10th registration anniversary dates. *See* Securities Exchange Act Release No. 35341 (February 8, 1995), 60 FR 8426 (February 14, 1995) (Order Approving File Nos. SR–AMEX–94–59; SR–CBOE–94–49; SR–CHX–94–27; SR–MSRB–94–17; SR–NASD–94–72; SR–NYSE–94–43; SR–PSE–94–35; and SR–PHLX–94–52). The change to the current three-year cycle was made in 1998 to provide registered persons more timely and effective training, consistent with the overall purpose of the Regulatory Element. *See* Securities Exchange Act Release No. 39712 (March 3, 1998), 63 FR 11939 (March 11, 1998) (Order Approving File Nos. SR–CBOE–97–68; SR–MSRB–98–02; SR–NASD–98–03; and SR–NYSE–97–33).

[16] *See* proposed Rule 2.5.02(a)(1).

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *See* proposed Rule 2.5.02(a)(4).

[21] The proposed rule change clarifies that the request for an extension of time must be in writing and include supporting documentation, which is consistent with current practice.

[22] *See* proposed Rule 2.5.02(a)(2).

[23] *Id.*

prescribed by the Exchange; [24] (4) individuals who have not completed any Regulatory Element content for a registration category in the calendar year(s) prior to reregistering would not be approved for registration for that category until they complete that Regulatory Element content, pass an examination for that registration category or obtain an unconditional examination waiver for that registration category, whichever is applicable; [25] and (5) the Regulatory Element requirements apply to individuals who are registered, or in the process of registering, as a representative or principal.[26] The Exchange notes that it also proposes to add additional language to Rule 2.5.02(a)(2) to further align such Rule with FINRA Rule 1240(a)(2).[27]

Under the proposed rule change, the amount of content that registered persons would be required to complete in a three-year, annual cycle for a particular registration category is expected to be comparable to what most registered persons are currently completing every three years. In some years, there may be more required content for some registration categories depending on the volume of rule changes and regulatory issues. In addition, an individual who holds multiple registrations may be required to complete additional content compared to an individual who holds a single registration because, as noted above, individuals would be required to complete content specific to each registration category that they hold. However, individuals with multiple registrations would not be subject to duplicative regulatory content in any given year. The more common registration combinations would likely share much of their relevant regulatory content each year. For example, individuals registered as General Securities Representatives and General Securities Principals would receive the same content as individuals solely registered as General Securities Representatives, supplemented with a likely smaller amount of supervisory-specific content on the same topics. The less common registration combinations may result in less topic overlap and more content overall.

Firm Element

The Exchange proposes adopting paragraph (b) under Rule 2.5.02 to implement and administer a required annual Firm Element training program for Registered Representatives. Proposed paragraph (b) is based on and substantially similar to FINRA Rule 1240(b), as amended. As proposed, each Member shall conduct an annual needs analysis to determine the appropriate training. At a minimum the Firm Element training must cover ethics and professional responsibility, as well as applicable regulatory requirements.

In alignment with recent changes to FINRA's Firm Element requirements, the Exchange, consistent with its needs analysis, may determine to apply toward the Firm Element other required training. The Exchange may consider training relating to its AML compliance program toward satisfying an individual's annual Firm Element requirement. Consistent with FINRA amendments, the Exchange shall extend Firm Element requirements to all Registered Representatives, with such training to cover topics related to the role, activities, or responsibilities of the individual Registered Representative and to professional responsibility.

Maintenance of Qualification After Termination of Registration

The Exchange proposes adopting paragraph (d) under Rule 2.5.02 to provide eligible individuals who terminate any of their representative or principal registrations the option of maintaining their qualification for any of the terminated registrations by completing continuing education. The proposed rule change would not eliminate the two-year qualification period set forth in Rule 2.5.02(a)(2). Rather, it would provide such individuals an alternative means of staying current on their regulatory and securities knowledge following the termination of a registration(s). Eligible individuals who elect not to participate in the proposed continuing education program would continue to be subject to the current two-year qualification period. The proposed rule change is generally aligned with other professional continuing education programs that allow individuals to maintain their qualification to work in their respective fields during a period of absence from their careers (including an absence of more than two years) by satisfying continuing education requirements for their credential.

The proposed rule change would impose the following conditions and limitations:

- Individuals would be required to be registered in the terminated registration category for at least one year immediately prior to the termination of that category; [28]
- Individuals could elect to participate when they terminate a registration or within two years from the termination of a registration; [29]
- individuals would be required to complete annually all prescribed continuing education; [30]
- individuals would have a maximum of five years in which to reregister; [31]
- individuals who have been inactive for two consecutive years, or who become inactive for two consecutive years during their participation, would not be eligible to participate or continue; [32] and
- individuals who are subject to a statutory disqualification, or who become subject to a statutory disqualification following the termination of their registration or during their participation, would not be eligible to participate or continue.[33]

Additional Provision Based on FINRA Rules

Finally, the Exchange proposes to adopt new paragraph (j) to Rule 2.5.01, entitled Lapse of Registration and Expiration of SIE based on FINRA Rule 1210.08. Currently, Interpretation and Policy .01(c) to Rule 2.5 states that any person who last passed the Securities Industry Essentials Examination (''SIE'') or who was last registered as a representative, whichever occurred last, four or more years immediately preceding the date of receipt by the Exchange of a new application for registration as a representative shall be required to pass the SIE in addition to a representative qualification examination appropriate to his or her category of registration. This same language is contained in FINRA Rule 1210.08 but with additional detail. The Exchange proposes adopting new paragraph (j) to more closely align with FINRA Rule 1210.08 and to move the

[24] *See* proposed Rule 2.5.02(a)(3).

[25] *See* proposed Rule 2.5.02(a)(4).

[26] *Id.*

[27] Specifically, proposed Rule 2.5.02(a)(2), like FINRA Rule 1240(a)(2), would state that a person whose registration had been deemed inactive ''may not accept or solicit business or receive any compensation for the purchase or sale of securities.'' The proposed Rule would go on to state that ''[h]owever, such person may receive trail or residual commissions resulting from transactions completed before the inactive status, unless the Member with which such person is associated has a policy prohibiting such trail or residual commissions.'' *See* proposed Rule 2.5.02(a)(2).

[28] *See* proposed Rule 2.5.02(d)(1).

[29] *See* proposed Rule 2.5.02(d)(2). Individuals who elect to participate at the later date would be required to complete, within two years from the termination of their registration, any continuing education that becomes due between the time of their Form U5 (Uniform Termination Notice for Securities Industry Registration) submission and the date that they commence their participation.

[30] *See* proposed Rule 2.5.02(d)(3).

[31] *See* proposed Rule 2.5.02(d).

[32] *See* proposed Rule 2.5.02(d)(4) and (d)(5).

[33] *See* proposed Rule 2.5.02(d)(1) and (d)(6).

existing text described above from paragraph (c) to paragraph (j).[34]

As proposed, any person who was last registered in a representative registration category two or more years immediately preceding the date of receipt by FINRA of a new application for registration in that registration category shall be required to pass a representative qualification examination appropriate to that registration category as specified in Rule 2.5.01, unless the person has maintained his or her qualification status for that registration category in accordance with proposed Rule 2.5.02(d) or as otherwise permitted by the Exchange. Any person who was last registered in a principal registration category two or more years immediately preceding the date of a new application for registration in that registration category shall be required to pass a principal qualification examination appropriate to that registration category as specified in this Interpretation and Policy .01, unless the person has maintained his or her qualification status for that registration category in accordance with Interpretation and Policy .02(d) to Rule 2.5 or as otherwise permitted by the Exchange. Any person whose registration has been revoked pursuant to Rule 8.1 and any person who has a continuing education deficiency for a period of two years as provided under Interpretation and Policy .02 to Rule 2.5 shall be required to pass a representative or principal qualification examination appropriate to his or her category of registration as specified in this Interpretation and Policy .01, to be eligible for registration. Lastly, for purposes of proposed paragraph (j), an application shall not be considered as a new application for registration if that application does not result in a registration.

Implementation Dates

The Exchange proposes to announce implementation dates of the proposed rule change in Regulatory Notices to Members that align with implementation dates previously announced by FINRA.[35]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[36] in general, and furthers the objectives of Section 6(b)(5) of the Act,[37] in particular, in that it is designed to prevent fraudulent and manipulative 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.

As noted above, the proposed rule change seeks to align the Exchange Rules with recent changes to FINRA rules which have been approved by the Commission.[38] The Exchange believes the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,[39] which requires, among other things, that Exchange Rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 6(c)(3) of the Act,[40] which authorizes the Exchange to prescribe standards of training, experience and competence for persons associated with Exchange. The proposed changes are based on the changes approved by the Commission in the Approval Order,[41] and the Exchange is proposing to adopt such changes substantially in the same form proposed by FINRA with only minor changes necessary to conform to the Exchange's existing rules, such as removal of cross-references to rules that are applicable to FINRA members but not Members of the Exchange.[42] The Exchange believes the proposal is consistent with the Act for the reasons described above and for those reasons cited in the Approval Order.[43]

The Exchange believes the proposed changes to the Regulatory Element will ensure that all Registered Representatives receive timely and relevant training, which will, in turn, enhance compliance and investor protection. The Exchange believes that establishing a path for individuals to maintain their qualification following the termination of a registration will reduce unnecessary impediments to requalification and promote greater diversity and inclusion in the securities industry without diminishing investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change, which harmonizes its rules with recent rule changes adopted by FINRA, will reduce the regulatory burden placed on market participants engaged in trading activities across different markets.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[44] and Rule 19b–4(f)(6) thereunder.[45]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that this proposed rule change may become operative immediately upon filing. In addition, Rule 19b–4(f)(6)(iii)[46] requires a self-regulatory organization to give the Commission written notice of its intent

[34] The Exchange notes that it also proposes to modify paragraph (h) of Rule 2.5.01 to define the term ''SIE'' because such term is currently first used in the text that the Exchange proposes to relocate to paragraph (j).

[35] See FINRA Regulatory Notice 21–41 (FINRA Amends Rules 1210 and 1240 to Enhance the Continuing Education Program for Securities Industry Professionals), available at: *https://www.finra.org/rules-guidance/notices/21-41.*

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(5).

[38] *See* Approval Order, *supra* note 7.

[39] 15 U.S.C. 78f(b)(5).

[40] 15 U.S.C. 78f(c)(3).

[41] *See* Approval Order, *supra* note 7.

[42] Proposed paragraph (j) to Interpretation and Policy .01 of Rule 2.5 is based on and substantially similar to FINRA Rule 1210.08. The proposed changes to Interpretation and Policy .02, including new paragraphs (b) and (d) through (f) are based on and substantially similar to FINRA Rules 1240(a)(1)–(4), FINRA Rule 1240(b), FINRA Rule 1240(c) and Supplementary Materials .01 and .02 to FINRA Rule 1240. The Exchange does not currently have a provisions analogous to FINRA Rules 1210.02, 1210.09, or Rule 3110 and thus has omitted language referring to such provisions in its proposed Rules.

[43] *Id.*

[44] 15 U.S.C. 78s(b)(3)(A)(iii).

[45] 17 CFR 240.19b–4(f)(6).

[46] 17 CFR 240.19b–4(f)(6)(iii).

to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Exchange has provided such notice.

Waiver of the 30-day operative delay would allow the Exchange to implement proposed changes to its Continuing Education Rules by March 15, 2022 to coincide with one of FINRA's announced implementation dates, thereby eliminating the possibility of a significant regulatory gap between the FINRA and MEMX rules, providing more uniform standards across the securities industry, and helping to avoid confusion for Members of the Exchange that are also FINRA members. For this reason, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[47]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MEMX–2022–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MEMX–2022–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MEMX–2022–05 and should be submitted on or before April 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05976 Filed 3–21–22; 8:45 am]

BILLING CODE 8011–01–P

[47] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94436; File No. SR-CboeEDGA–2022–003]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products

March 16, 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 3, 2022, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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 EDGA Exchange, Inc. (''EDGA'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fees applicable to various market data products. 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 (*https://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section applicable to its equities trading platform (''EDGA Equities''). Particularly, the Exchange proposes to (i) adopt a New External Distributor Credit applicable to Cboe One Premium, and (ii) extend the New External Distributor Credit applicable to EDGA Summary Depth Feed from one (1) month to three (3) months.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on January 3, 2022 (SR-CboeEDGA–2022–

By way of background, Cboe One Premium is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on EDGA and its affiliated exchanges (*i.e.,* Cboe BYX Exchange, Inc. (''BYX''), Cboe EDGX Exchange, Inc. (''EDGX''), and Cboe BZX Exchange, Inc. (''BZX'')) and contains optional functionality which enables recipients to receive aggregated two-sided quotations from EDGA and its affiliated equities exchanges for up to five (5) price levels.[4] Currently, the Exchange charges an external distribution fee of $12,500 per month to External Distributors [5] of Cboe One Premium. The Exchange now proposes to adopt a New External Distributor Credit which provide that new External Distributors of the Cboe One Premium Feed will not be charged an External Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the Cboe One Premium Feed. The Exchange believes the proposal will incentivize External Distributors to enlist new users to receive Cboe One Premium. To ensure consistency across the Cboe Equity Exchanges, BZX, BYX, and EDGX will be filing companion proposals to reflect this proposal in their respective fee schedules.

The Exchange notes that it offers similar credits for other market data products. For example, the Exchange currently offers a one (1) month New External Distributor Credit applicable to Cboe One Summary,[6] which is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on EDGA and its affiliated equities exchanges and also contains individual last sale information for the EDGA and its affiliated equities exchanges.[7] It also offers a New External Distributor Credit of one (1) month for subscribers of EDGA Summary Depth, which is a data feed that offers aggregated two-sided quotations for all displayed orders entered into the System for up to five (5) price levels. EDGA Summary Depth also contains the individual last sale information, Market Status, Trading Status, and Trade Break messages.[8] As noted above, the External Distribution fees for Cboe One Summary is equivalent to the aggregate EDGA Summary Depth, BZX Summary Depth, BYX Summary Depth, and EDGX Summary Depth External Distribution fees. In order to alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Cboe One Premium Feed based on the underlying data feeds, the Exchange proposes to also extend the current New External Distributor Credit for EDGA Summary Depth from one (1) month to three (3) months and the Exchange's affiliates BYX, BZX and EDGX are also submitting similar proposals to increase the length of their respective Summary Depth New External Distributor Credits from one (1) month to three (3) months. The respective proposals to extend these credits to three months ensures the proposed New External Distributor Credit for Cboe One Premium will continue to not cause the combined cost of subscribing to EDGA, EDGX, BYX, and BZX Summary Depth feeds for new External Distributors to be greater than those currently charged to subscribe to the Cboe One Premium feed.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[11] Finally, the proposed rule change is also consistent with Rule 603 of Regulation NMS,[12] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange believes that adopting a New External Distributor Credit for Cboe One Premium is equitable and reasonable. As discussed above, a similar New External Distributor Fee Credit was initially adopted at the time the Exchange began to offer the Cboe One Summary to subscribers. It was intended to incentivize new Distributors to enlist Users to subscribe to Cboe One Summary in an effort to broaden the product's distribution. Now, the Exchange proposes to adopt a similar credit for Cboe One Premium subscribers for their first three (3) months to similarly incentivize new Distributors to enlist Users to subscribe to Cboe One Premium in an effort to broaden the product's distribution. While this incentive is not available to Internal Distributors of Cboe One Premium, the Exchange believes it is appropriate as Internal Distributors have no subscribers outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive so that External Distributors have sufficient time to test the data within their own systems prior to going live externally. The Exchange believes extending the New External Distributor Credit for EDGA Summary Depth from one (1) month to three (3) months is also equitable and reasonable, as it (along with simultaneous corresponding proposals by the Exchange's affiliates) ensures the proposed New External Distributor Credit for Cboe One Premium will continue to not cause the combined cost of subscribing to EDGA, EDGX, BYX, and BZX Summary Depth feeds for new External Distributors to be greater than those currently charged to subscribe to the Cboe One Premium feed.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed

001). On March 3, 2022 the Exchange withdrew that filing and submitted this proposal.

[4] The Cboe Aggregated Market (''Cboe One'') Feed is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and its affiliated exchanges (*i.e.,* BYX, BZX, and EDGX). *See* Exchange Rule 13.8(b). The Cboe One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Cboe Equities Exchanges for up to five (5) price levels (''Cboe One Premium Feed''). *See* Exchange Rule 13.8(b)(i). The Cboe One Premium external distribution fee is equal to the aggregate EDGA Summary Depth, BYX Summary Depth, EDGA Summary Depth, and BZX Summary Depth external distribution fees.

[5] An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.

[6] *See* Exchange Rule 13.8(b).

[7] The Exchange notes that when it first adopted the New External Distributor Credit for Cboe One Summary, it similarly applied for a new External Distributor's first three (3) months. *See* Securities Exchange Act Release No. 74283 (February 18, 2015), 80 FR 9809 (February 24, 2015) (SR–EDGA–2015–09).

[8] *See* Exchange Rule 13.8(f).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78k–1.

[12] *See* 17 CFR 242.603.

waivers do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed credits would apply to all External Distributors Cboe One Premium and EDGA Depth on an equal and non-discriminatory basis. Further, the Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. Other exchanges are free to adopt a similar waiver if they choose. As discussed above, the proposed amendments are designed to enhance competition by providing an incentive to new Distributors to enlist new subscribers.

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 [13] and paragraph (f) of Rule 19b–4 [14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR-CboeEDGA–2022–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2022–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 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–CboeEDGA–2022–003 and should be submitted on or before April 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05985 Filed 3–21–22; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94427; File No. SR–ISE–2022–06]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Market Maker Plus Tier 1b Rebate for SPY, QQQ, and IWM

March 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 1, 2022, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Pricing Schedule at Options 7, Section 3 to increase the Market Maker Plus Tier 1b rebate for SPY, QQQ, and IWM.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Pricing Schedule at Options 7, Section 3 to increase the Market Maker Plus Tier 1b rebate for SPY, QQQ, and IWM.

Today, the Exchange operates a Market Maker Plus program for regular orders in Select Symbols [3] and Non-Select Symbols [4] that provides tiered incentives to Market Makers [5] based on time spent quoting at the National Best Bid or National Best Offer (''NBBO'').[6] This program is designed to reward Market Makers that contribute to market quality by maintaining tight markets in symbols traded on the Exchange. In particular, Market Makers that qualify for this program will not pay the maker fee of $0.18 per contract (in Select Symbols) or $0.70 per contract (in Non-Select Symbols), and will instead receive incentives based on the applicable Market Maker Plus Tier for which they qualify. Market Makers are evaluated each trading day for the percentage of time spent on the NBBO for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day. A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two successive periods described above.[7]

For SPY, QQQ, and IWM, the Exchange currently provides the below marker rebates based on the applicable Market Maker Plus tier for which the Market Maker qualifies.

SPY, QQQ, AND IWM

Market maker plus tier (specified percentage)	Regular maker rebate	Linked maker rebate
Tier 1a (50% to less than 65%)	($0.00)	N/A
Tier 1b (65% to less than 80%) or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.10% of Customer Total Consolidated Volume)	($0.05)	N/A
Tier 2 (80% to less than 85%) or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.20% of Customer Total Consolidated Volume)	($0.18)	($0.15)
Tier 3 (85% to less than 90%) or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.25% of Customer Total Consolidated Volume)	($0.22)	($0.19)
Tier 4 (90% or greater) or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.50% of Customer Total Consolidated Volume)	($0.26)	($0.23)

The Exchange now proposes to increase the Market Maker Plus Tier 1b rebate from $0.05 to $0.10 per contract. No other changes are being made to the Market Maker Plus program under this proposal.

By increasing the Tier 1b rebate, the Exchange seeks to further incentivize Market Makers to participate in the Market Maker Plus program for SPY, QQQ, and IWM. By fortifying participation in this program, the Exchange believes that the proposed changes will continue to encourage Market Makers to post quality markets in SPY, QQQ, and IWM, thereby improving trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options securities transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has 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'. . . .'' [10]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, 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.'' [11]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable

[3] ''Select Symbols'' are options overlying all symbols listed on the Exchange that are in the Penny Interval Program.

[4] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols.

[5] The term ''Market Makers'' refers to Competitive Market Makers and Primary Market Makers, collectively.

[6] See Options 7, Section 3, note 5.

[7] Qualifying series are series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *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)).

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

attempt by the Exchange to increase its liquidity and market share relative to its competitors.

In particular, the Exchange's proposal to increase the SPY, QQQ, and IWM Tier 1b rebate from $0.05 to $0.10 per contract is a reasonable attempt to fortify participation in the Market Maker Plus program and improve market quality on ISE. The Exchange will apply the proposed changes to SPY, QQQ, and IWM as they are three of the most actively traded symbols on ISE, so the Exchange believes that further incentivizing liquidity in these three names will have a significant and beneficial impact on market quality on ISE.

The Exchange also believes that the proposed changes are equitable and not unfairly discriminatory as all Market Makers would be eligible to receive the increased Tier 1b rebate in SPY, QQQ, and IWM by meeting the quoting requirements described above. Furthermore, the Exchange continues to believe that it is not unfairly discriminatory to offer this program's incentives to Market Makers only. Market Makers, and in particular, those Market Makers that participate in and qualify for the Market Maker Plus program, add value through continuous quoting, and are subject to additional requirements and obligations (such as quoting obligations) that other market participants are not. Lastly, the proposed changes will further encourage Market Makers to maintain tight markets in SPY, QQQ, and IWM, thereby increasing liquidity and attracting additional order flow to the Exchange, which will benefit all market participants in the quality of order interaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, while the proposed increase to the SPY, QQQ, and IWM Tier 1b rebate would apply directly to Market Makers that participate in the Market Maker Plus program, the Exchange believes that the proposed changes will further strengthen participation in the program, ultimately to the benefit of all market participants. As discussed above, continuing to encourage participation in the Market Maker Plus program will improve market quality by incentivizing Market Makers to provide significant quoting at the NBBO. This, in turn, improves trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market, thereby attracting additional order flow to the Exchange.

In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b–4(f)(2)[13] 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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2022–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2022–06. 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–ISE–2022–06 and should be submitted on or before April 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05977 Filed 3–21–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Thursday, March 24, 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.)

[14] 17 CFR 200.30–3(a)(12).

Dated: March 17, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–06095 Filed 3–18–22; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94432; File No. SR–CboeBZX–2022–015]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Applicable to Various Market Data Products

March 16, 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 3, 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. (''BZX'' or the ''Exchange'') is filing with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to amend the fees applicable to various market data products. 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Market Data section applicable to its equities trading platform (''BZX Equities''). Particularly, the Exchange proposes to (i) adopt a New External Distributor Credit applicable to Cboe One Premium, and (ii) extend the New External Distributor Credit applicable to BZX Summary Depth Feed from one (1) month to three (3) months.[3]

By way of background, Cboe One Premium is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer (''BBO'') of all displayed orders for securities traded on BZX and its affiliated exchanges (*i.e.,* Cboe BYX Exchange, Inc. (''BYX''), Cboe EDGX Exchange, Inc. (''EDGX''), and Cboe EDGA Exchange, Inc. (''EDGA'')) and contains optional functionality which enables recipients to receive aggregated two-sided quotations from BZX and its affiliated equities exchanges for up to five (5) price levels.[4] Currently, the Exchange charges an external distribution fee of $12,500 per month to External Distributors [5] of Cboe One Premium. The Exchange now proposes to adopt a New External Distributor Credit which provide that new External Distributors of the Cboe One Premium Feed will not be charged an External Distributor Fee for their first three (3) months in order to allow them to enlist new Users to receive the Cboe One Premium Feed. The Exchange believes the proposal will incentivize External Distributors to enlist new users to receive Cboe One Premium. To

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on January 3, 2022 (SR-CboeBZX–2022–001). On March 3, 2022 the Exchange withdrew that filing and submitted this proposal.

[4] The Cboe Aggregated Market (''Cboe One'') Feed is a data feed that contains the aggregate best bid and offer of all displayed orders for securities traded on the Exchange and its affiliated exchanges (*i.e.,* BYX, EDGX, and EDGA). *See* Exchange Rule 11.22(j). The Cboe One Feed contains optional functionality which enables recipients to receive aggregated two-sided quotations from the Cboe Equities Exchanges for up to five (5) price levels (''Cboe One Premium Feed''). The Cboe One Premium external distribution fee is equal to the aggregate BZX Summary Depth, BYX Summary Depth, EDGX Summary Depth, and EDGA Summary Depth external distribution fees.

[5] An External Distributor of an Exchange Market Data product is a Distributor that receives the Exchange Market Data product and then distributes that data to a third party or one or more Users outside the Distributor's own entity.

ensure consistency across the Cboe Equity Exchanges, EDGA, EDGX, and BYX will be filing companion proposals to reflect this proposal in their respective fee schedules.

The Exchange notes that it offers similar credits for other market data products. For example, the Exchange currently offers a one (1) month New External Distributor Credit applicable to Cboe One Summary,[6] which is a data feed that disseminates, on a real-time basis, the aggregate BBO of all displayed orders for securities traded on BZX and its affiliated equities exchanges and also contains individual last sale information for the BZX and its affiliated equities exchanges.[7] It also offers a New External Distributor Credit of one (1) month for subscribers of BZX Summary Depth, which is a data feed that offers aggregated two-sided quotations for all displayed orders entered into the System for up to five (5) price levels. BZX Summary Depth also contains the individual last sale information, Market Status, Trading Status, and Trade Break messages.[8] As noted above, the External Distribution fees for Cboe One Summary is equivalent to the aggregate BZX Summary Depth, BYX Summary Depth, EDGA Summary Depth, and EDGX Summary Depth External Distribution fees. In order to alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Cboe One Premium Feed based on the underlying data feeds, the Exchange proposes to also extend the current New External Distributor Credit for BZX Summary Depth from one (1) month to three (3) months and the Exchange's affiliates BYX, EDGA and EDGX are also submitting similar proposals to increase the length of their respective Summary Depth New External Distributor Credits from one (1) month to three (3) months. The respective proposals to extend these credits to three months ensures the proposed New External Distributor Credit for Cboe One Premium will continue to not cause the combined cost of subscribing to BZX, BYX, EDGA, and EDGX Summary Depth feeds for new External Distributors to be greater than those currently charged to subscribe to the Cboe One Premium feed.

[6] *See* Exchange Rule 11.22(j).

[7] The Exchange notes that when it first adopted the New External Distributor Credit for Cboe One Summary, it similarly applied for a new External Distributor's first three (3) months. *See* Securities Exchange Act Release No. 74285 (February 18, 2015), 80 FR 9828 (February 24, 2015) (SR–BATS–2015–11).

[8] *See* Exchange Rule 11.22(a).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(4),[10] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other recipients of Exchange data. In addition, the Exchange believes that the proposed rule change is consistent with Section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.[11] Finally, the proposed rule change is also consistent with Rule 603 of Regulation NMS,[12] which provides that any national securities exchange that distributes information with respect to quotations for or transactions in an NMS stock do so on terms that are not unreasonably discriminatory.

The Exchange believes that adopting a New External Distributor Credit for Cboe One Premium is equitable and reasonable. As discussed above, a similar New External Distributor Fee Credit was initially adopted at the time the Exchange began to offer the Cboe One Summary to subscribers. It was intended to incentivize new Distributors to enlist Users to subscribe to Cboe One Summary in an effort to broaden the product's distribution. Now, the Exchange proposes to adopt a similar credit for Cboe One Premium subscribers for their first three (3) months to similarly incentivize new Distributors to enlist Users to subscribe to Cboe One Premium in an effort to broaden the product's distribution. While this incentive is not available to Internal Distributors of Cboe One Premium, the Exchange believes it is appropriate as Internal Distributors have no subscribers outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive so that External Distributors have sufficient time to test the data within their own systems prior to going live externally. The Exchange believes extending the New External Distributor Credit for BZX Summary Depth from one (1) month to three (3) months is also equitable and reasonable, as it (along with simultaneous corresponding proposals by the Exchange's affiliates) ensures the proposed New External Distributor Credit for Cboe One Premium will continue to not cause the combined cost of subscribing to BZX, BYX, EDGA, and EDGX Summary Depth feeds for new External Distributors to be greater than those currently charged to subscribe to the Cboe One Premium feed.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78k–1.

[12] *See* 17 CFR 242.603.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed credits would apply to all External Distributors Cboe One Premium and BZX Depth on an equal and non-discriminatory basis. Further, the Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. Other exchanges are free to adopt a similar waiver if they choose. As discussed above, the proposed amendments are designed to enhance competition by providing an incentive to new Distributors to enlist new subscribers.

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 [13] and paragraph (f) of Rule 19b–4 [14] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

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–2022–015 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–2022–015. 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–2022–015 and should be submitted on or before April 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05982 Filed 3–21–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94431; File No. SR–NASDAQ–2022–006]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Approving Proposed Rule Change To Enable Exchange Participants To Enter Midpoint Extended Life Orders and M–ELO Plus Continuous Book Orders With an Immediate-or-Cancel Time-in-Force Instruction

March 16, 2022.

I. Introduction

On January 19, 2022, The Nasdaq Stock Market LLC (''Exchange'' or ''Nasdaq'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to enable Exchange participants to enter Midpoint Extended Life Orders (''M–ELOs'') and M–ELO Plus Continuous Book Orders (''M–ELO+CBs'') with an immediate-or-cancel (''IOC'') Time-in-Force (''TIF'') instruction. The proposed rule change was published for comment in the **Federal Register** on February 2, 2022.[3] The Commission has not received any comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

M–ELO is an order type with a non-display order attribute that is priced at the midpoint between the national best bid and national best offer (''NBBO'') and that will not be eligible to execute until a holding period of 10 milliseconds (''Holding Period'') has passed after acceptance of the order by the Exchange system.[4] Once a M–ELO becomes eligible to execute, the order may only execute against other eligible M–ELOs and M–ELO+CBs.[5]

M–ELO+CB is an order type that has all of the characteristics and attributes of a M–ELO, except that after satisfying its Holding Period, in addition to executing against other eligible M–ELO+CBs and M–ELOs, it may also execute against certain orders on the Exchange's continuous book.[6] Specifically, a M–ELO+CB may also execute against non-displayed orders with midpoint pegging and midpoint peg post-only orders (collectively, ''Midpoint Orders'') resting on the Exchange's continuous book, if: (1) The Midpoint Order has the midpoint trade now order attribute enabled; (2) the Midpoint Order has rested on the continuous book for at least 10 milliseconds after the NBBO midpoint falls within the limit price set by the participant; (3) no other order is resting on the continuous book that has a more aggressive price than the current NBBO midpoint; and (4) the Midpoint Order satisfies any minimum quantity requirement of the M–ELO+CB.[7]

Currently, M–ELOs and M–ELO+CBs may not be entered with a TIF of IOC.[8] The Exchange now proposes to amend Nasdaq Rule 4702(b)(14) to enable Exchange participants to enter M–ELOs and M–ELO+CBs with an IOC instruction.[9] As proposed, if a M–ELO or M–ELO+CB is entered with a TIF of IOC, it would execute against eligible resting interest immediately upon the expiration of the Holding Period.[10] If no eligible resting interest is available, or shares of the order remain unexecuted after trading against available eligible resting interest, then the system would automatically cancel the order or the remaining shares of the order, as applicable.[11] If the order is ineligible to begin the Holding Period upon entry (*i.e.,* the NBBO is crossed at the time of order entry, there is no NBB or NBO at the time of order entry, or the order is entered with a limit price that is not at or better than the NBBO midpoint), then the system would cancel the order immediately.[12]

As proposed, M–ELOs and M–ELO+CBs with a TIF of IOC would be subject to real-time surveillance to determine if they are being abused by

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 94076 (January 27, 2022), 87 FR 5926 (''Notice'').

[4] *See* Nasdaq Equity 4, Rule (''Rule'') 4702(b)(14).

[5] *See id.*

[6] *See* Nasdaq Rule 4702(b)(15).

[7] *See id.*

[8] *See* Nasdaq Rule 4702(b)(14)(B), (b)(15). An order with a TIF of IOC is one that is designated to deactivate immediately after determining whether the order is marketable. *See* Nasdaq Rule 4703(a)(1).

[9] *See* proposed Nasdaq Rule 4702(b)(14)(B). Because Nasdaq Rule 4702(b)(15) incorporates by reference the M–ELO characteristics and attributes set forth in Nasdaq Rule 4702(b)(14), the proposed rule change would also allow M–ELO+CBs to be entered with a TIF of IOC.

[10] *See* proposed Nasdaq Rule 4702(b)(14)(B).

[11] *See id.*

[12] *See id.;* Notice, *supra* note 3, at 5928.

market participants.[13] Moreover, as is the case for all other M–ELOs and M–ELO+CBs, the Exchange would monitor the use of M–ELOs and M–ELO+CBs with a TIF of IOC, with the intent to apply additional measures, as necessary, to ensure that their usage is appropriately tied to the intent of the order types.[14] The Exchange states that it is committed to determining whether there is opportunity or prevalence of behavior that is inconsistent with normal risk management behavior, such as excessive cancellations.[15] According to the Exchange, manipulative abuse is subject to potential disciplinary action under the Exchange's rules, and other behavior that is not necessarily manipulative but nonetheless frustrates the purposes of M–ELOs or M–ELO+CBs may be subject to penalties or other participant requirements to discourage such behavior, should it occur.[16]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed IOC functionality could make the use of M–ELOs and M–ELO+CBs more efficient for Exchange participants that choose to use these order types.[19] In particular, the proposed functionality could be attractive to Exchange participants that wish to enhance the efficiency of their decision-making process regarding whether to send additional M–ELOs or M–ELO+CBs to the Exchange or to seek liquidity elsewhere.[20] The proposed functionality could also enhance efficiency for Exchange participants that submit M–ELOs or M–ELO+CBs that do not satisfy the conditions for a Holding Period to commence upon order entry, because it would allow these orders to be cancelled immediately rather than be held by the system until such time as the conditions are met, and therefore allow these participants to more quickly assess whether they wish to submit new M–ELOs or M–ELO+CBs that would satisfy the conditions to commence a Holding Period upon entry.[21] Moreover, because M–ELOs and M–ELO+CBs are optional order types, if certain Exchange participants determine that the proposal would make these order types less attractive for their particular investment objectives, these participants may elect to reduce or eliminate their use of these order types.

In its original order approving M–ELO on the Exchange, the Commission stated its belief that the M–ELO order type could create additional and more efficient trading opportunities on the Exchange for investors with longer investment time horizons, including institutional investors, and could provide these investors with an ability to limit the information leakage and the market impact that could result from their orders.[22] In its order approving M–ELO+CB, the Commission stated its belief that, as with M–ELOs, M–ELO+CBs represent a reasonable effort to further enhance the ability of longer-term trading interest to participate effectively on an exchange.[23]

The Commission believes that the proposed IOC functionality for M–ELOs and M–ELO+CBs would not undermine the original intent of these order types. As proposed, these order types would continue to be available to market participants that are willing to wait a prescribed period of time following their order submission to receive a potential execution against other market participants that have similarly elected to forgo an immediate execution. As described above, the IOC instruction would activate only at the expiration of the Holding Period, rather than immediately upon order entry. In addition, while M–ELOs and M–ELO+CBs with an IOC instruction would be cancelled immediately upon entry if they do not meet the conditions to start the Holding Period at the time of entry, such cancellation would not depend on the availability of eligible resting interest on the Exchange, and therefore would not provide any indication of the availability of such interest on the Exchange. Finally, as described above, the Exchange will continue to conduct real-time surveillance and monitor the use of M–ELOs and M–ELO+CBs, including those with a TIF of IOC, to determine whether these order types are being abused by market participants and whether their usage is appropriately tied to the intent of the order types.[24]

Based on the foregoing, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NASDAQ–2022–006) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05979 Filed 3–21–22; 8:45 am]

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[13] *See* Notice, *supra* note 3, at 5928.

[14] *See id.*

[15] *See id.*

[16] *See id.*

[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] The Exchange states that institutional investors have approached the Exchange recently to request the ability to enter IOC instructions for M–ELOs and M–ELO+CBs. *See* Notice, *supra* note 3, at 5927. The Exchange also understands that some participants representing institutional investor orders have developed methods that mimic the functions of IOC. *See id.* at 5927 n.10.

[20] *See id.* at 5927.

[21] *See id.*

[22] *See* Securities Exchange Act Release No. 82825 (March 7, 2018), 83 FR 10937, 10938–39 (March 13, 2018) (order approving SR–NASDAQ–2017–074). The Commission also stated that the M–ELO order type is intended to provide additional execution opportunities on the Exchange for market participants that may not be as sensitive to very short-term changes in the NBBO and are willing to wait a prescribed period of time following their order submission to receive a potential execution against other market participants that have similarly elected to forgo an immediate execution. *See id.* at 10940. In addition, the Commission stated that the M–ELO order type is intended to mitigate the risk that an opportunistic low-latency trader will be able to execute against a member's order at a time that is disadvantageous to the member, such as just prior to a change in the NBBO. *See id.*

[23] *See* Securities Exchange Act Release No. 86938 (September 11, 2019), 84 FR 48978, 48980–81 (September 17, 2019) (order approving SR–NASDAQ–2019–048).

[24] *See supra* notes 13–16 and accompanying text.

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94435; File No. SR–Phlx–2022–11]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Market-Wide Circuit Breaker Pilot to April 18, 2022

March 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Equity 4, Rule 3101 to the close of business on April 18, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Equity 4, Rule 3101 to the close of business on April 18, 2022.

Background

The market-wide circuit breaker (''MWCB'') rules, including the Exchange's Rule 3101 under Equity 4, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Equity 4, Rule 3101).[3] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[4] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any extensions to the pilot period for the LULD Plan.[6] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[7] In light of the proposal to make the LULD Plan permanent, the Exchange amended Equity 4, Rule 3101 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[8] The Exchange subsequently filed to extend the Pilot Rules' effectiveness for an additional year to the close of business on October 18, 2020,[9] and later, on October 18, 2021.[10] The Exchange last extended the pilot to the close of business on March 18, 2022.[11]

The Exchange now proposes to amend Equity 4, Rule 3101 to extend the pilot to the close of business on April 18, 2022. This filing does not propose any substantive or additional changes to Rule 3101.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020.

In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[4] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equities exchanges invoke a MWCB Halt. *See, e.g.,* Options 3, Section 9(e).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[6] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–Phlx–2011–129) (Approval Order); and 68816 (February 1, 2013), 78 FR 9760 (February 11, 2013) (SR–Phlx–2013–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date).

[7] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[8] *See* Securities Exchange Act Release No. 85579 (April 9, 2019), 84 FR 15258 (April 15, 2019) (SR–Phlx–2019–12).

[9] *See* Securities Exchange Act Release No. 87206 (October 3, 2019), 84 FR 54234 (October 9, 2019) (SR–Phlx–2019–40).

[10] *See* Securities Exchange Act Release No. 90153 (October 9, 2020), 85 FR 65451 (October 15, 2020) (SR–Phlx–2020–46).

[11] *See* Securities Exchange Act Release No. 93281 (October 8, 2021), 86 FR 57216 (October 14, 2021) (SR–Phlx–2021–60).

intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[12]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020.

In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of the MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[13] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[14]

Proposal To Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the Exchange's Filing To Make the Pilot Rules Permanent

On July 16, 2021, the New York Stock Exchange (''NYSE'') proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[15] On August 27, 2021, the Commission extended its time to consider the proposed rule change to October 20, 2021.[16] On September 30, 2021, the Commission initiated proceedings to determine whether to approve or disapprove the proposed rule change by January 18, 2022.[17] On January 7, 2022, the Commission extended its time to issue an order approving or disapproving the proposed rule change, designating March 19, 2022 as the date by which the Commission would either approve or disapprove the proposed rule change.[18] On February 18, 2022, NYSE filed Partial Amendment No. 1 to SR–NYSE–2021–40.[19] The Exchange now proposes to extend the expiration date of the Pilot Rules to the end of business on April 18, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 3101 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional month would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from Pilot Rules should continue on a pilot basis because they will promote fair and orderly markets and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

Further, the Exchange understands that FINRA and other national securities

[12] *See https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_1.pdf; https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_2.pdf.*

[13] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[14] *See id.* at 46.

[15] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[16] *See* Securities Exchange Act Release No. 92785A (August 27, 2021), 86 FR 50202 (September 7, 2021) (SR–NYSE–2021–40).

[17] *See* Securities Exchange Act Release No. 93212 (September 30, 2021), 86 FR 55066 (October 5, 2021) (SR–NYSE–2021–40).

[18] *See* Securities Exchange Act Release No. 93933 (January 7, 2022), 87 FR 2189 (January 13, 2022) (SR–NYSE–2021–40).

[19] Partial Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nyse-2021-40/srnyse202140-20117319-268536.pdf.*

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [22] and Rule 19b–4(f)(6) thereunder.[23] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [24] and Rule 19b–4(f)(6)(iii) thereunder.[25]

A proposed rule change filed under Rule 19b–4(f)(6) [26] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[27] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on April 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[28]

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) [29] 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–Phlx–2022–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2022–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2022–11 and should be submitted on or before April 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05984 Filed 3–21–22; 8:45 am]

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[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4 requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78s(b)(2)(B).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94433; File No. SR–NASDAQ–2022–026]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Market-Wide Circuit Breaker Pilot to April 18, 2022

March 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Equity 4, Rule 4121 to the close of business on April 18, 2022.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Equity 4, Rule 4121 to the close of business on April 18, 2022.

Background

The market-wide circuit breaker (''MWCB'') rules, including the Exchange's Rule 4121 under Equity 4, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Equity 4, Rule 4121(a)–(c) and (f)).[3] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[4] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any extensions to the pilot period for the LULD Plan.[6] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[7] In light of the proposal to make the LULD Plan permanent, the Exchange amended Equity 4, Rule 4121 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[8] The Exchange subsequently filed to extend the Pilot Rules' effectiveness for an additional year to the close of business on October 18, 2020,[9] and later, on October 18, 2021.[10] The Exchange last extended the pilot to the close of business on March 18, 2022.[11]

The Exchange now proposes to amend Equity 4, Rule 4121 to extend the pilot to the close of business on April 18, 2022. This filing does not propose any substantive or additional changes to Rule 4121.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020.

In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[12]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading

[3] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[4] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equities exchanges invoke a MWCB Halt. *See, e.g.,* Options 3, Section 9(e).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[6] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–NASDAQ–2011–131) (Approval Order); and 68786 (January 31, 2013), 78 FR 8666 (February 6, 2013) (SR–NASDAQ–2013–021) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date).

[7] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[8] *See* Securities Exchange Act Release No. 85578 (April 9, 2019), 84 FR 15271 (April 15, 2019) (SR–NASDAQ–2019–027).

[9] *See* Securities Exchange Act Release No. 86944 (September 12, 2019), 84 FR 49141 (September 18, 2019) (SR–NASDAQ–2019–072).

[10] *See* Securities Exchange Act Release No. 90144 (October 9, 2020), 85 FR 65460 (October 15, 2020) (SR–NASDAQ–2020–068).

[11] *See* Securities Exchange Act Release No. 93296 (October 13, 2021), 86 FR 57864 (October 19, 2021) (SR–NASDAQ–2021–079).

[12] *See https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_1.pdf; https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_2.pdf.*

and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020.

In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of the MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[13] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[14]

[13] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[14] *See id.* at 46.

Proposal To Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the Exchange's Filing To Make the Pilot Rules Permanent

On July 16, 2021, the New York Stock Exchange (''NYSE'') proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[15] On August 27, 2021, the Commission extended its time to consider the proposed rule change to October 20, 2021.[16] On September 30, 2021, the Commission initiated proceedings to determine whether to approve or disapprove the proposed rule change by January 18, 2022.[17] On January 7, 2022, the Commission extended its time to issue an order approving or disapproving the proposed rule change, designating March 19, 2022 as the date by which the Commission would either approve or disapprove the proposed rule change.[18] On February 18, 2022, NYSE filed Partial Amendment No. 1 to SR–NYSE–2021–40.[19] The Exchange now proposes to extend the expiration date of the Pilot Rules to the end of business on April 18, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 4121 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional month would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

The Exchange also believes that the proposed rule change promotes just and equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from Pilot Rules should continue on a pilot basis because they will promote fair and orderly markets and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[22] and Rule 19b–4(f)(6) thereunder.[23] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if

[15] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[16] *See* Securities Exchange Act Release No. 92785A (August 27, 2021), 86 FR 50202 (September 7, 2021) (SR–NYSE–2021–40).

[17] *See* Securities Exchange Act Release No. 93212 (September 30, 2021), 86 FR 55066 (October 5, 2021) (SR–NYSE–2021–40).

[18] *See* Securities Exchange Act Release No. 93933 (January 7, 2022), 87 FR 2189 (January 13, 2022) (SR–NYSE–2021–40).

[19] Partial Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nyse-2021-40/srnyse202140-20117319-268536.pdf.*

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [24] and Rule 19b–4(f)(6)(iii) thereunder.[25]

A proposed rule change filed under Rule 19b–4(f)(6) [26] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[27] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on April 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[28]

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) [29] 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–NASDAQ–2022–026 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–026. 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–NASDAQ–2022–026 and should be submitted on or before April 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05983 Filed 3–21–22; 8:45 am]

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[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4 requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78s(b)(2)(B).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94441; File No. SR–NYSE–2021–40]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 To Adopt on a Permanent Basis the Pilot Program for Market-Wide Circuit Breakers in Rule 7.12

March 16, 2022.

I. Introduction

On July 2, 2021, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to make its rules governing the operation of Market-Wide Circuit Breakers (''MWCB'') permanent. The proposed rule change was published for comment in the **Federal Register** on July 22, 2021.[3] On August 27, 2021, the Commission designated a longer period within which to either approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed changes.[4] On September 30, 2021, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] On January 7, 2022, the Commission again designated a longer period within which to either approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed changes.[6] On February 28, 2022, the Exchange filed Amendment No. 1 to the proposed rule change.[7] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (SR–NYSE–2021–40) (''Notice'').

[4] See Securities Exchange Act Release No. 92785A, 86 FR 50202 (September 7, 2021).

[5] *See* Securities and Exchange Act Release No. 93212, 86 FR 50566 (October 5, 2021). The Commission instituted these proceedings to request comments regarding the Exchange's proposed testing requirement, which did not contemplate an ongoing assessment of whether the MWCB design remains appropriate over time, nor require the Exchange to participate in testing.

[6] *See* Securities Exchange Act Release No. 93933, 87 FR 2189 (January 13, 2022).

[7] In Amendment No. 1, the Exchange revised the proposal to: (1) Explain options market enhancements following the March 2020 MWCBs events to eliminate latency in their responses to

Commission has received no comments on the proposed rule change. The Commission is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Background

MWCBs are coordinated, cross-market trading halts designed to operate during extreme market-wide declines to provide opportunities for markets and market participants to assess market conditions and systemic stress. Each cash equity exchange and options exchange have rules that govern the operation of these MWCBs. The Commission first approved MWCB rules on a pilot basis in 1988 [8] following the market crash in October 1987.[9] These rules provided for a one-hour halt across all securities markets if the Dow Jones Industrial Average (''DJIA'') declined 250 points from the previous day's closing level and for a two-hour halt if the DJIA declined 400 points from the previous day's close.[10] The Commission approved amendments to MWCB rules in July 1996 to reduce the duration of the 250- and 400- point halts to 30 minutes and 60 minutes from one hour and two hours, respectively.[11] Subsequently, the Commission approved modifications to raise the point triggers to 350 points and 550 points in 1997.[12] In its order approving these changes, the Commission noted the importance of revisiting these triggers over time and stated that it would work with the markets and the Commodities and Futures Trading Commission (''CFTC'') to develop procedures for reevaluating the triggers on at least an annual basis.[13]

An MWCB was triggered for the first time on October 27, 1997, when the market dropped 350 points, representing a decline of 4.5%.[14] After a 30-minute halt, the market declined again, reaching the 550-point trigger, representing a total decline of 7%.[15] After studying the events of that day, the Commission approved revised MCWB rules on a pilot basis. These rules established trading halts following one-day declines in the DJIA of 10%, 20%, and 30%, rather than at specific point declines, to be calculated at the beginning of each calendar quarter using the average closing value of the DJIA for the previous month to establish specific point values for the quarter.[16] Under these revised MWCB rules, trading would halt for one hour if the DJIA declined 10% prior to 2:00 p.m., and for one-half hour if the DJIA declined 10% between 2:00 p.m. and 2:30 p.m.[17] If the DJIA declined by 10% at or after 2:30 p.m., trading would not halt at the 10% level.[18] If the DJIA declined 20% prior to 1:00 p.m., trading would halt for two hours; trading would halt for one hour if the DJIA declined 20% between 1:00 p.m. and 2:00 p.m., and for the remainder of the day if a 20% decline occurred at or after 2:00 p.m.[19] If the DJIA declined 30% at any time, trading will halt for the remainder of the day.[20]

On May 6, 2010, the markets sharply dropped 9%, but did not reach the 10% MWCB, before rebounding (the ''Flash Crash''). Following these events, in 2012 the Commission approved several modifications to MWCB rules (the ''Pilot Rules'') that were designed to make them more meaningful in high-speed, electronic trading environments.[21] The MWCB triggers were lowered to 7% (''Level 1''), 13% (''Level 2''), and 20% (''Level 3''); the DJIA was replaced with the S&P 500® Index (''S&P 500'') as the reference index; the recalculation of the values of the triggers was changed to daily instead of each calendar quarter; the length of the trading halts associated with each market decline level was shortened from 30 minutes to 15 minutes; and the times when a trading halt may be triggered were modified.[22] Specifically, these rules provided that if a Level 1 or Level 2 trigger was hit before 3:25 p.m., trading would halt for 15 minutes, and if a Level 1 or Level 2 trigger was hit at or after 3:25 p.m., trading would continue, unless a Level 3 trigger was hit.[23] If a Level 3 trigger was hit at any time, trading would halt for the rest of the day.[24]

The modified thresholds in the Pilot Rules were not triggered for the first time until March 2020 when MWCB Level 1 halts occurred on March 9, 12, 16, and 18, 2020.[25] In response to these events, a task force comprised of the SROs and industry participants [26] reviewed the events and concluded that the MWCBs had performed as expected and recommended that no changes be made to the MWCB rules.[27] In 2020, the SROs conducted a more complete study of the design and operation of the Pilot Rules and the National Market System (''NMS'') Plan to Address Extraordinary Market Volatility (''Limit Up-Limit Down'' or ''LULD'') during the period of volatility in the Spring of 2020. The SROs created an MWCB ''Working Group'' composed of SRO

MWCB halt messages; (2) reflect that the pilot period of the Rule 7.12 (MWCB Rule) expires on March 18, 2022; (3) require that the Exchange participate in all industry-wide tests of the MWCBs; (4) require members participating in MWCB tests to notify the Exchange of any inability to process messages relating to the MWCB test, records of which would be retained by the Exchange along with records of the Exchange's own participation in the test; (5) require the Exchange, along with the other SROs, to prepare and submit a report containing an analysis of any MWCB event and recommendations to the Commission within six months of a halt being triggered following a Level 1, Level 2, or Level 3 Market Decline; and (6) require the Exchange, together with the other SROs, to review the MWCB in the event of 5% market declines and any time an SRO makes changes to MWCB reopening processes, and provide a report to the Commission concerning such review should a modification to the MWCB be recommended. Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-nyse-2021-40/srnyse202140.htm*.

[8] *See* Securities Exchange Act Release Nos. 26198 (October 19, 1988), 53 FR 41637 (October 24, 1988) (approving MWCB rules for Amex, CBOE, NASD, and NYSE); 26218 (October 26, 1988), 53 FR 44127 (November 1, 1988) (approving rules for CHX); 26357 (December 14, 1988), 53 FR 51182 (December 20, 1988) (approving rules for BSE); 26368 (December 16, 1988), 53 FR 51942 (December 23, 1988) (approving rules for PSE); 26386 (December 22, 1988), 53 FR 52904 (December 29, 1998) (approving rules for PHLX); and 26440 (January 10, 1989), 54 FR 1830 (January 17, 1989) (approving rules for CSE).

[9] The events of October 19, 1987 are described more fully in a report by the staff of the Commission's Division of Market Regulation. *See* ''The October 1987 Market Break, A Report by the Division of Market Regulation'' (February 1988).

[10] *See supra* note 8.

[11] *See* Securities Exchange Act Release Nos. 37457 (July 19, 1996), 61 FR 39176 (July 26, 1996) (SR–NYSE–96–09); 37458 (July 19, 1996), 61 FR 39167 (July 26, 1996) (SR–Amex–96–13); and 37459 (July 19, 1996), 61 FR 39172 (July 26, 1996) (SR–BSE–96–4; SR–CBOE–96–27; SR–CHX–96–20; SR–Phlx–96–12).

[12] *See* Securities Exchange Act Release No. 38221 (January 31, 1997), 62 FR 5871 (February 7, 1997).

[13] *See id.* at 5875.

[14] The events of October 27, 1997 are described more fully in a report by the staff of the Commission's Division of Market Regulation. *See* ''Trading Analysis Findings of October 27 and October 28, 1997'' (Sept. 1998), *available at https://www.sec.gov/news/studies/tradrep.htm#FOOTNOTE_24*.

[15] *See id.*

[16] *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998), at 18478.

[17] *See id.*

[18] *See id.*

[19] *See id.*

[20] *See id.*

[21] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012).

[22] *See id.* at 33532.

[23] *See id.*

[24] *See id.*

[25] For a full description of the trading halts on March 9, 12, 14, and 16, *see* Notice at 38777–78.

[26] This task force was formed in late 2019, prior to the MWCB events in 2020, to evaluate the operation and design of the MWCB mechanism. *See* Securities Exchange Act Release No. 85560 (April 9, 2019), 84 FR 15247 (April 15, 2019) (SR–NYSE–2019–19). The task force made two recommendations after reviewing the MWCB events in 2020: (1) Futures markets should change the S&P 500 futures market volatility threshold from 5% to 7% to better align with the securities market MWCB Level 1 threshold of 7% and 2) futures markets should resume trading in S&P 500 futures contracts 5 minutes before end of MWCB halt. The futures markets have made changes to address these two recommendations, as discussed further below. *See supra* note 96.

[27] *See id.* at 38778.

representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group prepared a study (the ''Study''),[28] which includes a timeline of the MWCB events in March 2020; a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

III. Description of the Proposal, as Modified by Amendment No. 1

Based on the conclusions and recommendations reached by the Working Group after analyzing how the MWCBs performed in March 2020, the Exchange is proposing to transition the Pilot Rules [29] to operate on a permanent basis, as modified by Amendment No. 1.

IV. Discussion and Commission Findings

After careful consideration, the Commission finds that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the Exchange's proposed rule change is consistent with Section 6(b)(5) of the Act,[30] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.[31]

In its proposal to make the MWCB rules permanent in their current form, the Exchange considered whether the MWCBs functioned as designed, and whether the MWCBs calmed volatility without causing harm. The Exchange also examined the specific characteristics of the MWCBs: (1) Trigger levels; (2) trading halt times; and (3) use of the S&P 500 Index (''SPX'') as the reference for the MWCB mechanism. Further, the Exchange evaluated the impact of LULD Amendment 10 on the MWCB mechanism, whether changes should be made to MWCBs to prevent the market from halting shortly after the beginning of regular trading hours, and whether excessive LULD pauses should trigger a MWCB halt. Finally, the Exchange discussed the requirements for industry participants to test the operation of the MWCBs at least annually. Each of these elements are discussed in greater detail below.

A. MWCB Operation and Effect on Market Volatility

The Exchange finds that the MWCBs (1) operated as intended during the period in March considered in the Study [32] and (2) had the intended effect of calming volatility in the market without causing harm.[33] The Exchange considered the findings of the Study, including the effectiveness of communications instructing market participants to initiate an MWCB Halt, volatility and liquidity preceding and following the MWCB Halts, various measures of liquidity during MWCB Halts, and additional LULD halts following MWCB reopening auctions. As discussed further below, the Commission believes that the MWCBs operated as designed, appropriately halting trading and facilitating reopening auctions in NMS stocks. The Commission believes that the evidence, however, is not conclusive regarding the MWCB's effect on calming market volatility, although the Commission does believe that the MWCBs did not appear to harm the market.

1. MWCB Operated as Designed

On March 9, 12, 16, and 18, 2020, market conditions indicated that a Level 1 MWCB halt was likely to occur.[34] On each of these days, the Exchange activated an ''Intermarket Bridge'' call and sent an email alert to a pre-existing distribution list comprising multiple staff from securities and futures exchanges, FINRA, the Commission, the CFTC, the Depository Trust & Clearing Corporation, and the Options Clearing Corporation.[35] On each day when a Level 1 MWCB Halt was triggered, the call opened before the halt was triggered and remained open during the entire period of the halt, until trading in all symbols was reopened.[36] When SPX declined 7% from the previous day's closing value, breaching the MWCB Level 1 trigger, breach messages and regulatory halt messages were sent to relevant market participants.[37] Following these messages, all 9,000+ equity symbols were halted in a timely manner.[38] Further, approximately 900,000 options series were halted once regulatory halt messages were received by the options markets.[39] However, a relatively small number of options traded following the MWCB Halt messages.[40] Finally, on each of the four days where MWCB Halts were triggered, all SPX stocks reopened within 15 minutes of the end of the MWCB Halt.[41]

The Commission believes that the mechanism for communicating and initiating MWCB Halts worked as intended during March 2020. Prior to the triggering of the MWCB Halts, the SROs and industry members were actively monitoring market conditions in anticipation of an MWCB Halt. Before, during, and after the MWCB Halts occurred, the relevant SROs and regulators remained in communication about the implementation of an MWCB Halt and reopening. Additionally, all equity symbols subject to the MWCB were successfully halted in a timely manner, and while a small percentage of options continued trading during the MWCBs, the vast majority of affected options series halted following the initiation of the MWCBs. Furthermore, remedial steps have been taken by options exchanges to prevent trades from occurring following a future MWCB Halt.[42] Finally, all SPX symbols reopened within 15 minutes of the end of the MWCB Halts, and all securities had reopened within 30 minutes of the end of the MWCB Halt.[43]

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[28] *See* ''Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,'' submitted March 31, 2021 (the ''Study''), attached hereto as Exhibit 3 [sic] and available at Exhibit 3 [sic] (sec.gov).

[29] NYSE Rule 7.12.

[30] 15 U.S.C. 78f(b)(5).

[31] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f). *See* also, supra Sections IV(A)(2)(f), IV(B), IV(C), and IV(D).

[32] *See* Notice, *supra* note 3, at 10.

[33] *See id.* at 12.

[34] *See id.* at 10.

[35] *See id.*

[36] *See id.*

[37] *See id.*

[38] *See id.*

[39] As noted by the Exchange, options markets are required to halt trading in options if there is an MWCB Halt in the cash equities market. *See* Study, *supra* note 27, at 3.

[40] Approximately 5,000 options trades that were sent to OPRA after the time of the four MWCB Halts were nullified. *See id.* Additionally, approximately 4,400 futures and options on futures traded for one minute following the initiation of the MWCB Halt. *See id.* at 11. The Exchange states that it understands that the Nasdaq options markets made a number of enhancements to internal systems to eliminate latency in the Nasdaq options markets' response to MWCB halt messages. *See* Amendment No. 1, *supra* note 7, at 3.

[41] *See* Notice, *supra* note 3, at 17.

[42] *See* Amendment No. 1, *supra* note 7, at 3.

[43] The MWCB Pilot Rules do not prescribe a time in which securities trading must resume following the halt. These rules require that trading halt for 15 minutes, after which exchanges may resume trading based on their rules governing reopening auctions

2. Effect of MWCB Halts on Volatility and Market Functioning

The Study evaluated the effects of the MWCB Halts in March 2020 on market volatility and functioning by examining various measurements of liquidity and volatility following each of the March 2020 MWCB Halts and comparing them to liquidity and volatility measurements of other trading periods.[44] In particular, the Study reviewed: (1) Activity before the opening of regular trading hours and the number of securities opening on a trade vs. opening on a quote; (2) size and liquidity in the opening auctions and post-MWCB halt reopening auctions; (3) quote volatility as measured by the median mid-point to mid-point price change every second in basis points; (4) liquidity at the national best bid and offer (''NBBO''); and (5) LULD Trading Pauses following MWCB reopening auctions.[45] The Exchange concludes that, based on the liquidity and volatility measures reviewed in the Study and discussed below, the MWCBs had the intended effect of calming volatility in the market, without causing harm.[46]

a. Activity Before the Opening of Regular Trading Hours and the Number of Securities Opening on a Trade vs. Opening on a Quote

The Study examined liquidity and volatility in the SPDR S&P 500 Trust ETF (''SPY'') prior to the market open on the four days where MWCB Halts occurred.[47] Generally, pre-market early morning trading activity is fairly limited. However, during the High-Volatility Period,[48] and particularly during the four days where an MWCB Halt was triggered, pre-market trading activity was significantly higher.[49] On the four MWCB Halt days, roughly five to nine times the number of shares traded in pre-market trading, relative to January 2020 levels.[50] Further, SPYs pre-market price range on those four days was up to ten times larger than what was typical in January 2020.[51] These levels indicate that markets were experiencing significant volatility prior to the MWCB being triggered.

The Study also reviewed whether there were any differences between the number of securities opened on a trade vs. opened on a quote during the four days with MWCB Halts.[52] The Study found that there was no meaningful difference in the percentage of securities opening on a trade versus quote during January 2020, MWCB Halt days, or the High-Volatility Period.[53] The one exception to this, however, was with respect to Tier 2 ETPs, which had a higher percentage of openings on a trade on each of the four MWCB Halt days than in January or during the High-Volatility Period.[54] Further, for most groups of securities, there was not a significant difference in the percentage of securities opening on a trade during reopening versus the open.[55] To the extent a difference did exist for certain classes of securities, this does not necessarily reflect inferior market function, as the reopening auctions examined were for securities that had opened prior to the MWCB Halts.[56] Therefore, the Study noted that it would expect there to be less interest represented in those reopening auctions.

b. Size and Liquidity of Opening and Reopening Auction

To assess the effect of MWCB Halts on available liquidity, the Study reviewed the liquidity available in the reopening auctions following an MWCB Halt and compared it to the average volume in opening auctions during other trading periods. The Study first compared (i) the median opening auction in share volume in January 2020, (ii) the median opening auction volumes in the High-Volatility Period, and (iii) the median volumes in shares traded in the reopening auctions following the MWCB Halts for symbols that had already executed opening auctions.[57] The Study found that given how many securities had already opened before the four MWCB Halts, the size of the reopening auctions were somewhat smaller than the opening auctions.

The Study also compared the size of the opening auctions plus reopening auctions following the MWCB Halts on the MWCB Halt days to the size of opening auctions in January 2020. The Study concluded that the MWCB Halts did not result in a loss of liquidity overall in the opening and reopening auctions. This was demonstrated, according to the Study, because the opening auction plus MWCB reopening auction volumes on the MWCB Halt days hewed closely to the January 2020 auction volumes.[58]

The Study also reviewed the March 16 MWCB Halt (which took place almost immediately upon the market open at 9:30:01 a.m.) and reopen.[59] The Study found that the size of the reopening auctions after the March 16 MWCB Halt were similar to opening auction volumes in January 2020.[60] This suggests, according to the Study, that MWCB Halts did not cause a significant deterioration in market liquidity.

The Study also assessed the nature of participation in reopening auctions. First, the Study assessed the participation of market makers in reopening auctions following MWCB Halts by reviewing principal versus agency activity in opening and MWCB reopening auctions.[61] In particular, the Study showed that the share of principal transactions in opening auctions on MWCB days was higher as compared to control periods.[62] Furthermore, the Study showed that while principal activity was lower in the MWCB reopening auctions, principal auction participation generally increased with each MWCB event.[63]

and trade resumption. See NYSE Rules 7.12 and 7.35A.

[44] *See Study, supra* note 27, at 12. The other trading periods include the month of January 2020 and the period from February 24 through May 1, 2020, excluding the four days with MWCB Halts (''High-Volatility Period'')

[45] *See id.*

[46] *See* Notice, *supra* note 3, at 12.

[47] *See* Study, *supra* note 27, at 13.

[48] Capitalized terms used but not defined herein have the meanings specified in the Study.

[49] *See* Study, *supra* note 27, at 13

[50] *See id.*

[51] *See id.*

[52] *See id.* at 14–15. The Exchange notes that it does not express any opinion about whether opening on a trade is preferable to opening on a quote.

[53] *See id.*

[54] *See id.*

[55] *See id.* The Commission notes that the Study does show a notable difference in the percentage of securities opening on a trade during the reopen versus the open for certain Tier 2 securities including ETPs and Non-ETPs. *See id.* at 14 (Chart 2, G4 and G5 graphs). However, as discussed in the Study, this does not necessarily reflect inferior market functioning. *See* Id.

[56] *See id.*

[57] *See id* at 15.

[58] *See id.* at 15–16. The Study notes that the March 18 MWCB event was excluded from this analysis since the MWCB Halt that day occurred midday rather than the early morning. *Id.*

[59] *See id.*

[60] The Study noted that when the March 16 Halt occurred, many securities had not yet started trading or quoting. Despite this, the size of the reopening auctions were similar to the opening auction volumes in January 2020. *See id.*

[61] *See id.* The Study noted that liquidity providers typically act as principal on such transactions and therefore principal trades are a proxy for trading by liquidity providers. *See id.* at 17. The Commission notes that the Study does not distinguish riskless principal trading by market makers and therefore some of the ''principal'' market maker interest may have represented as either retail or institutional customer interest. However, the Commission believes that this distinction does not significantly alter the broader analysis showing that the market appropriately reopened following each of the events, and market participants were able to resume trading in a normal fashion without apparent harmful impacts to either the auction processes or market liquidity.

[62] *See id.* at 17–18.

[63] *See id.*

Second, the Study looked at the top five market participants by volume during January 2020 and reviewed their involvement in MWCB reopening auctions.[64] The Study found that, compared to January 2020, their share of transactions in reopening auctions was higher than their share of opening auctions on days where an MWCB Halt was triggered.[65] According to the Study, these results suggest that the most active market participants were important providers of liquidity in the MWCB reopening auctions.[66]

c. Quote Volatility

The Study also reviewed the volatility of quoted equity prices before and after MWCB Halts were initiated as another method of testing the effects of MWCB Halts on liquidity and volatility.[67] As discussed above, following an MWCB Halt, if MWCBs perform as intended, volatility should decline as markets and market participants have the opportunity to assess market conditions and systemic stress. The Study concluded that MWCB Halts performed in this manner.

The Study reviewed the median second-to-second quote volatility before and after the MWCB Halts, as well as second-to-second quote volatility during January 2020 and the High-Volatility Period.[68] The Study stated that although second-to-second quote volatility was higher on the four MWCB days as compared to during January 2020 and the High-Volatility Period, volatility fell or stabilized following MWCB Halts.[69] Further, The Study concluded that during the four days where an MWCB was triggered, volatility fell to a level similar with the High-Volatility Period.[70] For Tier 1 and Tier 2 ETPs, volatility fell further and stabilized near January 2020 levels, although the Study recognized brief spikes in volatility midday on March 12 and March 18.[71] The Study asserted that market stabilization may be an indication that the MWCB Halts helped to calm the market, since volatility did not continue to escalate throughout the day.[72]

d. Liquidity at the NBBO

The Working Group also examined the intraday median quoted size (*i.e.,* number of shares) at the NBBO on days when MWCB Halts were triggered to understand the impact of the MWCB Halts on liquidity.[73] Specifically, the Study looked at two time periods: (1) 9:30 a.m.–9:34 a.m. and (2) 12:50 p.m.–12:55 p.m. Generally, when compared to January 2020 and the High-Volatility Period, the median size at the NBBO in the 9:30 a.m.–9:34 a.m. was smaller on days where an MWCB Halt was triggered.[74] However, on the three days with early morning MWCB Halts, many stocks did not open at 9:30 a.m. and many stocks also did not open on primary exchanges until after trading resumed following MWCB Halts, possibly explaining the relatively small size at the median NBBO.[75] Further, on March 18, when there was no early morning MWCB Halt and the only MWCB Halt took place in the afternoon, early morning liquidity was similar to the High-Volatility Period, and liquidity during the 12:50 p.m.–12:55 p.m. period was similar to January 2020 levels in most groups of securities.[76]

e. LULD Trading Pauses Following MWCB Reopening Auctions

Finally, the Study reviewed the number of LULD pauses following reopenings after MWCB Halts.[77] A significant increase in the number of LULD pauses may suggest that MWCBs did not serve their purpose of reducing volatility, or that adjustments need to be made to the reopening process, according to the Study.[78] A large number of LULD pauses may also suggest that reopenings occurred too quickly and the market did not have sufficient time to reprice.[79] The Study also distinguished limit up and limit down LULD pauses.[80] Generally, there were more limit up LULD pauses than limit down following MWCB reopening auctions.[81] This result is unsurprising as markets bounced back following large drops at the open, according to the Study.[82]

Having reviewed the findings of the Study, the Exchange concludes that the MWCB Halts triggered in March 2020 appeared to have the intended effect of calming volatility.[83] Specifically the Exchange found that (i) there was not a significant difference in the percentage of securities opening on a trade vs. quote during the MWCB days versus other periods reviewed; (ii) the size of MWCB reopening plus the initial opening for those days were on average equal to opening auction sizes during January 2020; (iii) securities in SPX opened relatively quickly following the MWCB Halt; (iv) volatility stabilized following MWCB Halt days and reached levels similar to other periods studied; and (v) the LULD mechanisms following MWCB Halts worked as designed to address intra-day volatility.[84] Based on the Exchange's conclusion that the MWCBs worked as intended, and calmed volatility without causing harm, it is proposing to make the MWCB rules permanent, as modified by Amendment No. 1. The MWCB rules include three main operational components, the trigger levels, halt times, and reference value, and a testing requirement. The Exchange addressed each of these in its proposed rule change, discussed further below.

f. Commission Assessment of MWCB Effect on Market Volatility and Market Functioning

While the Commission believes that the mechanism for communicating and initiating MWCB Halts and resumption of trading worked as intended during March 2020 as discussed above, we believe the evidence is less conclusive regarding the MWCB's effect on calming market volatility. For example, the Commission believes that the analysis regarding quote volatility is inconclusive. First, because three events occurred at the beginning of the trading day, the Study could not compare U.S. equity quote volatility before and after the MWCB event; rather it could only describe quote volatility after the MWCB event. Second, while the Study's analysis shows quote volatility decreasing following the MWCB halts, it does not necessarily lead to the conclusion that the MWCB halts caused

[64] *See id.*

[65] *See id.*

[66] The Commission notes, however, that it is not clear from the Study whether the reopening liquidity represented by the top five firms was due to their principal trading interest or agency customer orders (whether retail or institutional) routed to participate in the reopening auctions. However, the Commission believes that this distinction does not significantly alter the broader analysis showing that the market appropriately reopened following each of the events, and market participants were able to resume trading in a normal fashion without apparent harmful impacts to either the auction processes or market liquidity.

[67] *See id* at 22.

[68] *See id.*

[69] *See id.*

[70] *See id* at 23.

[71] *See id.*

[72] *See id.*

[73] *See id* at 25.

[74] *See id.* The Commission notes, however, that the Study shows that for G1 securities, median size at the NBBO was larger on March 9 than both January 2020 and the High-Volatility Period. G2 securities median size at the NBBO on March 12 was higher than the January period but lower than the High-Volatility Period. *See id.*

[75] *See id.*

[76] *See id.*

[77] *See id* at 20.

[78] *See id.*

[79] *See id.*

[80] *See id.*

[81] The March 18 MWCB reopening auction was the one exception to this trend, where the levels of limit up and limit down LULD pauses were similar. *See id.*

[82] *See id.*

[83] *See id.* at 22.

[84] *See id.* at 23.

quote volatility to decrease. Indeed, the quote volatility metrics described in the study are broadly consistent with the natural and well-known volatility dynamic in the U.S. equity market where volatility tends to be highest at the beginning of the trading day, decreases as the trading day progresses, and then increases again as the trading day approaches the close.[85] Third, the Study does describe some volatility analysis that shows volatility increasing for some stocks after some of the MWCB events and market reopenings, although again, it is not clear whether that volatility increase was caused by the MWCB.[86] The analysis is complicated further by the fact that three of the MWCB events in March occurred at the beginning of the trading day, preventing any comparison of the volatility of securities trading before the MWCB event with volatility after the MWCB event.[87]

Based on information available to analyze the MWCB's impact on market volatility, the Commission believes that the evidence provided in the Study generally indicates that the MWCB did not cause harm to the market. One concern with the three MWCB events occurring at the open of the trading day was that it could harm the opening process for equity securities, for example. The Study provides evidence that the size of the opening and MWCB reopening auctions, in tandem, was similar in size to the opening auction in other time periods considered.[88] Furthermore, on each of the four MWCB event days, the Study showed that there was no meaningful difference in the percentage of securities opening on a trade versus opening on a quote, with the exception of Tier 2 ETPs, which had a higher percentage opening on a trade on each of those days.[89] The Study's look at liquidity by measuring size at the NBBO does not present evidence which indicates the MWCB Halts had a significant impact on the liquidity available at the NBBO. While the Study showed that there was less size at the NBBO on the three MWCB event days that occurred at the beginning of the trading day, that result is not surprising given many stocks did not open until trading resumed after the MWCB reopening.[90] Additionally, the Study's observation of a drop in size at the NBBO around 1:30 p.m. for G4 and G5 securities on March 18 is not particularly concerning, given that by 2 p.m. size at the NBBO in these securities were back to normal.[91] Finally, the March 18 event analysis shows that on the day the MWCB was triggered in the middle of the trading day, size at the NBBO leading up to the MWCB event was similar to January 2020 levels and was slightly larger for non-ETPs when compared to the remainder of the High-Volatility Period.[92]

In sum, the Commission believes that the MWCB operated appropriately as designed. While the MWCB impact on volatility is inconclusive, evidence shows that the MWCB effectively halted the market after the Level 1 threshold was reached on each of the four days in March 2020. The market appropriately reopened following each of the events, and market participants were able to resume trading in a normal fashion without apparent harmful impacts to either the auction processes or market liquidity. It is also notable that while the Pilot Rules approved in 2012 had never previously been triggered, the four events in March 2020 have provided market participants with significant experience with the current MWCB design. This familiarity with how the mechanism operates should further support a fair and orderly market function in the event of a future MWCB halt.[93] Finally, the Exchange's proposed testing provisions, along with the provisions requiring an analysis and report to the Commission should future MWCB events occur and a commitment to review the MWCB in the event of 5% market declines and changes to MWCB reopening processes, will help ensure that the MWCB design remains appropriate as market conditions and structure change over time. For these reasons, the Commission finds that the Exchange's proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges. In particular, the Commission finds that the Exchange's proposed rule change is consistent with Section 6(b)(5) of the Act,[94] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission discusses below each of the key elements of the MWCB in more detail.

B. MWCB Threshold Levels

Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3).[95] Based on the analysis of these levels, the Exchange is proposing to make this aspect of the MWCB rules permanent.[96] In conducting its Study following the March 2020 MWCB trading halts, the Working Group examined historical data on large-scale market declines. It also considered the recommendation of the Equity Market Structure Advisory Committee's (''EMSAC'') Subcommittee on Market Quality from 2016 suggesting that the Level 1 trigger should be adjusted to 10% based on evidence from the Chinese markets that indicated that when markets began to approach a 7% band, selling pressure increase as market participants tried to complete trades before trading halted.[97]

The Study observed that since 1962, intraday losses as large as 7% in SPX have occurred only 16 times, and that the four times that such losses did occur since the implementation of the LULD Plan were the four dates in March 2020

[85] *See, e.g.,* Robert A. Wood, Thomas H. McInish, and J. Keith Ord., ''Investigation of Transactions Data for NYSE Stocks,'' 40 *The Journal of Finance* (1985).

[86] *See* Study, *supra* note 27, at 23–25. For example, when comparing Charts 8 and 10 of the Study, volatility appears to increase for Tier 2 securities after the three morning MWCB Halts when compared to the 9:30–9:35 a.m. periods. Additionally, after the midday March 18 MWCB Halt, it appears from Chart 9 of the Study that volatility rose in some securities. *Id.* We note, however, that the Study does not demonstrate a causal link between the MWCB Halts and the volatility increases in these instances.

[87] The Commission recognizes the challenges in empirically demonstrating a statistically significant causal relationship between MWCBs and volatility because MWCBs are rare events that occur during times of heightened volatility.

[88] *See id.* at 16.

[89] *See id.* at 14.

[90] *See id.* at 25.

[91] *See id.* at 25–27.

[92] *See id.*

[93] *See id.* at 18–21 (showing some evidence of increasing principal participation with each MWCB event).

[94] 15 U.S.C. 78f(b)(5).

[95] *See* NYSE Rule 7.12(a)(i)–(iii).

[96] *See* Notice, *supra* note 3, at 38778. The Exchange also noted that the Chicago Mercantile Exchange (''CME'') considered whether changes could be made to better align the cash and futures market. *See* Study, *supra* note 27, at 7. Specifically, CME considered whether the futures limit-down percentage should be widened to 7% from a 5% level. Id. Ultimately, on October 12, 2020, CME decided to implement a 7% price limit for overnight trading hours in certain futures and options on futures. *See* CME Submission No. 20–392, dated September 25, 2020.

[97] *See* EMSAC Recommendations for Rulemaking on Issues of Market Quality, July 25, 2016, *available at https://www.sec.gov/spotlight/emsac/emsac-market-quality-subcommittee-recomendation-072516.pdf.*

that triggered the MWCB Halts.[98] The Study further noted that since the LULD Plan was implemented, there have been only five days where SPX fell as much as 6%, and all took place during the March 9–March 18, 2020 time period.[99] The Study observed that on March 11, 2020 the index fell as much as 6.07%, but did not continue lower to trigger a Level 1 MWCB halt at 7%.[100] On March 16, 2020, SPX declined enough to trigger a Level 1 halt, and continued to fall after reopening down 12.18%, but did not fall to the 13% trigger for a Level 2 halt, according to the Study.[101] The Study also noted that on March 9, 12, and 18, 2020, SPX also declined further after the Level 1 halt, with intraday lows of –8.01%, –9.58%, and –9.83%.[102] The Study concluded that the fact that SPX continued to decline after the halt at 7% suggests that ''the market found an equilibrium level that was not particularly tied to the 7% Level 1 trigger or the 13% Level 2 trigger.'' [103] The Study further concluded that the available evidence supports a conclusion that the current 7% and 13% triggers did not create a ''magnet effect.'' [104] The Exchange has represented that it agrees with this analysis and therefore is proposing that the MWCB trigger levels be permanently approved without change.[105]

The Commission believes that the Level 1 (7%), Level 2 (13%), and Level 3 (20%) thresholds are appropriate levels of market decline at which the MWCB halts are triggered. The Commission has reviewed the levels at which the MWCBs are triggered on several occasions following sharp declines in the markets and has made adjustments over the last three decades to ensure the thresholds remain meaningful as the markets evolve. The initial MWCB rules, approved in 1988, established thresholds based on DJIA point values of 250 and 400, which at the time represented market declines of 12% and 19%, respectively.[106] Years later, it became clear that the thresholds needed to be updated to keep up with changes in the market. Stock prices had risen substantially since the MWCBs were first approved, such that by July 1996, a 250-point decline and a 400-point decline, represented declines of the DJIA of only 4.5% and 7%, respectively.[107] In 1997, the Commission approved proposals to increase the thresholds to 350 points and 550 points.[108] After the MWCB halts were triggered in October 1997, the industry concluded that the thresholds were too low, as they were triggered at declines of only 4.54% and 7.18%, which the industry believed did not justify halts in trading.[109] The Commission subsequently approved modifications to base the thresholds on a percentage of market decline instead of a point decline and set them at 10%, 20% and 30%.[110] The market sharply declined 9% in the Flash Crash on May 6, 2010, which was not enough to trigger a Level 1 MWCB halt. Amidst concerns that events such as the Flash Crash could seriously undermine the integrity of the U.S. securities markets, in 2012, as discussed above, the Commission again approved modification to the thresholds, and lowered the Level 1 and Level 2 thresholds to 7% and 13%, respectively.[111]

The MWCB thresholds set in 2012 have been in place on a pilot basis since their approval and were not reached until the market declines experienced in March 2020.[112] Over the last 18 months, the SROs, Industry Members, and the Commission have had an opportunity to study data from these events and consider whether the current trigger levels are appropriately set. The Commission believes that data and analysis in the Study, in addition to the lessons learned since the original implementation of circuit breakers in 1988, support a conclusion that the current MWCB threshold levels represent appropriate levels of decline in NMS stocks that warrant a temporary halt, in the case of a Level 1 and Level 2 decline, or a halt for the remainder of the day, in the event of a Level 3. Furthermore, as discussed above, the Exchange's proposed testing provisions, along with the provisions requiring an analysis and report to the Commission should future MWCB events occur and a commitment to review the MWCB in the event of 5% market declines and changes to MWCB reopening processes, will help ensure that the MWCB design remains appropriate as market conditions and structure change over time.

C. Trading Halt Times

The Pilot Rules provide that in the event an MWCB Level 1 or Level 2 halt is triggered after 9:30 a.m. but before 3:25 p.m., trading will halt for 15 minutes. If the threshold for a Level 1 or Level 2 MWCB halt is triggered after 3:25 p.m., trading will continue unless a Level 3 halt is triggered.[113] If the threshold to trigger a Level 3 MWCB is reached at any time, trading will halt for the remainder of the day.[114] The Exchange has represented that it agrees with the conclusion in the Study that a 15-minute trading halt following a Level 1 or Level 2 MWCB is appropriate, and is proposing to make this aspect of the Pilot Rules permanent, along with the provision that provides that trading will halt for the remainder of the day following a Level 3 circuit breaker.[115]

In reaching its conclusion, the Study noted that in October 2020, CME implemented a change to reopen the E-mini S&P 500 futures five minutes before the end of a 15-minute Level 1 or Level 2 MWCB halt, in order to enhance the equity market price discovery process leading into an MWCB reopening auction process, which begin after the end of the 15-minute MWCB halts.[116] The Study noted, however, that a similar change to the length of the Level 1 and 2 MWCB Halts was unnecessary, and recommended the 15-minute length of the Level 1 and Level 2 MWCB halts be approved on a permanent basis without change.[117]

The Commission believes that a trading halt of 15 minutes following a triggering of a Level 1 or Level 2 MWCB halt between 9:30–3:25 p.m. is appropriate to allow market participants

[98] *See* Study, *supra* note 27, at 38.

[99] *See id.*

[100] *See id.*

[101] *See id.*

[102] *See id.*

[103] *Id.*

[104] *Id.* The Study did not draw any conclusions about whether a ''magnet effect'' exists when market declines approach 20% (the Level 3 MWCB trigger that would end trading for the remainder of the day), given the lack of data. *See id.*

[105] *See* Notice, *supra* note 3, at 38782.

[106] *See supra* note 6.

[107] *See* ''Trading Analysis of October 27 and 28, 1997,'' A Report by the Division of Market Regulation U.S. Securities and Exchange Commission, dated September 1998, *available at https://www.sec.gov/news/studies/tradrep.htm#cbs* (''1997 Trading Analysis'').

[108] *See supra,* note 10.

[109] *See* 1997 Trading Report, *supra* note 118.

[110] *See supra* note 14.

[111] *See supra* note 19.

[112] *See* Notice, *supra* note 3, at 38777–78.

[113] *See* NYSE Rule 7.12(b).

[114] *See id.*

[115] *See* Notice, *supra* note 3, at 38783–84. The Exchange also proposed no changes be made to the MWCB to prevent the market from halting shortly after the open of regular trading at 9:30 a.m., despite the three MWCB events that occurred near the open of regular trading. *See* Study, *supra* note 27, at 2. As noted in the Study, after considering this potential change, it was determined that (1) there was no simple way to design an alternative that would prevent a halt at the open, (2) the markets should be protected at the open in any event, as it tends to be the most volatile period of the trading day and different future scenarios such as breaking news at the open would merit a halt, (3) market participants are now accustomed to how the MWCBs operate at the open of regular trading, and (4) the MWCB Halts at the open of regular trading did not harm the market functioning, including the conduct of opening and reopening auctions. *See* Study, *supra* note 27, at 43–44.

[116] *See* Study, *supra* note 25, at 38.

[117] *See id.*

to assess the state of the market. Regarding the application of MWCB shortly after the open of regular trading, the Commission agrees that on balance it remains appropriate. In particular, the Commission believes that the MWCB protections are an important protection at the beginning of regular trading. Furthermore, as discussed above, the Commission believes that the Study provides evidence that the three MWCB events at or near the open of regular trading did not cause harm to the market, including the conduct of the opening and reopening auctions.[118] Finally, market participants now have substantial experience with how the MWCB operates at or near the open of regular trading, and any changes to the MWCB at the time of day would introduce new uncertainty that is not necessary at this time, given the benefit of opening protections and the market's experience thus far. Additionally, the Commission believes that the CME's modification to resume trading in the E-mini S&P 500 futures should further improve the function of the MWCB, as market participants will have a better sense of market valuations leading into the MWCB reopening auction for equity securities. The Commission further believes that permitting trading to continue after 3:25 p.m. despite a decline in the markets, unless a Level 3 MWCB threshold is reached remains appropriate as this will help ensure a fair and orderly closing at 4 p.m. Finally, the declines in SPX in March 2020 did not approach the 20% threshold for triggering a Level 3 MWCB halt. Therefore, there is no data available to analyze how the markets would respond in the event SPX drops 20% and markets close for the day. The Commission believes, however, that any disruption in the markets that would cause a 20% decline in SPX would require market participants to make significant adjustments to their trading strategies, and thus halting trading for the remainder of the day is appropriate in such a situation. Furthermore, as discussed above, the Exchange's proposed testing provisions, along with the provisions requiring an analysis and report to the Commission should future MWCB events occur and a commitment to review the MWCB in the event of 5% market declines and changes to MWCB reopening processes, will help ensure that the MWCB design remains appropriate as market conditions and structure change over time.

[118] *See supra* Section IV(2)(f).

D. SPX as Reference Value [119]

The Pilot Rules provide that SPX shall be used as the reference value for determining any percentage decline in the markets.[120] Based on the conclusion in the Study that SPX is the best measure for this purpose, the Exchange is proposing that the Pilot Rule designating SPX as the reference value be approved on a permanent basis.[121]

In analyzing whether to retain SPX as the reference for triggering MWCB halts, the Study examined criteria for considering an instrument or methodology to replace SPX and compared a number of potential alternatives to SPX. The Study considered the DJIA, S&P 100, Nasdaq 100, Russell 1000, Russell 3000, Wilshire 5000, E-Mini S&P 500 Futures, Exchange Trading Products-related SPX (*i.e.,* SPY, IVV, VOO) as potential alternatives to SPX and for each alternative considered: The breath of securities in an index or an index or in the index underlying a specific product; breadth of sectors represented by product/index; breadth of listing exchanges represented by product/index; correlation with related products, including derivatives and ETPs; does the reference value demonstrate dislocations from the underlying value; industry awareness of the index/product level; activity level in/liquidity generally present in the product (or correlated products if reference value is an index); if reference value is a traded product, susceptibility of that product to short term liquidity imbalances that might erroneously trigger an MWCB; potential concerns regarding cross-market coordination; whose regulatory purview does the reference value fall under; reference calculation method; and the index methodology.[122]

The Study reflected the view of industry practitioners that it is important that the reference price be based an index rather than an individual tradable product because individual product are vulnerable to temporary order imbalances or price shocks, which may result in transient premiums or discounts.[123] In addition, the Study considered that individual products may be subject to single stock price bands or circuit breakers, but an index has less potential to be influenced by these factors than an individual product.[124]

Of the indices the Study examined, it found that SPX contains a large number of securities with a high degree of breadth, an extremely high correlation with the liquidity of its underlying securities, and a well-understood calculation methodology. S&P DJI disseminates documentation regarding the calculation of SPX, especially at and around market open and reopen that addresses technical questions regarding the index calculation and value dissemination.[125]

Based on the Study's review of the potential alternatives to SPX and the Exchange's own observations of the product, the Exchange believes that SPX is an appropriate product to use as the reference for the MWCB mechanism, and is proposing to make this aspect of the Pilot Rules permanent without change.[126] The Exchange acknowledges that non-traded products are not subject to regulatory oversight, but due to the safeguards provided by S&P DJI the Exchange nevertheless believes that SPX is an appropriate reference.[127] In particular, the Exchange notes that S&P DJI periodically improves its calculation methods for SPX.[128] The Exchange also considered that S&P DJI was forthcoming and transparent in responding to the Working Group's questions about the resiliency and redundancy of the SPX calculation.[129] In meetings with the Working Group, S&P DJI explained that three geographically disperse data centers independently calculate the SPX, and S&P DJI monitors for consistency of values.[130] The Exchange also considered however that, while S&P DJI's index computations are conducted and made available from three geographic locations with delivery through separate communications lines, there is no completely independent backup maintained for SPX, which remains a

[119] The Exchange also considered the question of whether or not the MWCB should be triggered if there is a sufficient number of LULD price limits triggered. See Study, supra note 25, at 44. According to the Study, the LULD trading pause data prior to the MWCB Halts did not shed light on this question, as the March MWCB Halts were proceeded by very few LULD Halts. While the MWCB Halts did not provide evidence in support of this alternative MWCB trigger, the Exchange and the Study note that future events may merit looking at this potential modification again. See Study, supra note 25, at 44.

[120] *See* NYSE Rule 7.12(a)(i).

[121] *See* Notice, *supra* note 3, at 38784–85.

[122] *See* Study, *supra* note 27, at 39–40.

[123] *See id.* at 40–41.

[124] *See id.* at 41.

[125] *See id.* at 41.

[126] *See* Notice, *supra* note 3, at 38785.

[127] *See id.*

[128] *See id.* at 38784–5. For example, following the events of August 24, 2015, S&P DJI changed its methodology for calculating SPX to use consolidates prices. The Exchange believes that this change likely helped to ensure that SPX accurately reflected market conditions preceding the MWCB Halts in March 2020. *See id.*

[129] *See id.* at 38785.

[130] *See id.*

single point of failure.[131] S&P DJI addressed this concern by explaining that it intends to establish an independent index calculation to be conducted and maintained by a separate, independent entity to further reinforce redundancy and resiliency of the calculation.[132]

The Commission believes that SPX is the best reference for gauging a decline in the markets overall. The Commission agrees that at this time an index is a more reliable reference than a single tradable product as it is not subject to same degree of temporary volatility or liquidity gaps and remains more in-line with a large number of products. Additionally, SPX's number and breadth of securities, high correlation to those underlying securities, and its well-understood calculation methodology makes it an appropriate benchmark for the MWCB. The SPX calculation is performed at separate, geographically diverse locations to help ensure the integrity of the index calculation. Further, as noted by the Exchange, S&P DJI has been transparent and responsive to the Exchange and the other Working Group members about the calculation of SPX, and has committed to further enhance the redundancy and resiliency of the SPX calculation by establishing an independent index calculation to be conducted and maintained by a separate, independent entity.[133] Finally, as discussed above, the Exchange's proposed testing provisions, along with the provisions requiring an analysis and report to the Commission should future MWCB events occur and a commitment to review the MWCB in the event of 5% market declines and changes to MWCB reopening processes, will help ensure that the MWCB design remain appropriate as market conditions and structure change over time

E. Testing Requirement

The Exchange's Rules require that the Exchange participate in all industry wide tests of the MWCB Mechanism. Further, the Rules also provide that all designated Regulation SCI firms participate in at least one MWCB test each year.[134] This test is designed to ensure that relevant systems function as intended in the event an MWCB is triggered.[135] Each of these firms must also verify their participation in a MWCB test by attesting that they are able to or have attempted to: (1) Receive and process MWCB halt messages from the securities information processors (''SIPs''); (2) receive and process resume messages from the SIP following a MWCB Halt; (3) receive and process market data from the SIPs relevant to MWCB Halts; and (4) send orders following a Level 1 or Level 2 MWCB halt in a manner consistent with their usual trading behavior.[136] To the extent that a member organization that participated in a MWCB test is unable to receive and process any of these messages, its attestation should notify the Exchange which messages it was unable to process and any known reason why the messages could not be received or processed.[137] Member organizations not designated pursuant to standards established in paragraphs (b)(1) and (3) of Rule 48 are permitted to participate in any MWCB test.[138]

In addition to testing of MWCB technical functionalities, the Exchange has also proposed a mandatory review of the performance of MWCBs generally, should certain events occur. In the event of a MWCB Halt, the Working Group will analyze the MWCB performance and prepare a report that documents its analysis and recommendations.[139] This report will be provided to the Commission within 6 months of MWCB Halt.[140] In the event that there is (1) a market decline of more than 5% or (2) an SRO implements a rule change that effects its reopening process following a MWCB Halt, the Exchange and the Working Group will review such event and consider when any modification should be made to the MWCB rules.[141] If the Working Group recommends that a modification be made, the Working Group will prepare a report that documents its analysis and recommendations and provide that report to the Commission.[142]

The Exchange believes that these testing obligations remove impediments to and perfect the mechanism of a free and open market and a national market system.[143] Specifically, the Exchange contends that adding specificity by requiring SCI firms to attest to their participation in the MWCB will promote stability and investor confidence in the MWCB mechanism.[144] Further, the Exchange believes that requiring firms to identify any inability to process any messages related to the MWCB mechanism will contribute to a fair and orderly market by flagging potential issues that should be corrected.[145] The Exchange also notes that the attestations, as well as the Exchange's own records regarding the MWCB test, will be preserved and retained by the Exchange.[146]

The Exchange is also of the opinion that the ''event driven'' MWCB review described in the MWCB Rules would benefit market participants, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.[147] The Exchange believes that requiring the Working Group to review any halt triggered under the MWCB Rules and prepare a report on of its analysis and recommendations, would permit the Working Group and the Commission to evaluate the efficacy of the MWCB mechanism and whether any modifications should be made.[148] The Exchange also contends that having the Working Group review instances of a market decline of more than 5% or an SRO rule that changes its reopening process following a MWCB Halt will allow the Working Group to identify situations where it recommends that the MWCB Rules should be modified. Finally, the Exchange notes that in those situations where the Working Group recommends that a modification should be made and a report is submitted to the Commission, providing this report to the Commission will help protect investors and the public interest.[149]

The Commission believes that these testing and ongoing assessment provisions will allow the Commission and the SROs to evaluate the MWCB mechanism going forward. As noted by the Exchange, by requiring Regulation SCI firms and the Exchange to participate in yearly tests of certain basic messaging functionalities, the SROs and the Commission can help ensure that important technical aspects of the MWCB mechanism will function properly should a MWCB Halt occur. Additionally, as the Exchange noted, the results of this testing will be retained by the Exchange pursuant to its obligation to keep books and records. This will allow the Commission to review the results of the MWCB test to ensure that the MWCB mechanism continues to operate as intended.

[131] *See id.*

[132] *See id.*

[133] The Commission believes that further efforts to enhance the redundancy and resiliency of the SPX calculation is appropriate.

[134] *See* Study, supra note 27, at 9.

[135] *See id.*

[136] *See* Notice, *supra* note 3, at 42.

[137] *See* Amendment No. 1, *supra* note 7.

[138] *See supra* note 137.

[139] *See supra* note 138.

[140] *See id.*

[141] *See id.*

[142] *See id.*

[143] *See* Notice, *supra* note 3, at 47.

[144] *See id.*

[145] *See supra* note 138, at 6.

[146] *See id.*

[147] *See id.*

[148] *See id.* at 7.

[149] *See id.*

The Commission also believes that the proposed ''event driven'' reviews of the MWCB mechanism will allow the Commission and the SROs to evaluate whether any modification to the MWCB mechanism is necessary. Specifically, should a MWCB Halt occur, the SROs will examine how the MWCBs functioned and report this to the Commission. If the SROs or the Commission finds that the MWCB mechanism did not work as intended during a future MWCB Halt, then the MWCB mechanism can be further refined to address this deficiency. The Commission also supports the proposal concerning review of the MWCB when either (1) a market decline of more than 5% or (2) an SRO implements a rule that changes its reopening process following a MWCB Halt. A review of a market decline of more than 5% will allow the Working Group to evaluate significant market events that do not reach the threshold for initiating a MWCB, and determine whether any alterations to the MWCB mechanism should be made. Further, a review of any changes to reopening processes following a MWCB Halt will allow the Working Group to evaluate the implications of the proposed changes on the effectiveness of the MWCB mechanism. Finally, the Commission believes that the requirement to report any proposed modification following the Working Group's review will give the Commission an opportunity to study the event that preceded the Working Group's review and any potential modification that the Working Group recommends.

In conclusion, the Commission believes that the analysis presented by the Exchange demonstrates that the MWCBs operated effectively in accomplishing the goal of providing a trading halt during extreme market-wide declines to provide opportunities for markets and market participants to assess market conditions and systemic stress. Further, the Commission believes that the proposal sets forth testing and ongoing assessment requirements for industry members and the Exchange that should allow market participants and the Exchange to detect issues with the MWCB design or their internal system in response to MWCB halts and recommend modifications. For these reasons, the Commission finds that it is appropriate to approve the Exchange's MWCB rules on a permanent basis.

V. 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–2021–40 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–2021–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2021–40 and should be submitted on or before April 12, 2022.

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[150] to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of Amendment No. 1, in the **Federal Register**. As discussed above, Amendment No. 1 requires Exchange participation in all industry-wide testing of the MWCBs, and further requires the Exchange, together with the other SROs, to provide the Commission with a report that documents its analysis and recommendations following a halt that is triggered following a Level 1, Level 2, or Level 3 Market Decline. The amendment also requires the Exchange, together with the other SROs, to review the MWCB in the event of 5% market declines and any time an SRO makes changes to MWCB reopening processes, and provide a report to the Commission concerning such review should a modification to the MWCB be recommended. Amendment No. 1 also requires an industry member to notify the Exchange in its attestation following testing if it was unable to process any messages and, if known, why. In Amendment No. 1, the Exchange commits to maintain records documenting its participation in MWCB testing. Amendment No. 1 also provides additional detail on actions taken by SROs in response to the March 2020 MWCB halts.[151]

The Commission believes that the revisions to the proposal in Amendment No. 1 raise no novel regulatory issues. The amendment proposes additional protections that will help ensure that the MWCB design is appropriate over time. In particular, it provides for more robust ongoing testing processes and assessments of the operation of the MWCBs. The tests will be conducted on an industry-wide basis with Exchange participation and will require the creation and retention of records concerning testing effectiveness. Furthermore, the amendment provides for MWCB assessments in key events that will provide an opportunity for the Exchange, along with the other SROs, to more effectively evaluate the MWCB design. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[152] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[153] that the proposed rule change, as modified by Amendment No. 1, (SR–NYSE–2021–40), be, and hereby is, approved on an accelerated basis.

[150] 15 U.S.C.78s(b)(2).

[151] Amendment No. 1 also makes technical changes to the proposal to update the dates on which the MWCB Pilot Rule expires and the proposed rule would take effect.

[152] 15 U.S.C. 78s(b)(2).

[153] 15 U.S.C. 78s(b)(2).

By the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[154]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05980 Filed 3–21–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94437; File No. SR–CboeEDGX–2022–013]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend its Fee Schedule

March 16, 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 9, 2022, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'' or ''EDGX 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/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule applicable to its equities trading platform (''EDGX Equities'') as follows: (1) Amend fee code ZM so that it applies to applicable orders with a time-in-force of Good 'til Extended Day (''GTX''); and (2) modify the criteria of Growth Tier 2. The Exchange proposes to implement these changes effective March 1, 2022.[3]

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 Exchange Act, to which market participants may direct their order flow. Based on publicly available information,[4] no single registered equities exchange has more than 17% 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 rebates 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. Currently, for orders in securities priced at or above $1.00, the Exchange provides a standard rebate of $0.00160 per share for orders that add liquidity and assesses a fee of $0.0030 per share for orders that remove liquidity. For orders in securities priced below $1.00, the Exchange provides a standard rebate of $0.00009 per share for orders that add liquidity and assesses a fee of 0.30% of total dollar value 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.

As noted under the Fee Codes and Associated Fees section of the Fee Schedule, fee code ZM is appended to retail orders with a time-in-force of Day [5]/Regular Hours Only (''RHO'') [6] that remove liquidity on arrival and provides a fee/rebate of free. Now the Exchange proposes to amend fee code ZM so that is appended to retail with a time-in-force of Day/RHO or GTX [7] that remove liquidity on arrival. Currently, retail orders with a time-in-force of GTX that remove liquidity upon arrival are appended fee code ZR which are assessed a fee of $0.00300 per share in securities at or above $1.00 and 0.30% of dollar value to securities below $1.00. Therefore, the proposal would decrease the fee associated with retail orders with a time-in-force of GTX that remove liquidity upon arrival by $0.00300.

Further, the Growth Volume Tiers Volume Tiers set forth in footnote 1 of the Fee Schedule (Add/Remove Volume Tiers) provide Members an opportunity for qualifying orders (*i.e.,* orders yielding fee code B,[8] V,[9] Y,[10] 3 [11] or 4 [12]) to receive an enhanced rebate and are designed to encourage growth in order flow by providing specific criteria in which Members must increase their relative liquidity each month over a predetermined baseline. Growth Tier 2, for example, provides an opportunity for qualifying orders (*i.e.,* orders yielding fee code B, V, Y, 3 or 4) to receive an enhanced rebate of $0.0027 per share to Members that (1) add a Step-Up ADAV [13] from June 2021 greater than or equal to 0.10% of the TCV [14] or Members that add a Step-Up

[154] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed the proposed fee changes on March 1, 2022 (SR–CboeEDGX–2022–009). On March 9, 2022, the Exchange withdrew that filing and submitted this proposal.

[4] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (February 27, 2022), available at *https://markets.cboe.com/us/equities/market_statistics/.*

[5] *See* Exchange Rule 11.6(q)(2)

[6] *See* Exchange Rule 11.6(q)(6).

[7] *See* Exchange Rule 11.6(q)(5).

[8] Orders yielding Fee Code ''B'' are orders adding liquidity to EDGX (Tape B).

[9] Orders yielding Fee Code ''V'' are orders adding liquidity to EDGX (Tape A).

[10] Orders yielding Fee Code ''Y'' are orders adding liquidity to EDGX (Tape C).

[11] Orders yielding Fee Code ''3'' are orders adding liquidity to EDGX in the pre and post market (Tapes A or C).

[12] Orders yielding Fee Code ''4'' are orders adding liquidity to EDGX in the pre and post market (Tape B).

[13] ''Step-Up ADAV'' means ADAV in the relevant baseline month subtracted from current ADAV.

[14] ''TCV'' means total consolidated volume calculated as the volume reported by all exchanges

ADAV from June 2021 equal to or greater than 8 million shares; and (2) Members that have a total remove ADV equal to or greater than 0.70% of TCV. The Exchange now proposes to modify the criteria in the second prong of Growth Tier 2 to require that Members (i) have a total remove ADV equal to or greater than 0.70% of TCV, or alternatively, (ii) have a total remove ADV equal to or greater than 60,000,000 shares.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Securities and Exchange Act of 1933 (the ''Act''),[15] in general, and furthers the objectives of Section 6(b)(4),[16] 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)[17] 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. As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels 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.

Regarding the proposed amendment to fee code ZM, the Exchange notes that the competition for retail order flow is particularly intense, especially as it relates to exchange versus off-exchange venues, as prominent retail brokerages tend to route a majority of their limit orders to off-exchange venues.[18] Accordingly, competitive forces compel the Exchange to use exchange transaction fees and credits, particularly as they relate to competing for retail order flow, because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange believes that its proposed change to amend fee code ZM is reasonable, equitable and not unfairly discriminatory. First, the Exchange notes that the current fee applied to retail orders with a time-in-force of GTX that remove liquidity upon arrival is $0.00300 per share in securities at or above $1.00 and 0.30% of dollar value to securities below $1.00. Therefore, the proposal would decrease the fee associated with retail orders with a time-in-force of GTX that remove liquidity upon arrival. Second, while the proposed fee/rebate applies only to retail orders, the Exchange does not believe this application is discriminatory as the Exchange offers similar rebates or reduced fees to non-retail order flow. The Exchange notes that, like all other fee codes, ZM and the accompanying fee (which is free) will be automatically and uniformly applied to all Members' qualifying orders as applicable.

The Exchange believes its proposal to amend the criteria of the Growth Tier 2 is reasonable because the tier is and will continue to be available to all Members and provides Members an alternative opportunity to meet the required criteria in order to receive an enhanced rebate. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable, and non-discriminatory because they are open to all Members on an equal basis and provide additional discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated with higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. The proposed amendment to Growth Tier 2 is designed to give Members an alternative opportunity to meet the second prong of the required criteria, and therefore the tier may be more easily achieved by Members. The Exchange believes that the existing rebates under Growth Tier 2 continues to be commensurate with the proposed criteria. That is, the rebate reasonably reflects the difficulty in achieving the corresponding criteria as amended.

The Exchange believes that the changes Growth Tier 2 will benefit all market participants by incentivizing continuous liquidity and, thus, deeper more liquid markets as well as increased execution opportunities. Particularly, the proposal is designed to incentivize liquidity, which further contributes to a deeper, more liquid market and provide even more execution opportunities for active market participants at improved prices. This overall increase in activity deepens the Exchange's liquidity pool, offers additional cost savings, supports the quality of price discovery, promotes market transparency and improves market quality, for all investors.

The Exchange also believes that the proposed amendment to the Growth Tier 2 represents an equitable allocation of rebates and are not unfairly discriminatory because all Members are eligible for the tiers and would have the opportunity to meet the tier's criteria and would receive the proposed 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 this proposed rule change would definitely result in any Members qualifying for the tier. While the Exchange has no way of predicting with certainty how the proposed tier will impact Member activity, based on trading activity on the Exchange during the prior month, the Exchange anticipates that at least one Member will be able to compete for and reach the proposed criteria in Growth Tier 2. The Exchange also notes that proposed change will not adversely impact any Member's ability to qualify for other reduced fee or enhanced rebate tiers. Should a Member not meet the proposed criteria under the tier, as amended, the Member will merely not receive the corresponding enhanced rebate.

As noted above, the Exchange operates in a highly competitive market. The Exchange is only one of 16 equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. It is also only one of several maker-taker exchanges. Competing equity exchanges offer similar rates and tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume thresholds.

and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4).

[17] 15 U.S.C. 78f.(b)(5).

[18] *See* Securities Exchange Release No. 86375 (July 15, 2019), 84 FR 34960 (SRCboeEDGX–2019–045).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Rather, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional order flow to a public exchange, thereby promoting market depth, execution incentives and enhanced execution opportunities, as well as price discovery and transparency for all Members. As a result, the Exchange believes that the proposed changes further the Commission's goal in adopting Regulation NMS of fostering competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.''

The Exchange believes the proposed rule changes do not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed tier change will apply to Members equally in that all Members are eligible for Growth Tier 2, have a reasonable opportunity to meet the tier's criteria and will receive the enhanced rebate on their qualifying orders if such criteria is met. Further, the fee code ZM is and will continue to be available to all Members equally. The Exchange does not believe the proposed changes burdens competition, but rather, enhances competition as it is intended to increase the competitiveness of EDGX by amending an existing pricing incentive in order to attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

Next, 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 purposes 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 17% of the market share.[19] 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 investors and listed companies.'' [20] 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'. . . .''.[21] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

[19] *Supra* note 4.

[20] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[21] 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)).

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 [22] and paragraph (f) of Rule 19b–4 [23] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission 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–CboeEDGX–2022–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR-CboeEDGX-2022–013. 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

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f).

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–CboeEDGX–2022–013 and should be submitted on or before April 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05986 Filed 3–21–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94434; File No. SR–BX–2022–005]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Market-Wide Circuit Breaker Pilot to April 18, 2022

March 16, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2022, Nasdaq BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot related to the market-wide circuit breaker in Equity 4, Rule 4121 to the close of business on April 18, 2022.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/bx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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 extend the pilot related to the market-wide circuit breaker in Equity 4, Rule 4121 to the close of business on April 18, 2022.

Background

The market-wide circuit breaker (''MWCB'') rules, including the Exchange's Rule 4121 under Equity 4, provide an important, automatic mechanism that is invoked to promote stability and investor confidence during periods of significant stress when cash equities securities experience extreme market-wide declines. The MWCB rules are designed to slow the effects of extreme price declines through coordinated trading halts across both cash equity and equity options securities markets.

The cash equities rules governing MWCBs were first adopted in 1988 and, in 2012, all U.S. cash equity exchanges and FINRA amended their cash equities uniform rules on a pilot basis (the ''Pilot Rules,'' *i.e.,* Equity 4, Rule 4121).[3] The Pilot Rules currently provide for trading halts in all cash equity securities during a severe market decline as measured by a single-day decline in the S&P 500 Index (''SPX'').[4] Under the Pilot Rules, a market-wide trading halt will be triggered if SPX declines in price by specified percentages from the prior day's closing price of that index. The triggers are set at three circuit breaker thresholds: 7% (Level 1), 13% (Level 2), and 20% (Level 3). A market decline that triggers a Level 1 or Level 2 halt after 9:30 a.m. and before 3:25 p.m. would halt market-wide trading for 15 minutes, while a similar market decline at or after 3:25 p.m. would not halt market-wide trading. (Level 1 and Level 2 halts may occur only once a day.) A market decline that triggers a Level 3 halt at any time during the trading day would halt market-wide trading for the remainder of the trading day.

The Commission approved the Pilot Rules, the term of which was to coincide with the pilot period for the Plan to Address Extraordinary Market Volatility Pursuant to Rule 608 of Regulation NMS (the ''LULD Plan''),[5] including any extensions to the pilot period for the LULD Plan.[6] In April 2019, the Commission approved an amendment to the LULD Plan for it to operate on a permanent, rather than pilot, basis.[7] In light of the proposal to make the LULD Plan permanent, the Exchange amended Equity 4, Rule 4121 to untie the pilot's effectiveness from that of the LULD Plan and to extend the pilot's effectiveness to the close of business on October 18, 2019.[8] The Exchange subsequently filed to extend the Pilot Rules' effectiveness for an additional year to the close of business on October 18, 2020,[9] and later, on October 18, 2021.[10] The Exchange last extended the pilot to the close of business on March 18, 2022.[11]

The Exchange now proposes to amend Equity 4, Rule 4121 to extend the pilot

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129) (''Pilot Rules Approval Order'').

[4] The rules of the equity options exchanges similarly provide for a halt in trading if the cash equities exchanges invoke a MWCB Halt. *See, e.g.,* Options 3, Section 9(e).

[5] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012). The LULD Plan provides a mechanism to address extraordinary market volatility in individual securities.

[6] *See* Securities Exchange Act Release Nos. 67090 (May 31, 2012), 77 FR 33531 (June 6, 2012) (SR–BX–2011–068) (Approval Order); and 68815 (February 1, 2013), 78 FR 9752 (February 11, 2013) (SR–BX–2013–009) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay the Operative Date).

[7] *See* Securities Exchange Act Release No. 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019).

[8] *See* Securities Exchange Act Release No. 85585 (April 10, 2019), 84 FR 15643 (April 16, 2019) (SR–BX–2019–008).

[9] *See* Securities Exchange Act Release No. 87208 (October 3, 2019), 84 FR 54213 (October 9, 2019) (SR–BX–2019–034).

[10] *See* Securities Exchange Act Release No. 90145 (October 9, 2020), 85 FR 65462 (October 15, 2020) (SR–BX–2020–029).

[11] *See* Securities Exchange Act Release No. 93287 (October 12, 2021), 86 FR 57712 (October 18, 2021) (SR–BX–2021–045).

to the close of business on April 18, 2022. This filing does not propose any substantive or additional changes to Rule 4121.

The MWCB Task Force and the March 2020 MWCB Events

In late 2019, Commission staff requested the formation of a MWCB Task Force (''Task Force'') to evaluate the operation and design of the MWCB mechanism. The Task Force included representatives from the SROs, the Commission, CME, the Commodity Futures Trading Commission (''CFTC''), and the securities industry and conducted several organizational meetings in December 2019 and January 2020.

In Spring 2020, the MWCB mechanism proved itself to be an effective tool for protecting markets through turbulent times. In March 2020, at the outset of the worldwide COVID–19 pandemic, U.S. equities markets experienced four MWCB Level 1 halts, on March 9, 12, 16, and 18, 2020. In each instance, the markets halted as intended upon a 7% drop in the S&P 500 Index, and resumed as intended 15 minutes later.

In response to these events, in the Spring and Summer of 2020, the Task Force held ten meetings that were attended by Commission staff, with the goal of performing an expedited review of the March 2020 halts and identifying any areas where the MWCB mechanism had not worked properly. Given the risk of unintended consequences, the Task Force did not recommend changes that were not rooted in a noted deficiency. The Task Force recommended creating a process for a backup reference price in the event that SPX were to become unavailable, and enhancing functional MWCB testing. The Task Force also asked CME to consider modifying its rules to enter into a limit-down state in the futures pre-market after a 7% decline instead of 5%. CME made the requested change, which became effective on October 12, 2020.[12]

The MWCB Working Group's Study

On September 17, 2020, the Director of the Commission's Division of Trading and Markets asked the SROs to conduct a more complete study of the design and operation of the Pilot Rules and the LULD Plan during the period of volatility in the Spring of 2020.

In response to the request, the SROs created a MWCB ''Working Group'' composed of SRO representatives and industry advisers that included members of the advisory committees to both the LULD Plan and the NMS Plans governing the collection, consolidation, and dissemination of last-sale transaction reports and quotations in NMS Stocks. The Working Group met regularly from September 2020 through March 2021 to consider the Commission's request, review data, and compile its study. The Working Group's efforts in this respect incorporated and built on the work of the MWCB Task Force.

The Working Group submitted its study to the Commission on March 31, 2021 (the ''Study'').[13] In addition to a timeline of the MWCB events in March 2020, the Study includes a summary of the analysis and recommendations of the MWCB Task Force; an evaluation of the operation of the Pilot Rules during the March 2020 events; an evaluation of the design of the current MWCB system; and the Working Group's conclusions and recommendations.

In the Study, the Working Group concluded: (1) The MWCB mechanism set out in the Pilot Rules worked as intended during the March 2020 events; (2) the MWCB halts triggered in March 2020 appear to have had the intended effect of calming volatility in the market, without causing harm; (3) the design of the MWCB mechanism with respect to reference value (SPX), trigger levels (7%/13%/20%), and halt times (15 minutes) is appropriate; (4) the change implemented in Amendment 10 to the Plan to Address Extraordinary Market Volatility (the ''Limit Up/Limit Down Plan'' or ''LULD Plan'') did not likely have any negative impact on MWCB functionality; and (5) no changes should be made to the mechanism to prevent the market from halting shortly after the opening of regular trading hours at 9:30 a.m.

In light of the foregoing conclusions, the Working Group also made several recommendations, including that the Pilot Rules should be permanent without any changes.[14]

Proposal To Extend the Operation of the Pilot Rules Pending the Commission's Consideration of the Exchange's Filing To Make the Pilot Rules Permanent

On July 16, 2021, the New York Stock Exchange (''NYSE'') proposed a rule change to make the Pilot Rules permanent, consistent with the Working Group's recommendations.[15] On August 27, 2021, the Commission extended its time to consider the proposed rule change to October 20, 2021.[16] On September 30, 2021, the Commission initiated proceedings to determine whether to approve or disapprove the proposed rule change by January 18, 2022.[17] On January 7, 2022, the Commission extended its time to issue an order approving or disapproving the proposed rule change, designating March 19, 2022 as the date by which the Commission would either approve or disapprove the proposed rule change.[18] On February 18, 2022, NYSE filed Partial Amendment No. 1 to SR–NYSE–2021–40.[19] The Exchange now proposes to extend the expiration date of the Pilot Rules to the end of business on April 18, 2022.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Section 6(b)(5) of the Act,[21] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The market-wide circuit breaker mechanism under Rule 4121 is an important, automatic mechanism that is invoked to promote stability and investor confidence during a period of significant stress when securities markets experience extreme broad-based declines. Extending the market-wide circuit breaker pilot for an additional month would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

The Exchange also believes that the proposed rule change promotes just and

[12] *See https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_1.pdf; https://www.cmegroup.com/content/dam/cmegroup/market-regulation/rule-filings/2020/9/20-392_2.pdf.*

[13] *See Report of the Market-Wide Circuit Breaker (''MWCB'') Working Group Regarding the March 2020 MWCB Events,* submitted March 31, 2021 (the ''Study''), available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/Report_of_the_Market-Wide_Circuit_Breaker_Working_Group.pdf.*

[14] *See id.* at 46.

[15] *See* Securities Exchange Act Release No. 92428 (July 16, 2021), 86 FR 38776 (July 22, 2021) (SR–NYSE–2021–40).

[16] *See* Securities Exchange Act Release No. 92785A (August 27, 2021), 86 FR 50202 (September 7, 2021) (SR–NYSE–2021–40).

[17] *See* Securities Exchange Act Release No. 93212 (September 30, 2021), 86 FR 55066 (October 5, 2021) (SR–NYSE–2021–40).

[18] *See* Securities Exchange Act Release No. 93933 (January 7, 2022), 87 FR 2189 (January 13, 2022) (SR–NYSE–2021–40).

[19] Partial Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-nyse-2021-40/srnyse202140-20117319-268536.pdf.*

[20] 15 U.S.C. 78f(b).

[21] 15 U.S.C. 78f(b)(5).

equitable principles of trade in that it promotes transparency and uniformity across markets concerning when and how to halt trading in all stocks as a result of extraordinary market volatility. Based on the foregoing, the Exchange believes the benefits to market participants from Pilot Rules should continue on a pilot basis because they will promote fair and orderly markets and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposal would ensure the continued, uninterrupted operation of a consistent mechanism to halt trading across the U.S. markets while the Commission reviews the Exchange's proposed rule change to make the Pilot Rules permanent.

Further, the Exchange understands that FINRA and other national securities exchanges will file proposals to extend their rules regarding the market-wide circuit breaker pilot. Thus, the proposed rule change will help to ensure consistency across market centers without implicating any competitive issues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [22] and Rule 19b–4(f)(6) thereunder.[23] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [24] and Rule 19b–4(f)(6)(iii) thereunder.[25]

A proposed rule change filed under Rule 19b–4(f)(6) [26] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[27] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange asked that the Commission waive the 30 day operative delay so that the proposal may become operative immediately upon filing. Extending the Pilot Rules' effectiveness to the close of business on April 18, 2022 will extend the protections provided by the Pilot Rules, which would otherwise expire in less than 30 days. Waiver of the operative delay would therefore permit uninterrupted continuation of the MWCB pilot while the Commission reviews the NYSE's proposed rule change to make the Pilot Rules permanent. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposed rule change as operative upon filing.[28]

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) [29] 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–BX–2022–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2022–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2022–005 and should be submitted on or before April 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–05978 Filed 3–21–22; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(3)(A)(iii).

[23] 17 CFR 240.19b–4(f)(6).

[24] 15 U.S.C. 78s(b)(3)(A)(iii).

[25] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4 requires a self-regulatory organization to give the Commission written notice of its intent to file a proposed rule change under that subsection at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[26] 17 CFR 240.19b–4(f)(6).

[27] 17 CFR 240.19b–4(f)(6)(iii).

[28] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78s(b)(2)(B).

[30] 17 CFR 200.30–3(a)(12).

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2022–0003]

Request for Comments and Notice of Meetings of the United States–Colombia Environmental Affairs Council and Environmental Cooperation Commission

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The parties to the United States-Colombia Trade Promotion Agreement (TPA) and the United States-Colombia Environmental Cooperation Agreement (ECA) intend to hold meetings of the Environmental Affairs Council (Council) and Environmental Cooperation Commission (Commission). The Office of the United States Trade Representative (USTR) and the U.S. Department of State (State) invite public participation in a Council meeting and written comments on issues that should be addressed.

DATES:

March 30, 2022: Deadline for submission of written comments and notices of intent to attend the public meeting.

April 7, 2022: The Council and Commission will meet in a closed government-to-government session. The Council also will convene a public session. The time and location of the public meeting will be available on the USTR and State websites.

ADDRESSES: We strongly prefers electronic submissions made through the Federal eRulemaking Portal: *https://www.regulations.gov* (*Regulations.gov*), using Docket Number USTR–2022–0003. Follow the instructions for submitting comments in 'Requirements for Submissions' below. For alternatives to on-line submissions, please contact Katy Sater at *mary.c.sater@ustr.eop.gov,* (202) 395–9522, or Sarah Flores at *FloresSC@state.gov,* (202) 647–0156.

FOR FURTHER INFORMATION CONTACT: Katy Sater, Director for Environment and Natural Resources, USTR, *mary.c.sater@ustr.eop.gov,* (202) 395–9522, or Sarah Flores, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Quality and Transboundary Issues, State, *FloresSC@state.gov,* (202) 647–0156.

SUPPLEMENTARY INFORMATION:

1. Background

On April 7, 2022, the Council and Commission will meet in a closed government-to-government session to (1) review implementation of Chapter 18 (Environment) of the TPA, and discuss how the parties are meeting their environment chapter obligations; (2) highlight environmental enforcement and achievements and share related lessons learned and best practices; (3) review the environmental cooperation program; and (4) receive a report from the Secretariat for Environmental Enforcement Matters established under the TPA.

Also on April 7, 2022, the Council invites all interested persons to attend a public session on Chapter 18 implementation. The location will be shared on the USTR and State websites: *https://ustr.gov/issue-areas/environment/bilateral-and-regional-trade-agreements* and *https://www.state.gov/key-topics-office-of-environmental-quality-and-transboundary-issues/current-trade-agreements-with-environmental-chapters/*. At the public session, the Council will welcome questions, input and information about challenges and achievements in implementation of the Environment Chapter obligations and the related ECA. Attendees must comply with any public health protocols required by local authorities.

II. Public Participation

If you would like to attend the public session, please provide your full name, identify any organization or group you represent, and provide contact information such as email address and phone number.

USTR and State invite written comments or suggestions regarding implementation of Chapter 18, the ECA, or topics to be discussed at the public Council meeting. When preparing comments, submitters should refer to Chapter 18 of the TPA and ECA. Documents are available at *https://www.state.gov/key-topics-office-of-environmental-quality-and-transboundary-issues/current-trade-agreements-with-environmental-chapters/#colombia* and *https://ustr.gov/issue-areas/environment/bilateral-and-regional-trade-agreements.*

III. Requirements for Submissions

USTR and State invite public comments and suggestions, and notices of intent to attend the public session, by the March 30, 2022 deadline. You can view all comments in Docket Number USTR–2022–0003 on *Regulations.gov*.

We strongly urge you to make all submissions in English via *Regulations.gov*, using Docket Number USTR–2022–0003. We will not accept hand-delivered submissions. To make a submission using *Regulations.gov*, enter Docket Number USTR–2022–0003 in the 'search for' field on the home page and click 'search.' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'filter results by' section on the left side of the screen and click on the link entitled 'comment now.' The *Regulations.gov* website offers the option of providing comments by filling in a 'type comment' field or by attaching a document using the 'upload file(s)' field. We prefer that you provide submissions in an attached document and note 'see attached' in the 'type comment' field on the online submission form. At the beginning of the submission, or on the first page (if an attachment) include 'U.S.-Colombia TPA EAC/ECC Meeting'. Submissions should not exceed 30 double-spaced, standard letter-size pages in 12-point type, including attachments. Include any data attachments to the submission in the same file as the submission itself, and not as separate files. You will receive a tracking number upon completion of the submission procedure at *Regulations.gov*. The tracking number is confirmation that *Regulations.gov* received the submission. Keep the confirmation for your records. We are not able to provide technical assistance for *Regulations.gov*.

If you are unable to provide submissions as requested, please contact Katy Sater, Director for Environment and Natural Resources, USTR, *mary.c.sater@ustr.eop.gov,* (202) 395–9522, or Sarah Flores, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Quality and Transboundary Issues, State, *FloresSC@state.gov,* (202) 647–0156, in advance of the deadline, to arrange for an alternative method of transmission.

Kelly Milton,

Assistant U.S. Trade Representative for Environment and Natural Resources, Office of the United States Trade Representative.

[FR Doc. 2022–06045 Filed 3–21–22; 8:45 am]

BILLING CODE 3390–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Roadway in California

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

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed roadway project, the I–10 Bypass: Banning to Cabazon Project from the intersection of Hathaway Street and Westward Avenue in the City of Banning to the intersection of Bonita Avenue and Apache Trail in the unincorporated community of Cabazon, for approximately 3.3 miles of new roadway in the County of Riverside, State of California. Those actions grant approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 12, 2022. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Aaron Burton, Senior Environmental Planner, Caltrans-District 8, Environmental Local Assistance, 464 West Fourth Street, MS 760, San Bernardino, CA 92401, weekdays 9:00 a.m. to 3:00 p.m., telephone (909) 383–2841, email *aaron.burton@dot.ca.gov.* For FHWA: Shawn Oliver, Senior Environmental Specialist, California Division, (916) 498–5040, or email at *shawn.oliver@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The I–10 Bypass: Banning to Cabazon Project (Federal Project No. DEMO03L 5956 [210]), which would construct a new two-lane roadway extending approximately 3.3 miles from the intersection of Hathaway Street and Westward Avenue in the City of Banning to the intersection of Bonita Avenue and Apache Trail in the unincorporated community of Cabazon in order to provide a local roadway connecting these two communities, improve local transportation facilities, and provide safe bicycle and pedestrian facilities. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (Final EA) for the project, approved on October 6, 2021, in the FHWA Finding of No Significant Impact (FONSI) issued on October 6, 2021, and in other documents in the FHWA project records. The Final EA, FONSI, and other project records are available by contacting Caltrans at the address provided above. The Caltrans Final EA and FONSI can be viewed and downloaded from the project website at *https://rcprojects.org/i10bypass* or viewed at Caltrans District 8 or the Riverside County Transportation Department.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. E.O. 12372, Intergovernmental Review;

2. E.O. 11990, Protection of Wetlands;

3. E.O. 12088, Pollution Control Standards;

4. E.O. 13112, Invasive Species;

5. E.O. 11988, Floodplain Management;

6. Council on Environmental Quality regulations;

7. National Environmental Policy Act (NEPA);

8. Department of Transportation Act of 1996;

9. Federal Aid Highway Act of 1970;

10. Clean Air Act Amendments of 1990;

11. Department of Transportation Act of 1966; Section 4(f);

12. Clean Water Act of 1977 and 1987;

13. Endangered Species Act of 1973;

14. Migratory Bird Treaty Act;

15. National Historic Preservation Act of 1966, as amended; and

16. Historic Sites Act of 1935.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Dated: March 15, 2022.

Christina Leach,

Action Director, Planning, Environment and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2022–06067 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

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

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final. The actions relate to a proposed highway project, bridge replacement on at Post Mile 31.5 on State Route 1 in Mendocino County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 12, 2022. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Brandon Larsen, Environmental Branch Chief, 1656 Union Street, Eureka, CA, 8 a.m. to 4 p.m., (707) 441–5730, or *brandon.larsen@dot.ca.gov.* For FHWA, contact Shawn Oliver at (916) 498–5040 or email *shawn.oliver@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, and the Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1), by issuing licenses, permits, and approvals for the following highway project in the State of California: Replace the Elk Creek Bridge over Elk Creek at Post Mile 31.5 on State Route 1 south of the community of Elk in Mendocino County. Built in 1938, the existing bridge is near the end of its useful life. A new bridge will better accommodate vehicles, pedestrians, and bicyclists. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (FEA) for the project, approved on December 22, 2021, in the FHWA Finding of No Significant Impact (FONSI) issued on

January 10, 2022, and in other documents in the FHWA project records. The FEA, NOD, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEA and FONSI can be viewed at public libraries in the project area or an electronic document can be requested. Contact information for requesting digital copies can be found at *https://dot.ca.gov/caltrans-near-me/district-3/d3-programs/d3-environmental/d3-environmental-docs/d3-mendocino-county/.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality Regulations
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4332(2)(c)
3. 49 U.S.C. 303 for Section 4(f)
4. Federal-Aid Highway Act of 1970, 23 U.S.C. 109
5. MAP–21, the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141)
6. Clean Air Act Amendments of 1990 (CAAA)
7. Clean Water Act of 1977 and 1987
8. Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 & 1987)
9. Federal Land Policy and Management Act of 1976 (Paleontological Resources)
10. The National Historic Preservation Act of 1966 (NHPA)
11. Noise Control Act of 1972
12. Safe Drinking Water Act of 1944, as amended
13. Endangered Species Act of 1973
14. Executive Order 11990, Protection of Wetlands
15. Executive Order 13112, Invasive Species
16. Executive Order 13186, Migratory Birds
17. Fish and Wildlife Coordination Act of 1934, as amended
18. Migratory Bird Treaty Act
19. Wildflowers, Surface Transportation and Uniform Relocation Act of 1987 Section 130
20. Executive Order 11988, Floodplain Management
21. Department of Transportation (DOT) Executive Order 5650.2—Floodplain Management and Protection (April 23, 1979)
22. Title VI of the Civil Rights Act of 1964, as amended
23. Executive Order 12898, Federal Actions to Address Environmental Justice and Low-Income Populations

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Dated: March 15, 2022.

Christina Leach,

Action Director, Planning, Environment and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2022–06068 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

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

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final. The actions relate to a proposed highway project, on State Route 260 (SR–260) between postmiles R0.78 and R1.90 and Interstate 880 (I–880) between postmiles 30.47 and 31.61 in the cities of Oakland and Alameda in the County of Alameda, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before August 12, 2022. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Lindsay Vivian, Office Chief, California Department of Transportation. 111 Grand Avenue, MS–8B, Oakland, CA 94612. Office hours: Monday through Friday 8:00 a.m.–4:30 p.m. Contact information: *lindsay.vivian@dot.ca.gov* and 510–506–4310. For FHWA, contact Shawn Oliver at (916) 498–5040 or email *shawn.oliver@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Caltrans, in partnership with the Alameda County Transportation Commission (Alameda CTC), proposes the Oakland Alameda Access Project to improve motorist, pedestrian, and bicyclist safety, reduce conflicts between regional and local traffic, and enhance bicycle and pedestrian accessibility and connectivity within the project area. The project will remove and modify existing freeway ramps, modify the connection from the Posey Tube to I–880, construct Class IV two-way cycle tracks in Oakland, implement various ''complete streets'' improvements, implement bicycle and pedestrian improvements at the approaches to the Posey and Webster Tubes, and open the Webster Tube's westside walkway to bicyclists and pedestrians. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Document (FED) and Finding of No Significant Impact (FONSI) for the project, approved on August 20, 2021 and in other documents in the Caltrans project records. The FED, FONSI, and other project records are available by contacting Caltrans at the information provided above. The Caltrans FED and FONSI can be viewed and downloaded from the project website at *https://dot.ca.gov/caltrans-near-me/district-4/d4-projects/d4-oaap.*

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. Air: Clean Air Act [42 U.S.C. 7401–7671(q)].
3. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536]; Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)]; Migratory Bird Treaty Act 16 U.S.C. 703–712].
4. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Historic Sites Act of 1935 [16 U.S.C. 461–467].
5. Wetlands and Water Resources: Clean Water Act (Section 404 and

Section 401) [33 U.S.C. 1251–1377]; safe Drinking water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)].

6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].

7. Health: Resource Conservation and Recovery Act [42 U.S.C. 6901 *et seq.*]; Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 *et seq.*]; Atomic Energy Act [42 U.S.C. 2011–2259]; Toxic Substance Control Act [15 U.S.C. 2601–2629]; Community Environmental Response Facilitation Act; Occupational Safety and Health Act [29 U.S.C. 651]; Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136].

8. Executive Orders: E.O. 12088 Federal Compliance with Pollution Control Standards; E.O. 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations; E.O. 13112 Invasive Species; E.O. 11988 Floodplain Management.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: March 15, 2022.

Christina Leach,

Acting Director, Planning, Environment and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2022–06066 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway Project in Michigan

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

ACTION: Notice of limitation on claims for judicial review of actions by FHWA and other federal agencies.

SUMMARY: This notice announces actions taken by FHWA and other Federal agencies that are final. These final agency actions relate to a proposed highway project, I-375, from I-75 South of Mack Avenue to the Detroit Riverfront in the city of Detroit, Wayne County, State of Michigan. The actions issue National Environmental Policy Act (NEPA) and Section 4(f) of the U.S. Department of Transportation Act of 1966 (Section 4(f)) decisions relating to the I-375 improvement project. FHWA's Finding of No Significant Impact (FONSI) provides details on the Selected Alternative for proposed improvements.

DATES: By this notice, FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency action on the highway project will be barred unless the claim is filed on or before August 19, 2022. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then the shorter time period applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Mark Dionise, Engineering and Operations Director, FHWA Michigan Division, 315 Allegan, Room 201, Lansing, MI 48933, Telephone: (517) 702–1842, email: *Mark.Dionise@dot.gov.* The FHWA Michigan Division Office's normal business hours are 8:00 a.m. to 4:30 p.m. (Eastern Standard Time). For the Michigan Department of Transportation (MDOT): Jonathan Loree, P.E., Senior Project Manager, Michigan Department of Transportation, P.O. Box 30050, 425 W Ottawa Street, Lansing, MI 48909, Telephone: (313) 967–5420, email: *LoreeJ@michigan.gov.* The Michigan Department of Transportation's normal business hours are 8:00 a.m. to 5:00 p.m. (Eastern Standard Time).

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has taken final agency action by issuing a Finding of No Significant Impact (FONSI) for the following highway project in the State of Michigan: I-375 Improvement Project in Wayne County. Improvements include reconstruction of the I-75/I-375 interchange and construction of a direct connection to the Detroit Riverfront in the city of Detroit, Michigan between I-75 South of Mack Avenue and the Detroit Riverfront. The project will de-designate I-375 as an interstate highway and re-designate it as a state route. Improvements include removing the existing freeway and replacing it with a new boulevard aligned along the west side of the I-375 corridor. Gratiot Avenue and the new boulevard will intersect at-grade. Access to I-75 will be available via a new interchange north of Gratiot Avenue connecting Detroit's central business district, Eastern Market and other destinations in the vicinity. The project is included in the Southeast Michigan Council of Governments' (SEMCOG) 2045 Regional Transportation Plan for Southeast Michigan. Design and Right-of-Way (ROW) of the project is also included in SEMCOG's Fiscal Year 2020–2023 Transportation Improvement Program.

FHWA's action, related actions by other Federal agencies, and the laws under which such actions were taken, are described in the FONSI for the project, approved on March 7, 2022, and in other documents in the project file. The FONSI is available for review by contacting FHWA or MDOT at the addresses provided above. These documents are also available for viewing and download from the project website at: *https://www.michigan.gov/mdot/0,4616,7-151-9621_11058_75084---,00.html.*

This notice applies to all Federal agency decisions on each project as of the issuance date of this notice and all laws under which such actions were taken. This notice does not, however, alter or extend the limitation period of 150 days for challenges to final agency actions subject to previous notices published in the **Federal Register**.

The laws under which such actions were taken, include but are not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128]; E.O. 11514 Protection and Enhancement of Environmental Quality.

2. *Air:* Clean Air Act [42 U.S.C. 7401–7671(q)].

3. *Land:* Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].

4. *Wildlife:* Endangered Species Act (ESA) [16 U.S.C. 1531–1544 and Section 1536]; Marine Mammal Protection Act [16 U.S.C. 1361]; Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)], Fish and Wildlife Coordination Act [16 U.S.C. 661–667d]; Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*]; E.O. 13112 Invasive Species.

5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–470(ll)]; Archeological and Historic Preservation Act [16 U.S.C. 469–469c]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013]; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments.

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations.

7. *Wetlands and Water Resources:* Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1377]; Coastal Barrier Resources Act [16 U.S.C. 3501–3510]; Coastal Zone Management Act [16 U.S.C. 1451–1465]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Safe Drinking Water Act (SDWA) [42 U.S.C. 300(f)–300(j)(6)]; Rivers and Harbors Act of 1899 [33 U.S.C. 401–406]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287]; Emergency Wetlands Resources Act, [16 U.S.C. 3921, 3931]; TEA–21 Wetlands Mitigation [23 U.S.C. 103(b)(6)(M, 133(b)(11)]; Flood Disaster Protection Act [42 U.S.C. 4001–4128]; E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management.

8. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) [42 U.S.C. 9601–9675]; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6901–6992(k)].

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 139 (l)(1))

Theodore G. Burch,

Division Administrator, Lansing, Michigan.

[FR Doc. 2022–05993 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0018]

Petition for Waiver of Compliance and Statutory Exemption

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on February 24, 2022, Canadian Pacific Railway (CP) and Union Pacific Railroad Company (UP) jointly petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices). CP and UP also request an exemption from the requirements of title 49, United States Code (U.S.C.), section 20303, which states that a rail vehicle with defective or insecure equipment may be moved when necessary to make repairs to the nearest available place at which the repairs can be made. See 49 U.S.C. 20306. FRA assigned the petition Docket Number FRA–2022–0018.

Specifically, CP and UP request relief from 49 CFR 232.213, *Extended haul trains;* 232.15, *Movement of defective equipment;* and 232.103(f), *General requirements for all train brake systems,* and an exemption from the requirements of 49 U.S.C. 20303, for a potash unit train pair (CP train symbols 668 and 669), which are designated as extended haul trains, that operate between loading facilities in Saskatchewan, Canada, and the ports of Portland, Oregon, United States. The requested relief would allow technology-based advanced testing (the Automated Brake Effectiveness (ABE) Test Process) performed by wheel temperature detectors as an alternative approach to manual Class I brake tests performed by Certified Car Inspectors (Qualified Mechanical Inspectors). The tests would take place on westbound CP symbol 669 trains at the designated inspection location in Lethbridge, Alberta, Canada. The petitioners state that the ABE Test Process is expected to provide more accurate brake testing, more proactive identification and repair of defects, and safer railway operations.

Petitioners also explain that on December 10, 2021, Transport Canada granted two exemptions to CP under the Canadian Railway Safety Act that permit the use of CP's Remote Safety Inspection Process (RSIP) and ABE Test Process as alternative practices to meet certain freight car safety and air brake inspections performed in Canada as required by Canadian rules. The ABE Test Process has been in existence in Canada for over ten years, and FRA has audited the process as part of its investigation of test waivers under Docket Numbers FRA–2016–0018 and FRA–2018–0049. FRA believes that the RSIP, by utilizing Certified Car Inspectors in near real-time oversight of the process, meets the requirements of § 232.213(a)(3), and does not require relief for this instance. Petitioners state that the train pair currently receives and will continue to receive all inspections in Canada by CP employees prior to interchanging to the UP, and US operations would not change.

FRA may grant an exemption from the requirements of 49 U.S.C. 20303 only on the basis of (1) evidence developed at a hearing; or (2) an agreement between national railroad labor representatives and the developer of the equipment or technology at issue. 49 U.S.C. 20306. FRA notes that the public hearing FRA previously held to address a similar request for exemption from UP (Docket Number FRA–2016–0018) addresses substantially the same issues as this current request. Thus, FRA believes a separate public hearing on the current request is unnecessary, and in considering the joint CP and UP request in this docket, FRA intends to rely on the findings of the hearing conducted in Docket Number FRA–2016–0018.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by May 23, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–06011 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA 2022–0008]

Agency Information Collection Activity Under OMB Review: Public Transportation Agency Safety Plan

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the

Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to approve the extension of a currently approved information collection: Public Transportation Agency Safety Plan.

DATES: Comments must be submitted before May 23, 2022.

ADDRESSES: To ensure that your comments are not entered more than once into the docket, submit comments identified by the docket number by only one of the following methods:

1. *Website: www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site. (Note: The U.S. Department of Transportation's (DOT's) electronic docket is no longer accepting electronic comments.) All electronic submissions must be made to the U.S. Government electronic docket site at *www.regulations.gov.* Commenters should follow the directions below for mailed and hand-delivered comments.

2. *Fax:* 202–366–7951.

3. *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

4. *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

Instructions: You must include the agency name and docket number for this notice at the beginning of your comments. Submit two copies of your comments if you submit them by mail. For confirmation that FTA has received your comments, include a self-addressed stamped postcard. Note that all comments received, including any personal information, will be posted and will be available to internet users, without change, to *www.regulations.gov.* You may review DOT's complete Privacy Act Statement in the **Federal Register** published April 11, 2000, (65 FR 19477), or you may visit *www.regulations.gov.* Docket: For access to the docket to read background documents and comments received, go to *www.regulations.gov* at any time. Background documents and comments received may also be viewed at the U.S. Department of Transportation, 1200 New Jersey Avenue SE, Docket Operations, M–30, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Sharece Tyer (202) 366–7205 or email: *Sharece.Tyer@dot.gov*.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Title: Public Transportation Agency Safety Plan (OMB Number: 2132–0580).

Background: The Public Transportation Agency Safety Plan regulation (49 CFR part 673) establishes requirements for Agency Safety Plans as authorized under 49 U.S.C. 5329(d). The regulation requires States and certain operators of public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53 to develop Agency Safety Plans based on the Safety Management Systems (SMS) approach. The development and implementation of these plans will help ensure that public transportation systems are safe nationwide.

Each Public Transportation Agency Safety Plan must include, at minimum:

- An approval from the recipient's Board of Directors, or an Equivalent Authority;
- Methods for identifying and evaluating safety risks throughout all elements of the recipient's public transportation system;
- Strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions;
- A process and timeline for conducting an annual review and update of the plan;
- Performance targets based on the safety performance measures established in FTA's National Public Transportation Safety Plan;
- Assignment of an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer; and
- A comprehensive safety training program for operations personnel and personnel directly responsible for safety that includes the completion of a safety training program and continuing safety education and training.
- A rail transit agency must include or incorporate by reference in its Agency Safety Plan an emergency preparedness and response plan or procedures.

Information collection requirements associated with this regulation include information collected by the agency to support its internal SMS processes and information collected by recipients to distribute to FTA.

The information collection conducted at the agency level to support internal SMS processes includes the regulatory requirement to maintain:

- Documents that set forth the Agency Safety Plan, including those related to implementing the SMS;
- Results from SMS processes and activities; and
- Documents included in whole, or by reference, that describe the programs, policies, and procedures used to carry out the Agency Safety Plan.

Transit agencies must maintain this documentation for a minimum of three years and must make this documentation available upon request to FTA, other Federal entities having jurisdiction, and the relevant State Safety Oversight Agency, if applicable.

The information collection exchange between FTA and its recipients consists of:

- Annual Certifications and Assurances. FTA requires operators of public transportation systems and States to certify compliance with 49 CFR part 673 through its annual submittal of Certifications and Assurances to FTA.
- Triennial Review Process. FTA incorporated questions specific to the Public Transportation Agency Safety Plan Rule into FTA's existing oversight questionnaire for transit agencies to evaluate areas of compliance.
- State Management Review Process. FTA also ensures compliance with this rule through its existing triennial State Management Review oversight process.

The information collection will continue to help guide transit agency and FTA's safety program priorities.

Respondents: State and local government agencies, including transit agencies.

Estimated Annual Number of Respondents: 755 respondents.

Estimated Annual Burden Hours per Respondent: 335 hours.

Estimated Total Annual Burden: 252,855 hours.

Frequency: Annually.

Nadine Pembleton,

Director Office of Management Planning.

[FR Doc. 2022–05950 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2021–0109; Notice No. 2022–02]

Hazardous Materials: Frequently Asked Questions—Applicability of the Hazardous Material Regulations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: PHMSA is announcing an initiative to convert historical letters of interpretation (LOI) applicable to the Hazardous Materials Regulations that have been issued to specific stakeholders into broadly applicable frequently asked questions on its website. By creating a repository of frequently asked questions, PHMSA seeks to eliminate the need for recurring requests for common letters of interpretations. This **Federal Register** Notice introduces this initiative and its objectives to those subject to the Hazardous Materials Regulations. PHMSA's objective is to gain insight regarding the utility of this initiative and topics to prioritize in the development of future frequently asked questions. PHMSA requests comment on the initiative and input on the prioritization of future sets of frequently asked questions.

DATES: Interested persons are invited to submit comments on or before May 23, 2022. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the Docket Number PHMSA–2021–0109 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System; U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Docket Management System; Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and Docket Number (PHMSA–2021–0109) for this notice. To avoid duplication, please use only one of these four methods. All comments received will be posted without change to the Federal Docket Management System (FDMS) and will include any personal information you provide.

Docket: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* or DOT's Docket Operations Office (see **ADDRESSES**).

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Confidential Business Information (CBI): 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 notice 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 notice, it is important that you clearly designate the submitted comments as ''CBI.'' Please mark each page of your submission containing CBI as ''PROPIN.'' Submissions containing CBI should be sent to Arthur Pollack, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any commentary that PHMSA receives which is not specifically designated as CBI will be placed in the public docket for this notice.

FOR FURTHER INFORMATION CONTACT: Arthur Pollack, Standards and Rulemaking Division, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

PHMSA is announcing an initiative to publish frequently asked questions (FAQ) on its website to facilitate better public understanding and awareness of the hazardous materials regulations (HMR; 49 CFR parts 171–180). The FAQ contained in this notice are intended to clarify, explain, and promote better understanding of the HMR. FAQ are not substantive rules, themselves, and do not create legally enforceable rights, assign duties, or impose new obligations not otherwise contained in the existing regulations and standards, but are provided to help the regulated community understand how to comply with the regulations. However, an individual who can demonstrate compliance with the FAQ is likely to be able to demonstrate compliance with the relevant regulations. If a different course of action is taken by an individual, the individual must be able to demonstrate that its conduct is in accordance with the regulations.

PHMSA is creating a repository of these questions, which will remove the need for recurring requests for common letters of interpretation and will assist PHMSA in streamlining the use of its resources by eliminating frequently asked and recurring (LOI). This initiative will provide additional value to PHMSA's Online Code of Federal Regulations (oCFR) tool found at *https://www.phmsa.dot.gov/standards-rulemaking/hazmat/phmsas-online-cfr-ocfr.* The oCFR tool is an interactive web-based application that allows users to navigate with a single click between all content, including LOI connected to an HMR citation. The oCFR tool includes the ability to sort, filter, and export search results. Upon completion of this initiative, the PHMSA Office of Hazardous Materials Safety (OHMS) will be able to achieve efficiencies for other more complex or novel requests for LOI and devote resources to other hazardous materials transportation safety projects. Resources may be made available for other improvement-related operations such as petitions for rulemakings, public outreach and engagement, and economically beneficial regulatory and policy improvements. The information provided in this notice is useful to the regulated community, private citizens intending to offer a hazardous material for transportation, and state and local entities involved in hazardous materials transportation. PHMSA is publishing the first set of questions developed under this initiative.

II. Background

Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) directs the Secretary of Transportation (''the Secretary'') to establish regulations for the safe and secure transportation of hazardous materials in commerce. The Secretary is authorized to apply those regulations to

(1) persons who transport hazardous materials in commerce, (2) persons who cause hazardous materials to be transported in commerce, (3) persons who manufacture or maintain a packaging or a component of a packaging that is represented, marked, certified, or sold as qualified for use in the transportation of a hazardous material in commerce, (4) persons who indicate by marking or other means that a hazardous material being transported in commerce is present in a package or transport conveyance when it is not, and (5) persons who tamper with a package or transport conveyance used to transport hazardous materials in commerce or a required marking, label, placard, or shipping description.

In 49 CFR 1.97, the Secretary delegated authority to issue regulations for the safe and secure transportation of hazardous materials in commerce to the PHMSA Administrator. The PHMSA Administrator issues the HMR under that delegated authority. The HMR prescribes requirements for the safe transportation in commerce of hazardous materials, including provisions for classification, packaging, and hazard communication.

To facilitate its safety mission and promote better awareness of its programs and compliance requirements, OHMS periodically issues agency guidance in the **Federal Register** and on its publicly available website [1] for use by the regulated community, PHMSA staff, and federal, state, and local partners. This information is non-binding material given to the public pertaining to information and resources useful to comply with the HMR and is also used to make the public aware of safety issues or best practices. PHMSA issues this information through posted FAQ, advisory bulletins, publications, and policy manuals. PHMSA also answers questions from stakeholders through its staff and the Hazardous Materials Information Center (HMIC) [2] and by issuing LOI. As provided in 49 CFR 105.20 (Guidance and Interpretations), a member of the public may request information and answers to questions on HMR compliance by contacting the OHMS Standards and Rulemaking Division or the HMIC.[3]

OHMS receives an average of 250 requests for LOI each year. While each letter of interpretation is fact specific, some of these requests for interpretations present similar circumstances to earlier questions that have previously been asked, answered, and published on PHMSA's oCFR website at *https://www.phmsa.dot.gov/standards-rulemaking/hazmat/phmsas-online-cfr-ocfr.*

The purpose of this FAQ initiative is to optimize the effectiveness, reach, and impact of the OHMS LOI process. Through publishing FAQ, PHMSA will memorialize in broadly applicable guidance its historical letters of interpretation for, and applicable to, specific stakeholders regulated by the HMR. Specifically, this initiative will adapt currently available stakeholder engagement functions to more directly appeal to a broader regulated community, develop a systematic process in managing/curating agency information that can be incorporated conveniently into existing workflows, and create helpful tools for current stakeholders. The success of this initiative will be measurable by monitoring PHMSA website engagement, the rate of incoming calls to the HMIC, and the volume of incoming LOI requests. A successful project should see an increase in website engagement with either static or reduced rates of calls to the HMIC and a reduced volume of incoming LOI requests. In addition, the interpretation workflow should reflect more efficient processing and productivity.

III. Frequently Asked Questions: Applicability of Hazardous Materials Regulations to Persons and Functions

Section 171.1 addresses the applicability of the HMR for the safe and secure transportation of hazardous materials in commerce. PHMSA proposes to publish the following series of FAQ in the **Federal Register** and on its website to facilitate better understanding of the HMR applicability requirements and avoid the need for responding to frequent and recurring questions already addressed in accordance with § 105.20.

(1) *Question:* Is a Federal, state, or local government agency subject to the HMR?

Answer: Pursuant to § 171.1(d)(5), a Federal, state, or local government that transports hazardous materials for non-commercial governmental purposes using its own personnel is not engaged in transportation in commerce and, therefore, is not subject to the HMR. As specified in § 171.1, the HMR governs the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. The term ''in commerce'' does not include a Federal, state, or local government that transports hazardous materials for its own use, using its own personnel, and motor vehicles, aircraft, or vessel under its control.

(2) *Question:* Are state universities subject to the HMR when transporting hazardous materials?

Answer: A state agency—such as a state university—that transports hazardous materials for its own non-commercial use, using its own personnel and vehicles, is not engaged in transportation in commerce and, therefore, is not subject to the HMR. However, if the university is privately-operated or is a state university offering hazardous materials for transportation to commercial carriers, the HMR apply.

(3) *Question:* Is a hazardous material transported on private roads subject to the HMR?

Answer: Section 171.1(d)(4) states that the transportation of hazardous materials entirely on private roads with restricted public access is not subject to the HMR.

(4) *Question:* Is a hazardous material subject to the HMR that only crosses a public road?

Answer: The transportation of hazardous materials that, for example, takes place by motor vehicle and within a contiguous plant or factory boundary, is not subject to the HMR. However, intra-plant transport that utilizes or crosses a public road is subject to the HMR during that portion of the transportation unless access to the public road is restricted by gates, traffic signals, guard stations, or similar controls, in accordance with § 171.1(d)(4).

(5) *Question:* Are hazardous materials installed or used in or on a motor vehicle (*e.g.,* gasoline in the motor vehicle's fuel tank) subject to the HMR?

Answer: Hazardous materials that are installed or used in or on a motor vehicle such as the motor vehicle's fuel, suspension, or safety systems are not subject to the HMR. Fuel systems and safety equipment may be subject to the Federal Motor Carrier Safety Regulations (FMCSR) or National Highway Traffic Safety Administration (NHTSA) requirements.

(6) *Question:* Is the filling of a package with a hazardous material subject to the HMR if it is not being offered for transportation in commerce? For example, pouring a flammable liquid into bottles that may be transported eventually.

Answer: The answer is no. However, if there is a chance of future transportation in commerce, the stakeholder should consider placing that hazardous material in packagings suitable for transportation of that material in commerce to minimize safety risks associated with its re-packaging.

(7) *Question:* Are stationary (storage) tanks containing a hazardous material such as propane subject to the HMR?

Answer: The answer is no, unless the tank is transported in commerce containing a

[1] *https://www.phmsa.dot.gov/guidance.*

[2] The HMIC can be reached at 1–800–467–4922 and *infocntr@dot.gov.* For additional information visit: *https://www.phmsa.dot.gov/standards-rulemaking/hazmat/hazardous-materials-information-center.*

[3] To request a formal letter of interpretation, persons may also write to: Mr. Shane Kelley, Director, Standards and Rulemaking Division, U.S. DOT/PHMSA (PHH–10), 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, DC 20590. To obtain information and answers pertaining to statute compliance and preemption, persons must, as prescribed by 49 CFR 105.20(b), contact the office of the Chief Counsel at: Office of the Chief Counsel, U.S. DOT/PHMSA (PHC–10), 1200 New Jersey Avenue SE, East Building, Washington, DC 20590, or at (202) 366–4400.

hazardous material or its residue or if it is represented and maintained as a Department of Transportation (DOT) packaging usable for hazmat transportation.

(8) *Question:* Are hazardous materials being transported for personal use subject to the HMR? For example, are pesticides that are transported from a store by individuals to treat their garden subject to the HMR?

Answer: The answer is no. Under part 171, the phrase ''in commerce'' means in furtherance of a commercial enterprise and transportation in a private motor vehicle for personal use is not considered in furtherance of a commercial enterprise even when transported in a leased or rented vehicle.

(9) *Question:* Are privately-owned SCUBA tanks that are used for diving and marked as DOT specification cylinders subject to the HMR?

Answer: A SCUBA tank that is represented as conforming to HMR requirements—*i.e.,* marked with a DOT specification marking—must be maintained by the owner of said SCUBA tank in accordance with the applicable specification requirements whether or not it is in transportation in commerce.

(10) *Question:* Are government-owned hazardous materials transported for government purposes by contractor personnel subject to the HMR?

Answer: The answer is yes. As provided in § 171.1(d)(5), the HMR do not apply to transportation of a hazardous material in a motor vehicle, aircraft, or vessel operated by a Federal, state, or local government employee solely for noncommercial Federal, state, or local government purposes. However, contractor personnel are not considered government employees and the provisions of the HMR apply.

(11) *Question:* Are gasoline cans transported by a landscaping company by motor vehicle subject to the HMR?

Answer: Commercial businesses—such as landscaping, swimming pool services, or construction companies—transporting hazardous materials are considered ''in commerce'' and subject to the HMR. However, when used in support of a business, the HMR provides an exception in § 173.6 for the transport of ''materials of trade.''

(12) *Question:* Are household hazardous wastes that are transported by a private person to a county drop-off facility subject to the HMR?

Answer: The answer is no, provided the household hazardous wastes are the individual's personal property and he or she is not engaged in a commercial activity, such as a landscaping company or carpentry service.

IV. Notice Objectives

FAQ in this notice—and future FAQ published on PHMSA's website—will help to reduce the volume of duplicative requests for information covered by the FAQ and will facilitate faster processing of more complex and novel LOI requests in the future. Furthermore, in addition to publishing the first set of FAQ in the **Federal Register**, this notice seeks public input specific to the anticipated benefits provided by the FAQ initiative and suggestions for future FAQ topics.

Signed in Washington, DC, on March 16, 2022, under authority delegated in 49 CFR 1.97.

William A. Quade,

Deputy Associate Administrator of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2022–05958 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

[DOT–OST–2021–0009]

Solicitation for Annual Combating Human Trafficking in Transportation Impact Award

AGENCY: Office of the Secretary of Transportation, U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: The annual Combating Human Trafficking in Transportation Impact Award (the award) seeks to raise awareness among transportation stakeholders about human trafficking and increase training and prevention to combat it. The award is a component of the Department of Transportation (DOT) Transportation Leaders Against Human Trafficking initiative. Additional information regarding the Department's counter-trafficking activities can be found at *www.transportation.gov/stophumantrafficking.*

DATES: Submissions accepted March 22, 2022 through midnight PST on May 23, 2022.

FOR FURTHER INFORMATION CONTACT: For more information, and to register your intent to compete individually or as part of a team, visit *www.transportation.gov/stophumantrafficking,* email *trafficking@dot.gov,* or contact Maha Alkhateeb in the Office of International Transportation and Trade at (202) 366–4398.

SUPPLEMENTARY INFORMATION: The award serves as a platform for transportation stakeholders to creatively develop impactful and innovative counter-trafficking tools, initiatives, campaigns, and technologies that can help stop these heinous crimes. The award is open to individuals and entities, including non-governmental organizations, transportation industry associations, research institutions, and state and local government organizations. Entrants compete for a cash award of up to $50,000 to be awarded to the individual(s) or entity selected for creating the most impactful counter-trafficking initiative or technology. DOT intends to incentivize individuals and entities to think creatively in developing innovative solutions to combat human trafficking in the transportation industry, and to share those innovations with the broader community.

Award Approving Official: The Secretary of Transportation (Secretary).

Subject of Award Competition: The Combating Human Trafficking in Transportation Impact Award will recognize impactful and innovative approaches to combating human trafficking in the transportation industry.

Problem

As many as 25 million men, women, and children are held against their will and trafficked into forced labor and prostitution. Transportation figures prominently in human trafficking enterprises when traffickers move victims, which uniquely positions the industry to combat the crime.

Challenge

The Combating Human Trafficking in Transportation Impact Award is looking for the best innovators to develop original, impactful, and unique human trafficking tools, initiatives, campaigns, and technologies that can help stop these heinous crimes in the transportation industry.

Eligibility

To be eligible to participate in the Combating Human Trafficking in Transportation Impact Award competition, private entities must be incorporated in and maintain a primary place of business in the United States, and individuals must be citizens or permanent residents of the United States. There is no charge to enter the competition.

Rules, Terms, and Conditions

The following additional rules apply:

1. Entrants shall submit a project to the competition under the rules promulgated by the Department in this Notice;

2. Entrants must indemnify, defend, and hold harmless the Federal Government from and against all third-party claims, actions, or proceedings of any kind and from any and all damages, liabilities, costs, and expenses relating to or arising from participant's submission or any breach or alleged breach of any of the representations, warranties, and covenants of participant hereunder. Entrants are financially

responsible for claims made by a third party;

3. Entrants may not be a Federal entity or Federal employee acting within the scope of employment;

4. Entrants may not be an employee of the U.S. Department of Transportation;

5. Entrants shall not be deemed ineligible because an individual used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals participating in the competition on an equitable basis;

6. The entries cannot have been submitted in the same or substantially similar form in any other previous Federally sponsored promotion or Federally sponsored competition;

7. Entrants previously awarded first place are not eligible to reenter for the same or substantially similar project;

8. Entries which, in the Department's sole discretion, are determined to be substantially similar to another entity's entry submitted to this competition may be disqualified;

9. The competition is subject to all applicable Federal laws and regulations. Participation constitutes the entrants' full and unconditional agreement to these rules and to the Secretary's decisions, which are final and binding in all matters related to this competition;

10. Entries must be original, be the work of the entrant and/or nominee, and must not violate the rights of other parties. All entries remain the property of the entrant. Each entrant represents and warrants that:

- Entrant is the sole author and owner of the submission;
- The entry is not the subject of any actual or threatened litigation or claim;
- The entry does not and will not violate or infringe upon the intellectual property rights, privacy rights, publicity rights, or other legal rights of any third party; and
- The entry does not and will not contain any harmful computer code (sometimes referred to as ''malware,'' ''viruses,'' or, ''worms'').

11. By submitting an entry in this competition, entrants agree to assume any and all risks and waive any claims against the Federal Government and its related entities (except in the case of willful misconduct) for any injury, death, damage, or loss of property, revenue or profits, whether direct, indirect, or consequential, arising from their participation in this competition, whether the injury, death, damage, or loss arises through negligence of otherwise. Provided, however, that by registering or submitting an entry, entrants and/or nominees do not waive claims against the Department arising out of the unauthorized use or disclosure by the agency of the intellectual property, trade secrets, or confidential information of the entrant;

12. The Secretary or the Secretary's designees have the right to request additional supporting documentation regarding the application from the entrants and/or nominees;

13. Each entrant grants to the Department, as well as other Federal agencies with which it partners, the right to use names, likeness, application materials, photographs, voices, opinions, and hometown and state for the Department's promotional purposes in any media, in perpetuity, worldwide, without further payment or consideration;

14. If selected, the entrant and/or nominee must provide written consent granting the Department and any parties acting on their behalf, a royalty-free, non-exclusive, irrevocable, worldwide license to display publicly and use for promotional purposes the entry (''demonstration license''). This demonstration license includes posting or linking to the entry on Department websites, including the Competition website, and partner websites, and inclusion of the entry in any other media, worldwide;

15. Applicants which are Federal grant recipients may not use Federal funds to develop submissions;

16. Federal contractors may not use Federal funds from a contract to develop applications or to fund efforts in support of a submission; and

17. The submission period begins on March 22, 2022. Submissions must be sent by 11:59 p.m. Eastern Standard Time on May 23, 2022. The timeliness of submissions will be determined by the postmark (if sent in hard copy) or time stamp of the recipient (if emailed). Competition administrators assume no responsibility for lost or untimely submissions for any reason.

Submission Requirements

Applicants must submit entries via email or by mail. Electronic packages may be transmitted by email to: *trafficking@dot.gov.* Hard copies should be forwarded with a cover letter to the attention of: Combating Human Trafficking in Transportation Impact Award (Room W88–121), 1200 New Jersey Avenue SE, Washington, DC 20590.

Expression of Interest: While not required, entrants are strongly encouraged to send brief expressions of interest to the DOT prior to submitting entries. The expressions of interest should be sent by April 21, 2022 *to trafficking@dot.gov, and include the following elements: (1) Name of entrant/s; (2) Telephone and email address; and (3) A synopsis of the concept, limited to no more than two pages.*

Please ensure your submission package includes *ALL* of the following elements:

1. Entity

The (1) name of the submitting individual(s) or organization, (2) their title, (3) phone, (4) email, (5) website URL, and (6) mailing address. If the point of contact for the project is different, also specify their name, title, phone, and email.

2. Background

Brief background regarding the submitting individual(s) or organization(s) that includes project-related expertise.

3. Eligibility Statement

A statement of eligibility by private entities indicating that they are incorporated in and maintain a primary place of business in the United States, or a statement of eligibility by individuals indicating that they citizens or permanent residents of the United States.

4. Mode(s)

Specify which transportation mode(s) the project will focus on.

5. Title

The project title.

6. Project Summary and Overview (1–2 Pages)

A (1) one-paragraph synopsis of the proposed project followed by a (2) 1–2 page overview of the project. Projects should present a logical and workable solution and approach to addressing the issue of human trafficking in the transportation industry. *Questions to consider include:* Is the concept unique? Are the anticipated beneficiaries clearly identified? Were human trafficking survivors consulted in the development of the project and/or how will survivor input be included in project implementation? Are the anticipated resources and costs outlined in detail? Can the project be implemented in a way requiring a finite amount of resources (*e.g.,* the submission has fixed costs, low or no marginal costs, and a clear path to implementation and scale beyond an initial investment)?

7. Impact/Measurability

A description of how the project will be evaluated, and its potential impact

on human trafficking in the transportation industry. Questions to consider include: How will the project's impact be measured? How will the project contribute to counter-trafficking efforts in the transportation sector? If not a national project, can the project be scaled nationally?

8. Partners

If applicable, list the partners who will be engaged in project development and/or implementation, including a brief background for each.

9. Letters of Support

You may submit supporting letters, which may be from subject matter experts or industry, and may address the technical merit of the concept, originality, impact, practicality, measurability and/or applicability.

10. Supporting Documents (no page limit)

The paper(s) and/or technologies, programs, video/audio files, and other related materials, describing the project and addressing the selection criteria. As applicable, this can include a description of success of a previous or similar project and/or documentation of impact. DOT may request additional information, including supporting documentation, more detailed contact information, releases of liability, and statements of authenticity to guarantee the originality of the work. Failure to respond in a timely manner may result in disqualification.

Initial Screening

The Office of International Transportation and Trade will initially review applications to determine that all required submission elements are included, and to determine compliance with eligibility requirements.

Evaluation

After the Initial Screening, the Office of International Transportation and Trade, with input from the relevant Operating Administrations, will judge entries based on the factors described below: Technical merit, originality, impact, practicality, measurability, and applicability. All factors are important and will be given consideration.

The Secretary will make the final selection.

The Department reserves the right to not award the prize if the selecting officials believe that no submission demonstrates sufficient potential for sufficient transformative impact.

Technical Merit

- Presents a clear understanding of the issue of human trafficking in the transportation industry and utilizes a trauma-informed, victim-centered approach.
- Presents a logical and workable solution and approach to addressing human trafficking in the transportation industry.
- Survivors of human trafficking were consulted in the development of the project concept and survivor input is outlined in the description of project implementation.

Originality

- The concept is new or a variation of an existing idea.
- The concept possesses and clearly describes its unique merits.

Impact/Measurability

- The project can make a significant impact and/or contribution to the fight against human trafficking in the transportation industry.
- The project clearly describes the breadth of impact.
- The submission clearly outlines how the project will be measured.
- The project will result in measurable improvements.

Practicality

- The project clearly identifies anticipated beneficiaries of the project.
- The project clearly outlines anticipated resources and all costs to be incurred by executing the concept.
- The project can be implemented in a way that requires a finite amount of resources (specifically, the submission has fixed costs, low or no marginal costs, and a clear path to implementation and scale beyond an initial investment).

Applicability

- The project is national and/or can be scaled nationally.

Award

Up to three winning entries are expected to be announced. The first-place winner will receive up to a $50,000 cash prize. A plaque with the first-place winner(s) name and the date of the award will be on display at the U.S. Department of Transportation, and a display copy of the plaque(s) will be sent to the first-place award winner's headquarters. At the discretion of the Secretary, up to two additional plaques may be awarded to recognize two runners up. At the Department's discretion, DOT may pay for invitational travel expenses to Washington, DC for up to two individuals or representatives of the first-place winning organization and runners up organizations, should selectees be invited to present their project(s) for DOT officials.

(Authority: 15 U.S.C. 3719 (America COMPETES Act).

Issued in Washington, DC, on March 10, 2022.

Carol Annette Petsonk,

Deputy Assistant Secretary, Aviation and International Affairs, U.S. Department of Transportation.

[FR Doc. 2022–05781 Filed 3–21–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 8844

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 8844, *Empowerment Zone Employment Credit.*

DATES: Written comments should be received on or before May 23, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov.* Please include, ''OMB Number: 1545–1444—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Empowerment Zone Employment Credit.

OMB Number: 1545–1444.

Project Number: Form 8844.

Abstract: Employers who hire employees who live and work in one of the eleven designated empowerment zones can receive a tax credit for the first $15,000 of wages paid to each

employee. Employers use Form 8844 to claim the empowerment zone and renewal community employment credit.

Current Actions: There is no change in the paperwork burden previously approved by the Office of Management and Budget (OMB). This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, farms and not-for-profit institutions.

Estimated Number of Respondents: 25.

Estimated Time per Respondent: 6 hrs., 33 min.

Estimated Total Annual Burden Hours: 158.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the information collection request (ICR) for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: March 16, 2022.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2022–06013 Filed 3–21–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 6252

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 6252, *Installment Sale Income.*

DATES: Written comments should be received on or before May 23, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov.* Please include, ''OMB Number: 1545–0228—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Installment Sale Income.

OMB Number: 1545–0228.

Project Number: Form 6252.

Abstract: Internal Revenue Code section 453 provides that if real or personal property is disposed of at a gain and at least one payment is to be received in a tax year after the year of sale, the income is to be reported in installments, as payment is received. Form 6252 provides for the computation of income to be reported in the year of sale and in years after the year of sale. It also provides for the computation of installment sales between certain related parties required by Code section 453(e).

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, and farms.

Estimated Number of Respondents: 521,898.

Estimated Time per Respondent: 3 hrs., 4 min.

Estimated Total Annual Burden Hours: 1,597,008.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: March 16, 2022.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2022–06000 Filed 3–21–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request for Form 1041–T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning Form 1041–T, *Allocation of Estimated Tax Payments to Beneficiaries (Under Code section 643(g)).*

DATES: Written comments should be received on or before May 23, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov.* Please include, ''OMB Number: 1545–1020—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation of Estimated Tax Payments to Beneficiaries (Under Code section 643(g)).

OMB Number: 1545–1020.

Project Number: Form 1041–T.

Abstract: This form allows a trustee of a trust or an executor of an estimate to make an election under Internal Revenue Code section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). The IRS uses the information on the form to determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

Current Actions: Changes to comply with current tax laws and updates in the burden estimates will result in a burden increase of 725 hours. This form is being submitted for renewal purposes only.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,381.

Estimated Time per Respondent: 42 min.

Estimated Total Annual Burden Hours: 1,715.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid Office of Management and Budget (OMB) control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the information collection request (ICR) for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: March 16, 2022.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2022–06010 Filed 3–21–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Rulings and Determination Letters

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA), on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before April 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION: *1. Title:* Rulings and determination letters.

OMB Control Number: 1545–1522.

Type of Review: Reinstatement with change of a previously approved collection.

Description: This revenue procedure explains how the Service provides advice to taxpayers on issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), and the Associate Chief Counsel (Procedure and Administration). It explains the forms of

advice and the way advice is requested by taxpayers and provided by the Service.

Form Number: Rev. Proc. 2021–1 and Rev. Proc. 2022–10.

Affected Public: Individuals and households; Businesses or other for-profits.

Estimated Number of Respondents: 3,966.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 3,966.

Estimated Time per Response: 79.88 hours.

Estimated Total Annual Burden Hours: 316,100 hours.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: March 17, 2022.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2022–06029 Filed 3–21–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; VITA/TCE Volunteer Program

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA), on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments must be received on or before April 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

1. Title: VITA/TCE Volunteer Program.

OMB Control Number: 1545–2222.

Type of Review: Revision of a currently approved collection.

Description: The Internal Revenue Service offers free assistance with tax return preparation and tax counseling using specially trained volunteers. The Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs assist seniors and individuals with low to moderate incomes, those with disabilities, and those for whom English is a second language.

Current Actions: There is a change in the paperwork burden previously approved by OMB. The agency has requested to add Forms 13977, 13978, and 14335 to this collection and has updated the form to meet 508 compliance. The information on the form can only be submitted to the IRS at *https://www.irs.gov/individuals/irs-tax-volunteers.* This process is part of Link and Learn (a self-paced e-learning for the Volunteer Income Tax Assistance and Tax Counseling for the Elderly (VITA/TCE) program).

Form Number: IRS Forms 8653, 8654, 13206, 13715, 13977, 13978, 14204, 14310 and 14335.

Affected Public: Individuals and Households.

Estimated Number of Respondents: 34,100.

Frequency of Response: On Occasion.

Estimated Total Number of Annual Responses: 49,100.

Estimated Time per Response: 21 minutes.

Estimated Total Annual Burden Hours: 17,034.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: March 17, 2022.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2022–06030 Filed 3–21–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Proposed Collection; Comment Request; Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to comment on the proposed information collections listed below, in accordance with the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before May 23, 2022.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, by the following method:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Refer to Docket Number TREAS–DO–2022–0006 and the specific Office of Management and Budget (OMB) control number 1505–0245.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Tonya Burton by emailing *FRFAssessments@treasury.gov,* calling (202) 927–8172, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Assessment of Fees on Large Bank Holding Companies and Nonbank Financial Companies.

OMB Control Number: 1505–0245.

Type of Review: Revision of a currently approved collection.

Description: The Financial Research Fund (FRF) Preauthorized Payment Agreement form will collect information with respect to the final rule (31 CFR part 150) on the assessment of fees on large bank holding companies and nonbank financial companies supervised by the Federal Reserve Board to cover the expenses of the FRF.

Form: TD F 105.1.

Affected Public: Businesses or other for-profits.

Estimated Number of Respondents: 17.

Frequency of Response: Once.

Estimated Total Number of Annual Responses: 17.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 4.25 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the

collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services required to provide information.

Authority: 44 U.S.C. 3501 *et seq.*

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2022–06072 Filed 3–21–22; 8:45 am]

BILLING CODE 4810–AK–P

DEPARTMENT OF THE TREASURY

Open Meeting of the Financial Research Advisory Committee

AGENCY: Office of Financial Research, Department of the Treasury.

ACTION: Notice of open meeting.

SUMMARY: The Financial Research Advisory Committee for the Treasury's Office of Financial Research (OFR) is convening for its nineteenth meeting on Thursday, April 7, 2022, via webcast, beginning at 10:00 a.m. Eastern Time. The meeting will be open to the public, and advance registration is required.

DATES: The meeting will be held Thursday, April 7, 2022, beginning at 10:00 a.m. Eastern Time.

ADDRESSES: The meeting will be held via webcast using Zoom. Participants are required to register ahead of time. Register in advance for the meeting using this Zoom attendee registration link: *https://ofr-treasury.zoomgov.com/webinar/register/WN_xkw_IwFgQHSaKv9Sj4jJKw.* After registering, you will receive a confirmation email with a unique link to join the meeting.

Reasonable Accommodation: If you require a reasonable accommodation, please contact *ReasonableAccommodationRequests@treasury.gov.* Please submit requests at least five days before the event.

FOR FURTHER INFORMATION CONTACT: Melissa Avstreih, Designated Federal Officer, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, (202) 927–8032 (this is not a toll-free number), or *OFR_FRAC@ofr.treasury.gov.* Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 10(a)(2), through implementing regulations at 41 CFR 102–3.150, *et seq.*

Public Comment: Members of the public wishing to comment on the business of the Financial Research Advisory Committee are invited to submit written statements by any of the following methods:

- *Electronic Statements.* Email the Committee's Designated Federal Officer at *OFR_FRAC@ofr.treasury.gov.*
- *Paper Statements.* Send paper statements in triplicate to the Financial Research Advisory Committee, Attn: Melissa Avstreih, Office of Financial Research, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

The OFR will post statements on the Committee's website, *https://www.financialresearch.gov/frac/,* including any business or personal information provided, such as names, addresses, email addresses, or telephone numbers. The OFR will also make such statements available for public inspection and copying in the Department of the Treasury's library, Annex Room 1020, 1500 Pennsylvania Avenue NW, Washington, DC 20220 on official business days between the hours of 8:30 a.m. and 5:30 p.m. Eastern Time. You may make an appointment to inspect statements by calling (202) 622–0990. All statements, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Agenda/Topics for Discussion: The Committee provides an opportunity for researchers, industry leaders, and other qualified individuals to offer their advice and recommendations to the OFR, which, among other things, is responsible for collecting and standardizing data on financial institutions and their activities and for supporting the work of the Financial Stability Oversight Council.

This is the nineteenth meeting of the Financial Research Advisory Committee. Topics to be discussed among all members are data on uncleared bilateral repurchase agreements and the potential financial stability implications from growth in digital asset markets. For more information on the OFR and the Committee, please visit the OFR's website at *https://www.financialresearch.gov.*

Melissa Avstreih,

Senior Product Manager.

[FR Doc. 2022–05991 Filed 3–21–22; 8:45 am]

BILLING CODE 4810–AK–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings

TIME AND DATE: March 31, 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: 956 7355 6729, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/meeting/register/tJErcOqtqz0tGN2cOoys6RcIabpP-LnfNfbA.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Finance 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—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Finance Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification 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 Finance Subcommittee Agenda and Setting of Ground Rules—UCR Finance Subcommittee Chair

For Discussion and Possible Subcommittee Action

The agenda will be reviewed, and the UCR Finance Subcommittee will consider adoption.

Ground Rules

➢ Subcommittee action only to be taken in designated areas on agenda.

IV. Review and Approval of Minutes From the November 10, 2021 Meeting—UCR Finance Subcommittee Chair

For Discussion and Possible Subcommittee Action

Draft minutes from the November 10, 2021 UCR Finance Subcommittee meeting via teleconference will be reviewed. The UCR Finance Subcommittee will consider action to approve.

V. Review Current Calculations of 2024 Registration Fee Recommendation—UCR Finance Subcommittee Chair and UCR Depository Manager

The UCR Finance Subcommittee Chair and UCR Depository Manager will present the most recent calculations of the proposed fee for the 2024 registration year based on the actual registration results as of February 28, 2022 and current projections for March 2022 through December 31, 2022.

VI. Update on Development of Investment Strategy—UCR Finance Subcommittee Chair and UCR Depository Manager

The UCR Finance Subcommittee Chair and UCR Depository Manager will provide an update regarding the development of an investment strategy and policy for increasing the rate-of-return on Administrative Reserve Funds. An update on current investment performance, including U.S. Treasuries will be provided.

VII. Review of 2021 Administrative Expenses—UCR Depository Manager

For Discussion and Possible Subcommittee Action

The UCR Depository Manager will review the expenditures of the UCR Plan for the 12 months ended December 31, 2021 with the Finance Subcommittee. The Finance Subcommittee may take action to recommend to the UCR Board how to allocate any remaining allowance.

VIII. Review of 2022 Administrative Expenses—UCR Depository Manager

The UCR Depository Manager will review the expenditures of the UCR Plan for the 2 month period ended February 28, 2022 with the Finance Subcommittee.

IX. 2020 Registration Year Closure—UCR Depository Manager

The UCR Depository Manager will present to the subcommittee the results of the final closure of the Depository for the 2020 registration year.

X. Other Business—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will call for any other items Finance Subcommittee members would like to discuss.

XI. Adjourn—UCR Finance Subcommittee Chair

The UCR Finance Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, March 17, 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. 2022–06137 Filed 3–18–22; 11:15 am]

BILLING CODE 4910–YL–P

FEDERAL REGISTER

Vol. 87 Tuesday,
No. 55 March 22, 2022

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(D) Rule for Sand Dune Phacelia and Designation of Critical Habitat; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2021–0070; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BF89

Endangered and Threatened Wildlife and Plants; Threatened Species Status With Section 4(d) Rule for Sand Dune Phacelia and Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the sand dune phacelia (*Phacelia argentea*), a plant species from coastal southern Oregon and northern California, as a threatened species and designate critical habitat under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the sand dune phacelia. After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the sand dune phacelia as a threatened species with a rule issued under section 4(d) of the Act (''4(d) rule''). If we finalize this rule as proposed, it would add this species to the List of Endangered and Threatened Plants and extend the Act's protections to the species. We also propose to designate critical habitat for the sand dune phacelia under the Act. In total, approximately 252 acres (102 hectares) in Coos and Curry Counties in Oregon, and Del Norte County in California, fall within the boundaries of the proposed critical habitat designation. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat for sand dune phacelia.

DATES: We will accept comments received or postmarked on or before May 23, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for a public hearing, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by May 6, 2022.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter the docket number or RIN for this rulemaking (presented above in the document headings). For best results, do not copy and paste either number; instead, type the docket number or RIN into the Search box using hyphens. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R1–ES–2021–0070, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Availability of supporting materials: For the critical habitat designation, the draft economic analysis and the coordinates or plot points or both from which the maps are generated are included in the decision file and are available at the Oregon Ecological Services website (*https://www.fws.gov/oregonfwo/*) and at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2021–0070. Additional supporting information that we developed for this critical habitat designation will be available at the Service's website set out above, at *https://www.regulations.gov,* or both.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone (503) 231–6179. 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:

Executive Summary

Why we need to publish a rule. Under the Act, if we determine that a species warrants listing, we are required to promptly publish a proposal in the **Federal Register**, unless doing so is precluded by higher-priority actions and expeditious progress is being made to add and remove qualified species to or from the List of Endangered and Threatened Wildlife and Plants. The Service will make a determination on our proposal within 1 year. If there is substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the proposed listing, we may extend the final determination for not more than six months. To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Listing a species as an endangered or threatened species and designation of critical habitat can only be completed by issuing a rule.

What this document does:

- Proposes to list sand dune phacelia as a threatened species under the Act.
- Proposes a rule issued under section 4(d) of the Act (''4(d) rule'') that would make it unlawful to remove and reduce to possession the species from areas under Federal jurisdiction; maliciously damage or destroy the species on areas under Federal jurisdiction; or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law; import or export; sell; or involve in interstate or foreign commerce.
- Proposes to designate critical habitat for the species on approximately 252 acres (ac) (102 hectares (ha)) in Coos and Curry Counties in Oregon, and Del Norte County in California.

The basis for our action. Under the Act, we may determine that a species is an endangered or threatened species because of any of 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. We have determined that stressors related to Factors A and E (invasive species encroachment and competition, climate change, and small population size) are causing sand dune phacelia to be threatened.

Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat concurrent with listing to the maximum extent prudent and determinable. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the

geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species. Section 4(b)(2) of the Act states that the Secretary must make the designation on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impacts of specifying any particular area as critical habitat.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) Information on regulations that are necessary and advisable to provide for the conservation of the sand dune phacelia and that the Service can consider in developing a 4(d) rule for the species. In particular, information concerning the extent to which we should include any of the Act's section 9 prohibitions in the 4(d) rule or whether we should consider any additional exceptions from the prohibitions in the 4(d) rule.

(6) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(b) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States; or

(d) No areas meet the definition of critical habitat.

(7) Specific information on:

(a) The amount and distribution of sand dune phacelia habitat;

(b) What areas, that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the species, should be included in the designation and why;

(c) Any additional areas occurring within the range of the species (in Coos or Curry County in Oregon, or Del Norte County in California) that should be included in the designation because they (1) are occupied at the time of listing and contain the physical or biological features that are essential to the conservation of the species and that may require special management considerations, or (2) are unoccupied at the time of listing and are essential for the conservation of the species;

(d) Special management considerations or protection that may be needed in critical habitat areas we are proposing, including managing for the potential effects of climate change; and

(e) What areas not occupied at the time of listing are essential for the conservation of the species. We particularly seek comments:

(i) Regarding whether occupied areas are adequate for the conservation of the species;

(ii) Providing specific information regarding whether or not unoccupied areas would, with reasonable certainty, contribute to the conservation of the species and contain at least one physical or biological feature essential to the conservation of the species; and

(iii) Explaining whether or not unoccupied areas fall within the definition of ''habitat'' at 50 CFR 424.02 and why.

(8) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(9) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the related benefits of including or excluding specific areas.

(10) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of the likely economic impacts and any additional information regarding probable economic impacts that we should consider.

(11) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(12) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send

comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying 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. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is endangered instead of threatened, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species. For critical habitat, our final designation may not include all areas proposed, may include some additional areas that meet the definition of critical habitat, and may exclude some areas if we find the benefits of exclusion outweigh the benefits of inclusion. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the 4(d) rule if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are compatible with the conservation and recovery of the species.

Public Hearing

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations at 50 CFR 424.16(c)(3).

Previous Federal Actions

On March 7, 2014, the Service received a petition requesting that sand dune phacelia be listed as an endangered or threatened species and, if applicable, critical habitat be designated for this species under the Act (Center for Biological Diversity et al. 2014, entire). Our subsequent 90-day finding (80 FR 37568, July 1, 2015) concluded that the petition provided substantial information, and that the status of sand dune phacelia warranted further review.

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the sand dune phacelia. The SSA team was composed of Service biologists, in consultation with other species experts. The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought the expert opinions of three appropriate specialists regarding the SSA. We received three responses. We also sent the SSA report to seven partners, including scientists with expertise in botany and coastal native dune plant conservation, for review. We received review from three partners: Oregon Department of Agriculture's Native Plant Conservation Program, the California Department of Parks and Recreation, and the Tolowa Dunes Stewards.

I. Proposed Listing Determination

Background

Sand dune phacelia (*Phacelia argentea*), also known as silvery phacelia, is an evergreen, herbaceous, flowering perennial in the forget-me-not family (Boraginaceae), and its status as a taxonomically valid species is well-accepted (Nelson and MacBride 1916, p. 34). It is found only on coastal dune habitat in southern Oregon (Coos and Curry Counties) and far northern California (Del Norte County) coasts. A rangewide survey conducted in 2017 documented 26 occupied sites (including 1 entirely introduced population), with 16 sites in Oregon and the remaining 10 in California (Brown 2020a database). Sand dune phacelia occurs on the open sand above the high tide line, further inland on semi-stabilized and open dunes, and on coastal bluffs (Kalt 2008, p. 2). It has been described as occurring at elevations ranging from 10 to 40 feet (3 to 12 meters) and on slopes less than 30 percent composed of sand or (rarely) gravel (Rodenkirk 2019, p. 7).

Sand dune phacelia exhibits multiple adaptations for living in drought-like, nutrient-poor areas with high winds, blowing sand, and salt spray. It forms mats that reduce its exposure to wind and spray and has silvery hairs on its leaves, which allow it to resist desiccation in its harsh environment of blowing sand. Its tap root may be extensive, facilitating life in an environment of shifting sands and maximizing the plant's ability to uptake water (Rodenkirk 2019, p. 12).

Sand dune phacelia occurs in sandy habitats that are sufficiently free of competing vegetation to provide space and a high light environment to allow for seedling establishment and growth (Kalt 2008, p. 4; Meinke 2016, p. 2). Reproductively mature plants begin to bloom in late April and May, with flowers persisting through August (Meinke 1982, p. 282). Sand dune phacelia appears to be largely incapable of significant self-pollination (Meinke 2016, p. 3), relying upon pollination by bees (Rittenhouse 1995, p. 8).

A thorough review of the taxonomy, life history, and ecology of the sand dune phacelia (*Phacelia argentea*) is presented in the SSA report (Service 2021, pp. 7–20).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following 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 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.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent a decision by the Service on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket FWS–R1–ES–2021–0070 on *https://www.regulations.gov* and at *https://www.fws.gov/oregonfwo.*

To assess sand dune phacelia viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability.

Individual Needs

Sand dune phacelia occurs in sandy habitats that are sufficiently free of competing vegetation to allow for seedling establishment and growth (Kalt 2008, p. 4; Meinke 2016, p. 2). Drought has been implicated in low seedling recruitment and adult mortality (Rodenkirk 2019, p. 17), but precise moisture requirements are unknown. Nutritional needs are evidently low, as sand is nutrient poor. Whether sand dune phacelia is mycorrhizal (like many other dune species) is unknown. A high light environment is important for sand dune phacelia to complete its life cycle and reproduce. There is evidence that high light exposure is needed for seed germination (Meinke 2016, p. 5) as well as for seedling establishment and growth (Rodenkirk 2019, p. 19; Jacobs 2019, p. 92).

Population Needs

To be adequately resilient, populations of sand dune phacelia need sufficient numbers of reproductive individuals to withstand stochastic events. Sufficient annual seed production and seedling establishment is necessary to offset mortality of mature sand dune phacelia plants within a population. Because large individuals produce the most seed (Meinke 2016, p. 3), their loss is likely to have the greatest impact on the overall population. However, no quantitative analyses have been completed to determine minimum viable population size for sand dune phacelia.

Sandy habitat that is relatively free of vegetative competition is important for population persistence (Rodenkirk 2019, p. 16; Rittenhouse 1995, p. 8). Historically, sand dunes shifted as dictated by prevailing winds, tides, and storm surge, and these forces maintained and supported native dune plant communities adapted to highly dynamic environments. In the absence of sand-disturbing forces, dune habitats are susceptible to rapid colonization by nonnative species such as European beachgrass (*Ammophila arenaria*) and gorse (*Ulex europaea*), as well as encroachment by native successional species like shore pine (*Pinus contorta* ssp. *contorta*) (Meinke 2016, p. 2).

Sand dune phacelia is largely dependent upon pollination by bees. In coastal dune habitats, bee abundance and species richness are positively correlated with the presence of sand dune phacelia (Julian 2012, p. 3), and negatively correlated with cover of European beachgrass and other invasive vegetation (Julian 2012, p. 21).

Species Needs

To maintain viability, sand dune phacelia should have a sufficient number of sustainable populations that are well-distributed throughout its geographic range and throughout the variety of ecological settings in which the species is known to exist. Suitable habitat must be available, and the number and distribution of adequately resilient populations must be sufficient for the species to withstand catastrophic events. No quantitative analysis exists upon which to determine the minimum number of populations or the quantity of suitable habitat necessary for sand dune phacelia to maintain viability as a species.

The historical extent and distribution of sand dune phacelia across the southern Oregon and far northern California coasts is not precisely known. The species may have been more abundant, widespread, and contiguously distributed on the landscape prior to the loss and stabilization of sand dune habitats, off-highway vehicle use, and the introduction of invasive species (particularly European beachgrass) (Meinke 2016, p. 2). Due to its specialized adaptations to the sand dune environment, it is unlikely that sand dune phacelia ever occurred in a diverse range of ecological environments, and no information exists on the genetics of sand dune phacelia that would allow an assessment of whether populations demonstrate sufficient genetic variability to persist under changing environmental conditions.

In summary, individual sand dune phacelia plants require sandy substrate with limited vegetative competition for light, moisture, and growing space. Populations must be sufficiently large and sustainable to withstand stochastic events, have sufficient annual seed production, and an adequate pollinator community. For species viability, sand dune phacelia must have sufficiently resilient populations that are well distributed across its range and sufficient genetic diversity to adapt to changing conditions (table 1).

TABLE 1—INDIVIDUAL, POPULATION, AND SPECIES NEEDS OF SAND DUNE PHACELIA

Individuals	Populations	Species
Bare sandy substrate	Sufficiently large number of reproductive individuals per population to withstand stochastic events.	Sufficient number of adequately resilient populations well distributed across the range
High light environment.	Sufficient annual seed production to offset mortality	Sufficient genetic diversity to adapt to change over time (no information on genetics)
Water	Dune/sandy habitat with low degree of invasive species.	
Pollinators	Sufficient abundance and diversity of pollinators for outcrossing/optimal seed production.	

Threats

We considered a comprehensive set of sand dune phacelia stressors that have been cited in the literature (Rodenkirk 2019, entire), in the data provided from our partners (Brown 2020a database), and in the petition (Center for Biological Diversity et al. 2014, entire). For each stressor we assessed whether there was sufficient evidence that the influence of the stressor rose to the scope and magnitude necessary to impact sand dune phacelia populations, and thus be carried forward in our analysis of current and future condition. We also examined positive influence factors (conservation efforts) in a similar manner.

Invasive Plants

Invasive, introduced plant species are considered one of the most influential stressors to sand dune phacelia and its habitat (Kalt 2008, p. 7; Rodenkirk 2019, p. 6). European beachgrass, gorse, and other invasive plant species outcompete sand dune phacelia throughout its range (Rodenkirk 2019, p. 6). Introduced to the Pacific Northwest region of the United States and California in the 1800s, European beachgrass is an aggressive, perennial, rhizomatous grass. It was extensively planted to stabilize sand and build dunes parallel to the ocean shore to protect infrastructure from the effects of ocean storms and tides (Hacker et al. 2011, p. 2; Oregon Department of Fish and Wildlife (ODFW) 2016, pp. 67). Colonizing European beachgrass captures sand with its deep roots and spreading shoots, forming dense monocultures of grass that outcompete many native dune species, including sand dune phacelia, for growing space, sunlight, and moisture (Rittenhouse 1996, p. 3). The steep, heavily vegetated foredunes seen today along much of the Oregon, and to a lesser extent California, coastlines are the result of European beachgrass colonization (Rittenhouse 1995, p. 9; Zarnetske et al. 2010, pp. 12). Dune stabilization by European beachgrass also facilitates the establishment and succession of native trees and shrubs that proliferate in the absence of natural disturbance regimes,

thereby resulting in the conversion, and ultimate loss, of native dune habitat (Rittenhouse 1996, p. 3; Brown 2020a database).

According to population surveys conducted in California, European beachgrass poses the most consequential threat to sand dune phacelia populations in that State (Jacobs 2019, p. 9; Imper 1987, p. 1; Kalt 2008, p. 7). In Oregon, the expansion of European beachgrass was a likely factor in the extirpation of two sand dune phacelia populations near Bandon (Christy 2007, p. 15), and adverse effects to sand dune phacelia populations from European beachgrass have been documented at multiple locations throughout its range (Rittenhouse 1995, p. 9; Kagan and Titus 1998a, p. 10; Kagan and Titus 1998b, p. 3; Titus 1998, p. 12; Rodenkirk 2019, entire; Brown 2020a database).

We are also aware that under certain ocean shore alteration permits in Oregon, landowners are required to stabilize the dune against erosion in order to protect properties and shoreline. European beachgrass is often used because it is readily available and effective for that purpose (Bacheller 2021, pers. comm.). This permitting requirement may promote the spread of European beachgrass, although to our knowledge this is not currently occurring within the range of sand dune phacelia.

Gorse is an introduced spiny shrub that forms impenetrable thickets that overtake dune habitats. It is widely recognized as a threat to native plant species and dune habitats (Christy 2007, entire; ODFW 2016, p. 7). Widespread in the Bandon, Oregon, area, it poses a threat to sand dune phacelia populations in the northern region of its range (Kagan and Christy 1998, p. 14; Christy 2007, p. 17; Kalt 2008 p. 8; Rodenkirk 2019, p. 6; Brown 2020a database). Gorse is also highly flammable and produces copious amounts of seed that can persist in the environment for 30 years or more (Goodwin 2018, p. 119).

There is broad consensus in the scientific literature and available data that invasive species presently pose a population-level threat to sand dune phacelia rangewide and will continue to do so into the future, so we included this threat in our analysis of current and future condition.

Recreational Impacts

Legal and illegal off-highway vehicle (OHV) use can damage or kill sand dune phacelia. While widely perceived as a potential threat (Kalt 2008, p. 9; Brown 2020a database; Rodenkirk 2019, p. 6), documented impacts from OHVs are limited to individuals at a small number of sites throughout its range, most notably in California (Imper, 1987, p. 1; Gedik 2009, p. 7; Tolowa Dune Stewards 2013, p. 18; Jacobs 2019, pp. 15, 102). Impacts of OHV use to sand dune phacelia in Oregon are thought to be minimal and localized (Rittenhouse 1995, p. 9), with most OHV use occurring in areas unoccupied by sand dune phacelia (Kalt 2008, p. 9).

Trampling by pedestrians and equestrians is noted in the literature as a concern throughout the range of sand dune phacelia. Trampling can both decrease the size of sand dune phacelia mats and destroy individuals (Rodenkirk 2019, p. 6). However, light levels of disturbance can also partially destabilize dunes and reduce invasive species proliferation, thus benefitting sand dune phacelia habitat (Kalt 2008, p. 10). Additional study is needed to investigate the effects of human traffic on sand dune phacelia populations (Jacobs 2019, pp. 113–114).

In general, while noted as a stressor and documented as destructive to individuals at some sites, lack of available data on population-level effects of recreational use on sand dune phacelia precluded us from carrying forward the influence of recreation in our analysis of current and future condition. However, we do acknowledge that recreational impacts, primarily from OHV use, are damaging sand dune phacelia habitat at some sites, and may be especially deleterious to small populations.

Coastal Development

Coastal development may directly damage sand dune phacelia plants or result in habitat loss due to conversion of sand dunes to other uses (Kalt 2008, p. 9). Coastal development may be more consequential in Oregon, where State-listed plants receive no protection on private lands. In California, the California Environmental Quality Act, the Native Plant Protection Act, and the California Coastal Act regulate development to minimize impacts to coastal dunes and other Environmentally Sensitive Habitat Areas.

Most extant populations of sand dune phacelia occur on public lands where protections are in place that safeguard against direct mortality or habitat loss, and we found insufficient data to support the claim that development is currently impacting the remaining extant populations on private land. For example, the two primary private land parcels that currently support sand dune phacelia are the Pacific Shores Subdivision in California and the sites at the Bandon Dunes Golf Resort in Oregon. Seventy-five percent of the undeveloped, privately owned lots at Pacific Shores have been acquired by the California Department of Fish and Wildlife for inclusion into a conservation area, and efforts are underway to purchase the remaining undeveloped private holdings (Jerabek 2020, pers. comm.). At the Bandon Dunes Golf Resort, a stated goal of the conservation-minded owner is to protect and enhance the sand dune phacelia population there, which after heavy infestations of gorse were cleared (Gunther 2012, no pagination) now represents the largest population rangewide (Brown 2020a database).

It is possible that coastal development had impacts on sand dune phacelia historically, leading to its present-day condition of small and fragmented populations. However, based on our assessment of current land ownership and population condition, the best available data does not indicate that development is presently a population-level threat to sand dune phacelia. This stressor may have had historical impacts but no longer appears influential, and, based on land ownership of extant population sites, it seems unlikely to become influential in the future.

Livestock Grazing

Livestock grazing occurs throughout the range of sand dune phacelia on some private lands; however, it usually occurs on well-stabilized (vegetated) dunes and coastal meadows, which are not suitable sand dune phacelia habitat. Furthermore, in some cases grazing may actually benefit sand dune phacelia by reducing competition from invasive species (Rodenkirk 2019, p. 22). Negative effects of livestock grazing on sand dune phacelia populations have not been documented, and grazing was not listed as a threat to any of the populations in the most recent rangewide survey (Brown 2020a database). Given current land ownership, we do not expect grazing to impact populations in the future. Therefore, we did not include livestock grazing in our threat analysis.

Overutilization

Because of sand dune phacelia's attractive foliage, illegal removal of it for horticultural purposes has been cited as a threat (Rodenkirk 2019, p. 6; Oregon Department of Agriculture (ODA) 2020, no pagination). We could find no information with which to validate this claim or assess its impacts on sand dune phacelia populations. As such, we do not consider overutilization to be a threat influencing populations of sand

dune phacelia currently or into the future.

Sea Level Rise

The best available data does not indicate that sea level rise is currently influencing sand dune phacelia, and it is unknown how changes in sea levels may have affected the species in the past. However, because sea level rise is expected to increase in the future with climate change, and near-shore species could be affected by sea level rise and associated erosion and storm surge (IPCC 2014, p. 67), we consider the impact of projected sea level rise on sand dune phacelia in our analysis of future conditions.

Small Population Size

We acknowledge that, prior to habitat fragmentation, many of the populations, especially those south of the town of Bandon, Oregon, and near Crescent City, California, were most likely functionally continuous (Brown 2020b, pers. comm.). Our assessment of population abundance and habitat quality from recent surveys indicates that the number of populations of sand dune phacelia is reduced compared to documented historical occurrences. Many of the remaining populations are very small in size, and most populations are isolated from one another by large tracts of unsuitable habitat, making genetic exchange and dispersal among most populations unlikely without human intervention. No information exists on the minimum number of individuals required to support a sand dune phacelia population. However, a population size of about 25 individuals appears to be biologically relevant given the best available data. Specifically, the current abundance of nearly every extant population falls either below 25 (1 to 24 individuals) or well above 25 (100 or more individuals), with all populations with fewer than 25 individuals also undergoing population decline (Brown 2020a database). Therefore, in the absence of any existing minimum viable population analysis to draw upon, we assume that at least 25 individuals are necessary for sand dune phacelia population viability. As such, low abundance was a factor in our analysis of current condition, and we considered small populations that currently support fewer than 25 individuals as unlikely to persist in our future condition analysis.

Pollinator Decline

Because sand dune phacelia is largely reliant upon pollination to successfully reproduce, pollinator decline is cited as a potential threat to sand dune phacelia (ODA 2020; no pagination). Furthermore, bee abundance and diversity were found to be positively correlated with the presence of sand dune phacelia in one study in California (Julian 2012, p. iii). While we recognize the important role pollinators play in the needs of sand dune phacelia, we found no data with which to assess the status of pollinator communities at extant sand dune phacelia sites, nor to indicate that pollinator decline was affecting sand phacelia populations. Therefore, we acknowledge the importance of a healthy and diverse pollinator community but were unable to include this factor in our analysis of current and future conditions.

Summary of Threats

The primary threat currently acting upon sand dune phacelia populations is that of invasive species, which is expected to continue impacting the species into the future and was therefore included in our analysis of current and future condition. In addition, our current and future condition analysis included the consideration of sea level rise and small population size. Other stressors mentioned above may act on sand dune phacelia individuals, or have highly localized impacts, but do not rise to the level of impacting populations. However, we acknowledge that all stressors may exacerbate the effects of other ongoing threats.

Regulatory Conservation Efforts

Sand dune phacelia is listed as threatened by the Oregon Department of Agriculture (ODA) and has a State listing status of 1, indicating that it is threatened or endangered throughout its range (Oregon Biodiversity Information Center 2019, p. 33). Native plant species that are listed as threatened or endangered in Oregon are protected on all non-federal public lands (Oregon Revised Statutes (ORS) 564.105). Any land action on Oregon public lands that results, or might result, in the collection or disturbance of a threatened or endangered species requires either a permit or a consultation with ODA staff. The State consultation process for public land managers requires a written evaluation of projects that impact listed plant species, and the ODA may recommend alternatives to avoid or minimize impacts to those species; a formal consultation or permit may be required. Prohibitions for listed plant species in the State of Oregon are provided by ORS 603–073–0003, which states ''Willful or negligent cutting, digging, trimming, picking, removing, mutilating, or in any manner injuring, or subsequently selling, transporting, or offering for sale any plant, flower, shrub, bush, fruit, or other vegetation growing on the right of way of any public highway within this state, within 500 feet of the center of any public highway, upon any public lands, or upon any privately owned lands is prohibited without the written permission of the owner or authorized agent of the owner.'' Additionally, ORS 564.105(3) calls for the State to establish programs for the protection and conservation of plant species, and the State participates in conservation management actions as staffing and funding allows. In practice, however, resource limitations often prevent implementation of the full suite of affirmative management actions required to achieve the recovery of State listed plants. As an example, the eradication or control of widespread invasive species such as gorse, one of the primary threats to sand dune phacelia, would pose enormous resource requirements that far exceed the State's capacity.

Oregon State Parks contain nearly 50 percent of all sand dune phacelia populations rangewide. Under the master-plan level designation for Oregon State parks, sites that contain listed species are automatically placed in a category of administrative conservation designation, which provides sand dune phacelia populations with protection from development. While no formal conservation plans to benefit sand dune phacelia are in place, invasive control actions at several parks improve sand dune habitat and may assist with restoring or maintaining suitable conditions for sand dune phacelia in the future (Bacheller 2020, pers. comm.). Oregon State Parks are not supported by tax dollars, as are other State agencies, but are supported by a combination of State Park user fees, recreational vehicle license fees, and a portion of State lottery revenues. As a result, Oregon State Park budgets can be subject to significant fluctuations in revenue and are often limited, which can affect their capacity to implement management actions for conservation, such as habitat restoration for rare plants on State Park lands.

In California, sand dune phacelia is designated as a California Rare Plant with a rank of 1B.1, meaning that it is rare, threatened, or endangered in California and elsewhere, and is seriously endangered in California. Impacts to species of this rank or their habitat must be analyzed during preparation of environmental documents relating to the California Environmental Quality Act (CEQA).

Under CEQA, state public agencies (including State Parks) must provide measures to reduce or avoid adverse environmental impacts of proposed projects, including impacts to designated rare plants such as sand dune phacelia. Designation as a California Rare Plant generally reduces negative impacts to sand dune phacelia caused by development or other land use programs and actions but does not ameliorate the primary threat to the species, which is that of invasive species encroachment. All of the plants constituting California Rare Plant Rank 1B meet the definitions of the California Endangered Species Act of the California Fish and Game Code, and are eligible for State listing, however, sand dune phacelia is not listed under the California Endangered Species Act.

The Federal Lands Policy and Management Act of 1976, as amended (FLPMA; 43 U.S.C. 1701 *et seq.*) governs the management of public lands administered by the Bureau of Land Management (BLM). Under FLPMA, the BLM administers a special status species policy that calls for the conservation of BLM special status species and the ecosystems upon which they depend on BLM-administered lands. BLM special status species are any species listed or proposed for listing under the Endangered Species Act, or species designated as ''Bureau sensitive'' by the State Director(s). Sand dune phacelia is designated as a Bureau sensitive special status plant species and is thus the recipient of proactive conservation efforts on BLM lands as staffing and resources allow. On Federal lands in Oregon, the BLM regularly restores sand dune phacelia habitat through the removal or control of invasive species at Lost Lake, Floras Lake, and Storm Ranch (Rodenkirk 2019; entire). BLM is updating its management plan for the New River Area of Critical Environmental Concern, where the majority of sand dune phacelia populations on BLM land occurs (Wright, pers. comm. 2020). The new plan will include an emphasis on restoring native dune plant communities, including those with sand dune phacelia.

Voluntary Conservation Efforts

Rangewide, the largest sand dune phacelia population is located on private land at the Bandon Dunes Golf Resort, and while no formal conservation agreements or commitments exist, the private land owner has been actively maintaining sand dune phacelia habitat through ongoing removal of European beachgrass and gorse (Gunther 2012, no pagination). In California, the South Lake Tolowa Restoration effort has removed European beachgrass from approximately 25 ac (10 ha) at Tolowa Dunes State Park and the Lake Earl Wildlife Area (Jacobs 2019, pp. 24–25). Conducted by California State Parks and a volunteer group called the Tolowa Dunes Stewards (Jacobs 2019, p. 10), restoration efforts initiated in 2010 increased the sand dune phacelia population from approximately 2,300 plants to 5,936 plants in 2017 (Brown 2020a database). The South Lake Tolowa population is now the largest in California, and the second largest rangewide. Volunteers from the Tolowa Dunes Stewards have also restored 30 ac of habitat (12 hectares) at the nearby East Dead Lake population via the removal of European beachgrass (Jerabek 2020, pers. comm.). However, in the absence of committed funding or agreements associated with these restoration efforts, they are almost entirely reliant on grant funding and volunteer efforts (Jerabek 2020, pers. comm.). The significant gains made for sand dune phacelia at these sites could quickly be lost without continuous maintenance efforts, given the aggressive nature of European beachgrass and other invasive species.

Rangewide, actions to control invasive species have demonstrated success in maintaining or increasing populations of sand dune phacelia (Gunther 2012, no pagination; Meinke 2016, p. 25; Jacobs 2019, p. 10; Rodenkirk 2019; entire). Sand dune phacelia is a management-dependent species, as restoration of dune habitat through ongoing control of invasive species is essential to the continuing viability of sand dune phacelia rangewide. Therefore, we considered the contribution of habitat management actions, and in particular control of invasive species, in our analysis of future conditions.

We also considered whether or not our Policy for the Evaluation of Conservation Efforts (68 FR 15100, March 28, 2003) applies to sand dune phacelia habitat management efforts, but we determined that it does not apply because no formalized agreements exist to ensure the future mitigation of the threat posed by invasive species.

In addition to habitat restoration activities, augmentation of sand dune phacelia populations using transplants has been carried out at several sites by BLM in partnership with Oregon State University (Meinke 2016, entire) and the Oregon Department of Agriculture (Brown 2017, entire). While transplant efforts appear to be beneficial initially, transplant mortality over time tends to be high as outplanted individuals succumb to environmental conditions (Meinke 2016, p. 18). Refinements to sand dune phacelia cultivation protocols are necessary to improve transplanting success (Meinke 2016, entire; Brown 2017, p. 5).

Attempts are also underway by BLM to enhance or establish populations by directly seeding sand dune phacelia into suitable habitat (Wright 2020, pers. comm.). The recently introduced population at Storm Ranch is the largest population that occurs on Federal lands (Rodenkirk 2019, p. 28). Attempts to establish the Storm Ranch population began in 2012 with a seeding of 2 ac (0.8 ha) (Rodenkirk 2019, p. 28). Initial seedings were unsuccessful, but eventually a population was established, with 1,596 plants counted in 2018. The population drastically declined in 2019, with only 620 plants observed (Rodenkirk 2019, p. 29). Long-term monitoring will assess whether this seeded population can maintain viability.

Because of the high levels of plant mortality observed following transplantation efforts, and the significant uncertainty as to whether augmented or introduced populations may be capable of contributing to the maintenance or enhancement of sand dune phacelia populations over time, we did not include the seeded population at Storm Ranch, or outplanted individuals at other sites, in our analysis of current and future conditions.

We determined that habitat restoration in the form of invasive species removal is the primary conservation effort influencing sand dune phacelia at the population level, and therefore carried it through our analysis of future condition. Augmentation and reintroduction are likely having a positive influence on sand dune phacelia, but we lack evidence that these conservation efforts are having population-level effects at this time.

Current Condition

Methodology

We delineated three representation units (Oregon–North, Oregon–South, and California) based on geographic breaks in the distribution of the species, because they could not otherwise be characterized by marked differences in genetic makeup, phenotypic variation, habitats, or ecological niches. No population viability assessment models exist to inform the categorization of population condition for sand dune phacelia. Therefore, we used the best

available science to score the overall current condition of each population qualitatively as high, moderate, or low, based upon our assessment of habitat condition, population abundance, and population trend over time. The average score was then used to rate the overall current condition of each population.

Sand dune phacelia populations were surveyed rangewide in Oregon and California in 2017 by the Oregon Department of Agriculture's Plant Conservation Program (Brown 2020a database). The 2017 survey enumerated current population size, examined historical data to discern population trends, delineated the area occupied, briefly described the habitat, and identified stressors at each site. This effort provides the most current data available on nearly every extant population of sand dune phacelia.

We excluded sites consisting of *Phacelia* species with intermediate morphology (those that appear hybridized). These plants were determined to most likely be crosses between sand dune phacelia and *P. nemoralis* ssp. *oregonensis* (Brown 2020a database; Meinke 1982, p. 260). In addition to different morphological attributes, the intermediate plants occur in rockier habitats as compared to areas occupied by sand dune phacelia, and rockier habitat is more indicative of *P. nemoralis.* While we suspect that these plants are most likely hybrids and not representatives of sand dune phacelia, no genetic information is available upon which to base this conclusion. Whether the presumed intergrades affect sand dune phacelia population viability is unknown. More information on intermediate populations, as well as on all populations, is included in the SSA (Service 2021, entire).

Abundance categories were defined as ''Low'' (100 or fewer plants), ''Moderate'' (101,500 plants), and ''High'' (over 500 plants). These rating categories were derived to reflect relative abundance between populations only, or an index of population size, because there is no information available on the minimum number of individuals necessary to maintain a viable population.

Habitat condition was scored based on the most recently available observations at sand dune phacelia population sites. Because sand dune phacelia habitat quality is highly influenced by invasive species, the scores reflect the relative encroachment of invasive species at a given site as reported by the 2017 rangewide survey (Brown 2020a database) and by BLM. Quantitative data on invasive species in sand dune phacelia populations, such as percent cover of invasive species, are not available.

Population trend data were derived from the 2017 rangewide survey (Brown 2020a database) and reflect documented abundance data across historical records. Trend data are necessarily coarse, as many populations were rarely or sporadically monitored prior to 2017. Increasing trends were rated as ''High,'' stable trends as ''Moderate,'' and decreasing trends as ''Low.''

The overall condition scores for all known extant populations of sand dune phacelia are presented in table 2.

Current Resiliency, Redundancy, and Representation

Resiliency refers to the ability of populations to withstand stochastic events, and we assessed the resiliency of each population using the current habitat condition, population abundance, and population trend. Of the 25 naturally occurring (we did not include the 1 entirely introduced population) extant sand dune phacelia populations we assessed, 4 are currently in high condition, 4 are in moderate condition, and 17 are in low condition (table 2). Therefore, resiliency is low for most populations rangewide, with 68 percent of all populations rated with low overall condition (figure 1).

TABLE 2.—CURRENT CONDITION OF EXTANT SAND DUNE PHACELIA POPULATIONS.

Representation Unit	Resiliency Unit (Population)	Parameters			Overall Current Condition
		Habitat Condition	Abundance	Population Trend	
Oregon - North	Pacific Dunes Golf Course	Moderate	Moderate	Unknown	Moderate
Oregon - North	Bandon Preserve & Golf Course	Moderate	High	High	High
Oregon - North	Bandon State Natural Area	Low	Low	Low	Low
Oregon - North	Lost Lake	High	Moderate	High	High
Oregon - North	Fourmile Creek	Low	Low	Low	Low
Oregon - North	Floras Lake	Low	Moderate	Low	Low
Oregon - North	Cape Blanco State Park	Low	Low	Low	Low
Oregon - North	Paradise Point	Moderate	Moderate	Unknown	Moderate
Oregon - North	Hubbard Creek	Low	Low	Low	Low
Oregon - South	Ophir Dunes	Low	Low	Low	Low
Oregon - South	Nesika Beach	Moderate	Low	Low	Low
Oregon - South	Pistol River Mouth	Moderate	Moderate	High	Moderate
Oregon - South	Pistol River State Park – South	Low	Low	Moderate	Low
Oregon - South	Lone Ranch Beach	Moderate	High	High	High
Oregon - South	Crissey Fields State Park	Low	Low	Low	Low
California	N. Kellogg Road	Low	Low	Low	Low
California	Pacific Shores Subdivision	Low	Moderate	Low	Low
California	South Lake Tolowa Restoration	High	High	High	High
California	Old Mill Road	Unknown	Low	Unknown	Low
California	NNW of Dead Lake	Low	Low	Low	Low
California	East Dead Lake	Moderate	Low	Low	Low
California	N End Del Norte Cty. Airport	Low	Low	Low	Low
California	NW End Del Norte Cty. Airport	Low	Low	Low	Low
California	Point St. George	Moderate	Low	Low	Low
California	Pebble Beach	Moderate	Moderate	Low	Moderate

Redundancy is a species' ability to withstand catastrophic events and is determined by the number of its populations and their distribution across the landscape. Currently, approximately 33,858 naturally occurring sand dune phacelia plants exist in 25 populations along roughly 100 miles (161 kilometers (km)) of coastline. Our analysis of current redundancy concludes that, although most extant populations exhibit low resiliency, it is unlikely that a single catastrophic event could eliminate all extant populations, which are well distributed throughout all representation units, with the most robust populations located at either end of the range (figure 1).

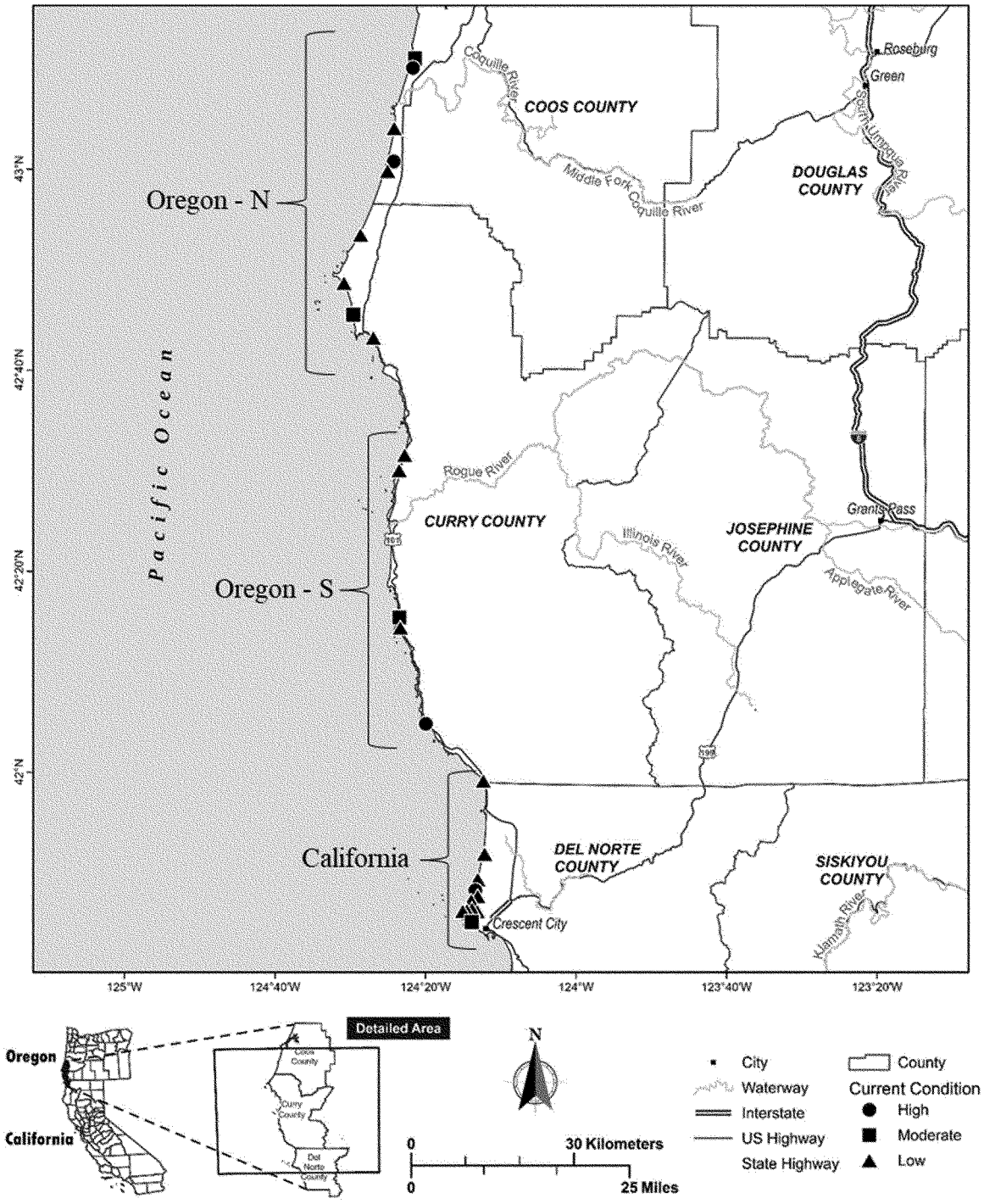


Figure 1.—Current condition of extant sand dune phacelia populations across the three representation units (Oregon–North, Oregon–South, and California).

Representation refers to the ability of a species to adapt to change and is based upon considerations of phenotypic, genetic, and ecological diversity, as well as the species' ability to colonize new areas. There is little evidence of phenotypic variation among individuals of sand dune phacelia, and no data are available on potential genetic diversity. As a narrow endemic, sand dune phacelia is highly specialized and restricted in its ecological niche, with all occupied sites sharing similar features, and differences being largely related to the population's distance from the ocean and position in relation to the dune (*e.g.,* foredune, backdune). As such, sand dune phacelia demonstrates little ecological diversity. However, the ability of a species to adapt is gauged not only by diversity among

individuals, but also by its ability to colonize new areas. Currently, populations of sand dune phacelia are patchy and dispersed, often isolated by large tracts of intervening habitat made unsuitable by human development or invasive species. The lack of available and unoccupied suitable habitat leaves less opportunity for a species to exploit new resources outside of the area it currently occupies and to adapt to changing conditions. Further, the lack of connectivity between populations may result in reduced gene flow and genetic diversity, rendering the species less able to adapt to novel conditions.

The low level of phenotypic and ecological diversity demonstrated within this species, as well as restricted opportunity for colonization into new areas, indicates some limitations in representation for sand dune phacelia. However, sand dune phacelia continues to be represented by multiple populations distributed throughout the known historical range of the species, although the resiliency of most of these populations is low.

Future Condition

The intent of this analysis is to assess the viability of sand dune phacelia into the future under various plausible future scenarios. Further explanation on our methodology and assumptions for our future condition analysis can be found in our SSA report (Service 2021, Chapter 6). We assessed the future condition of sand dune phacelia by considering how invasive species competition, the effects of climate change, small population size, and habitat management efforts may affect populations over time. We considered the impacts of both habitat management (invasive species removal) and climate change on the extent of invasive species cover expected to occur in the future at each site. Climate change is also projected to affect sea levels; thus, we assessed each site for potential effects of inundation due to sea level rise. In addition to the overall current condition categories of ''high,'' ''moderate,'' and ''low'' that were based on current habitat and demographic factors, we included for the future condition analysis the additional categories of ''very high,'' ''very low,'' and ''extirpated'' for populations where the overall condition was already high but projected to improve, was already low but projected to deteriorate further, or where the population (with fewer than 25 individuals) was expected to become extirpated, respectively.

Future Timeframe

We considered a timeframe for this analysis based upon the extent into the future we could reasonably forecast the impact of the threats on the species, given the data and models available to us. Global climate models project changes in global temperature and other associated climatic changes based on potential future scenarios of greenhouse gas concentrations in the atmosphere (*i.e.,* Representative Concentration Pathways, or RCPs). RCP 4.5 assumes major near-future cuts to carbon dioxide emissions, and RCP 8.5 assumes that current emissions practices continue with no significant change (Terando et al. 2020, p. 10). Thus, these RCPs represent conditions in the upper and lower ends of the range of what can reasonably be expected for the future effects of climate change (Terando et al. 2020, p. 17). Climate model projections are fairly aligned until about mid-century when they start to diverge more, as this is the timeframe during which our near-future carbon emissions begin to manifest in projections of future climate. Although all projections into the future show global temperature and sea level rise increasing, the variability or uncertainty in the magnitude of changes expected becomes much greater at this point. Therefore, we determined that the period of time from the present to about mid-century to be the timeframe over which we could most reliably project the future condition of sand dune phacelia. As such, the timeframe for our analysis of the future condition of sand dune phacelia extends to approximately the year 2060, which is the mid-century timeframe available for the sea level rise projections we used to assess inundation at sand dune phacelia populations (Service 2021, p. 43).

Climate Change

Warming temperatures have already been documented and are expected to continue in the Pacific Northwest, though changes will be somewhat muted in coastal areas (Mote et al. 2019, summary p. 1). There have been no clear discernible trends in annual precipitation, though there will likely be modest increases in the winter and decreases of similar scale in the summer (Mote et al. 2019, summary p. 1). Warming summer temperatures paired with decreased summer precipitation may lead to increased drought risk, which has the potential to cause stress, desiccation, and even mortality in plant communities. Although increased temperatures and decreased precipitation during the summer growing season are likely to have negative effects on sand dune phacelia, whether these changes will result in population-level impacts in the next 40 years is unclear given the available data. Therefore, we were unable to analyze the impacts of drought in our future scenarios.

Sea level rise projections in 1-foot increments were available at three locations that span the entire range of sand dune phacelia (Coos Bay and Port Orford in Oregon, and Crescent City in California). One foot (0.3 meter) of sea level rise is projected to occur under RCP 8.5 by 2060 in Oregon and by 2070 in northern California but is not projected to occur within this timeframe under RCP 4.5 (Climate Central 2020, no pagination). According to the sea level rise modeling tool we used (National Oceanographic and Atmospheric Administration 2020, no pagination), this amount of sea level rise under RCP 8.5 is not projected to inundate the areas currently occupied by sand dune phacelia. Further details of the sea level rise analysis we conducted, including potential indirect effects such as erosion and storm surge that we were unable to project, are available in the SSA (Service 2021, Chapter 6, Appendix 2).

Invasive Species

As described previously in this report, invasive plant species, in particular European beachgrass and gorse, unequivocally represent the primary driver of sand dune phacelia's status presently and into the future. Though some uncertainty remains as to how climate change will impact biological invasions into the future, it is widely agreed that changing climate, especially temperature and precipitation regimes, will exacerbate the invasions of many alien species under future conditions (Gervais et al. 2020, p. 1).

Although relatively few in number, some studies have demonstrated the impacts of climate change on invasive species by modeling the abundance, distribution, spread, and impact of invasive species in the Pacific Northwest relative to climate model projections (Gervais et al. 2020, p. 1). Further, there is evidence that climate-induced expansions of invasive species are already underway in this region (Gervais et al. 2020, p. 1). The best available information at this time does not allow us to quantify the magnitude of these expansions, nor does it allow us to predict how the population dynamics of sand dune phacelia at occupied sites may be affected. However, we expect that the pressure currently exerted upon sand dune phacelia populations due to encroachment by invasive plant species

is likely to increase into the future in response to climate change. We expect the negative impacts to sand dune phacelia from climate-related invasive species expansion to be most evident under the higher emissions scenario (RCP 8.5).

Small Population Size

We considered populations with fewer than 25 individuals likely to become extirpated in the future. While small population size does not appear to be a threat at the species level because there are multiple adequately-sized populations found throughout the range of the species, very small populations are at elevated risk for local extirpation, and thus small population size is a threat at the population level. None of the sites with very small populations currently have habitat management practices to remove invasive species, and we did not assume new efforts would be initiated but acknowledge that extirpation of very small populations could be prevented with management intervention.

Habitat Management

As previously described, the removal of invasive species has been shown to be the most effective strategy for maintaining and increasing populations of sand dune phacelia. Because there are no management plans in place at any of the population sites that would ensure the continuation of or initiate new habitat management practices, and funding for these practices is tenuous, we assumed that either habitat management currently in place would continue or cease, but that management efforts would not increase. We also assumed that populations with current management practices in place would improve in condition into the future with continued management, and those without management currently in place would decline in condition into the future.

Future Scenarios

We considered two plausible future scenarios in our analysis of future viability of sand dune phacelia. Scenario 1 assumes that current habitat management actions to control invasive species will continue to occur and will continue to benefit sand dune phacelia into the future. Thus, the condition of populations of sand dune phacelia at sites that are currently receiving habitat management will continue to improve into the future. Conversely, under this scenario we assume that if no actions to control invasive species are currently being implemented in or adjacent to sand dune phacelia populations, no new efforts are likely to be initiated, and habitat conditions will subsequently worsen over time. Scenario 1 also assumes that RCP 4.5 is in effect, with associated effects to sea level rise and a moderate increase in invasive species expansion. Scenario 2 assumes that any habitat management actions that are presently occurring will be discontinued over time, and therefore no habitat management actions to control invasive species are in effect in the future. Scenario 2 also assumes that RCP 8.5 is in effect, with the associated effects to sea level rise and a greater increase in invasive species expansion. Therefore, these two scenarios represent our best understanding of the most optimistic and the least optimistic of plausible futures we can expect for sand dune phacelia.

Future Resiliency, Redundancy, and Representation

Rangewide, we conclude that under Scenario 1, nearly half (12 of 25) of all sand dune phacelia populations would become extirpated by 2060, and many of the remaining populations (7 of 13) would deteriorate to Low or Very Low condition. However, the condition of those populations that currently benefit from the active control of invasive species would increase over time due to improved habitat conditions, such that five populations would be in High or Very High condition under Scenario 1. Future population resiliency fares worse under Scenario 2, with well over half of all populations (68 percent) becoming extirpated, and all remaining populations projected to be in Low or Very Low condition (table 3). Thus, under either future scenario we considered, many populations will become extirpated, and future resiliency will be low among most remaining populations.

TABLE 3.—FUTURE CONDITION OF EXTANT SAND DUNE PHACELIA POPULATIONS.

Representation Unit	Population	Current Condition	Scenario 1	Scenario 2
Oregon - North	Pacific Dunes Golf Course	Moderate	High	Very Low
Oregon - North	Bandon Preserve & Golf Course	High	Very High	Low
Oregon - North	Bandon State Natural Area	Low	Extirpated	Extirpated
Oregon - North	Lost Lake	High	Very High	Low
Oregon - North	Fourmile Creek	Low	Extirpated	Extirpated
Oregon - North	Floras Lake	Low	Moderate	Extirpated
Oregon - North	Cape Blanco State Park	Low	Very Low	Extirpated
Oregon - North	Paradise Point	Moderate	Low	Very Low
Oregon - North	Hubbard Creek	Low	Extirpated	Extirpated
Oregon - South	Ophir Dunes	Low	Extirpated	Extirpated
Oregon - South	Nesika Beach	Low	Extirpated	Extirpated
Oregon - South	Pistol River Mouth	Moderate	Low	Very Low
Oregon - South	Pistol River State Park – South	Low	Very Low	Extirpated
Oregon - South	Lone Ranch Beach	High	Very High	Low
Oregon - South	Crissey Fields State Park	Low	Extirpated	Extirpated
California	N. Kellogg Road	Low	Extirpated	Extirpated
California	Pacific Shores Subdivision	Low	Very Low	Extirpated
California	South Lake Tolowa Restoration	High	Very High	Low
California	Old Mill Road	Low	Extirpated	Extirpated
California	NNW of Dead Lake	Low	Extirpated	Extirpated
California	East Dead Lake	Low	Extirpated	Extirpated
California	N End Del Norte Cty. Airport	Low	Extirpated	Extirpated
California	NW End Del Norte Cty. Airport	Low	Extirpated	Extirpated
California	Point St. George	Low	Very Low	Extirpated
California	Pebble Beach	Moderate	Low	Very Low

Future redundancy of sand dune phacelia declines under both future scenarios we considered. Under Scenario 1, only 13 of the 25 extant populations would exist rangewide by 2060, with about half of those in Low or Very Low condition. However, five populations would remain in High or Very High condition, with at least one population considered in Very High condition in each representation unit. In the event of a catastrophe in a part of its range, sand dune phacelia would likely continue to exist in other parts of its range, albeit in low numbers and condition. Under Scenario 2, only eight populations are estimated to remain extant in 2060 and would be evenly split between Low and Very Low condition. Due to the greatly reduced number of remaining populations (mostly with low resiliency) under either future scenario, sand dune phacelia redundancy will be low, rendering the species vulnerable to catastrophic events within the future timeframe we considered.

Representation is not expected to change significantly under either future scenario we considered. All representation units will retain populations, and each will have at least one population in Very High condition under Scenario 1. However, only 13 populations are projected to exist rangewide, with over half (54 percent) being in Very Low or Low condition. Under Scenario 2, all populations are in Very Low or Low condition, with very few populations existing in any of the representation units. Fewer populations in the future would provide less opportunity for diversity among individuals, with fewer individuals available to contribute to the adaptive capacity of the species. Isolation is also expected to increase in the future with the expected reduction in size and number of populations on the landscape, further decreasing the likelihood of genetic exchange. These factors may result in a modest reduction in representation into the future, but overall, populations (though fewer) will still be distributed across the range of the species providing adequate representation.

Overall, we expect the viability of the species to decline by varying degrees under the future scenarios considered. Persistence of the two populations that contain 89 percent of known individuals, even under the more

favorable future scenario considered, appears to depend upon continued removal of introduced, invasive species. By mid-century (roughly 2060), we expect sand dune phacelia will still occur on the landscape, but likely with a significantly reduced number of sufficiently resilient populations that are even more sparsely distributed across the historical range of the species.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Determination of Sand Dune Phacelia Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an ''endangered species'' or a ''threatened species.'' The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an ''endangered species'' or a ''threatened species'' because of any of the following 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.

Status Throughout All of Its Range

We carefully assessed the best scientific and commercial information available regarding the past, present, and future stressors to sand dune phacelia. The potential stressors we considered were: Invasive species encroachment and competition (Factors A and E); recreational impacts from OHV use and trampling (Factor A); coastal development (Factor A); livestock grazing (Factor A); regulatory and voluntary conservation efforts (Factor D); climate change impacts including sea level rise and drought (Factor E); small population size (Factor E); and pollinator decline (Factor E). There is no evidence that overutilization (Factor B) or disease and predation (Factor C) are impacting sand dune phacelia. We evaluated each potential stressor to determine which stressors were likely to be drivers of the species' current and future condition, and found that invasive species, climate change, and small population size are the primary threats to the species.

There are 25 naturally occurring, extant populations of sand dune phacelia. Nearly 70 percent (17) of these populations are currently in low condition according to our assessment, and nearly half (12) of the populations have fewer than 25 individuals. However, extant populations are distributed across the historical range of the species, and there remains at least one highly resilient population and one moderately resilient population in each of the three representative areas (in the northern, middle, and southern regions of the range). Populations that are currently in poor condition, many of which have fewer than 25 individuals, are at risk of extirpation without management intervention. Many of these populations, especially those with very low abundance, may never be likely to contribute meaningfully to the species' viability. However, even without the very small (fewer than 25 individuals) populations on the landscape, the species would still maintain 13 populations across the range, with 8 of those populations being in moderate or high condition and evenly distributed across all 3 representation units. The distribution and maintenance of sufficiently resilient populations, albeit few of them, across the historical range of the species indicates an adequate degree of redundancy, making it unlikely that a single catastrophic event would lead to the extirpation of all extant populations.

While we have little evidence of diversity among members of the species, sand dune phacelia is a relatively localized endemic inhabiting a narrow ecological niche, so broad diversity is not necessarily expected. Populations of sand dune phacelia remain distributed across the three representation units and throughout its known historical range, and therefore the species is currently represented across the breadth of any ecological diversity that exists within its range.

We know that the most influential threat to sand dune phacelia, encroachment by invasive species (Factors A and E), can be successfully mitigated with active habitat management. Effective habitat management is currently ongoing at several population sites, including at the largest population strongholds at the northern and southern extents of the species' range (Bandon Preserve and Golf Course in Oregon and Tolowa Dunes in California). It is also possible that if management efforts continue or increase, they could promote the increase and expansion of populations into the future.

Because of the presence of multiple populations in moderate to high condition (or with adequate resiliency) distributed across all regions of the species' historical range (redundancy) and across the breadth of ecological conditions inhabited by the species (representation), as well as the success of current conservation efforts to mitigate the primary threat (invasive species) at population strongholds, we determined that sand dune phacelia is not currently in danger of extinction throughout its range.

Upon determining that sand dune phacelia is not at risk of extinction now, we consider whether it is likely to become endangered in the foreseeable future. According to our assessment of plausible future scenarios, we conclude that the species is likely to become endangered within the foreseeable future throughout all of its range through decreased resiliency, redundancy, and representation. For the purposes of this determination, the foreseeable future is considered to be approximately 40 years from now (or approximately 2060), based on the timeframe with which we could most reliably project the impacts of climate change and the species' response to those impacts.

As previously noted, the primary driver of the sand dune phacelia's status is habitat loss due to encroachment and competition by invasive species (Factors A and E). This species is considered management-dependent, relying on active and continuous removal of invasive species such as European beachgrass and gorse to maintain habitat

conditions to support sand dune phacelia. Invasive species removal, especially that which is effective and consistent enough to maintain sand dune phacelia populations over time, is costly and labor-intensive, and requires a significant commitment of resources. Currently, while invasive species removal efforts are responsible for maintaining the few (8 of 25) sand dune phacelia populations that are in moderate to high condition, no formal commitments or agreements are in place to continue these efforts, and many of these efforts are dependent upon the will and resources of volunteer groups or private landowners. The remaining strongholds of sand dune phacelia would likely decline quickly in the absence of effective habitat management efforts that are currently ongoing. Specifically, in the most severe future scenario we considered, which includes the cessation of all management efforts into the future, our analysis projects the extirpation of most (17) populations in the future, with those remaining (8) declining to low or very low condition.

Climate change (Factor E) may elevate the risk of drought, lead to increased erosion caused by sea level rise and the increased frequency and magnitude of storm surge, or potentially result in other negative influences to sand dune phacelia, but we were unable to reliably project how these influences would impact the species in our future analysis. Climate change is expected to exacerbate the threat of invasive species into the future, regardless of which emissions scenarios we consider. Given the severity of the threat of invasive species and the tenuous nature of habitat management into the future, the synergistic effects of climate change and invasive species on sand dune phacelia could be significant regardless of the magnitude of climate change impacts on their own.

Small population size (Factor E) is a threat that affects nearly half of the extant sand dune phacelia populations. These 12 populations have fewer than 25 individuals and have no programs in place or conservation efforts ongoing to ameliorate the threat of invasive species, which is the primary cause of low sand dune phacelia abundance at these sites. Without the implementation of habitat management practices at these sites, we expect these very small populations to become extirpated in the future.

Regulatory mechanisms (Factor D) and voluntary conservation efforts by the States of Oregon and California, BLM, volunteer groups, and private landowners, provide benefit to sand dune phacelia at the affected population sites, mostly through invasive species removal efforts and to some degree augmentation and reintroduction efforts. However, while these efforts have helped reduce the impacts of invasive species and small population size locally at certain populations, these influences remain prominent threats to sand dune phacelia and continue to affect the species as a whole.

Due to the continuation of threats at increasing levels into the future, we anticipate a significant reduction in the distribution of sand dune phacelia as the result of the extirpation of multiple populations. Even in the most optimistic future scenario we considered, nearly half of the extant populations of sand dune phacelia would likely become extirpated, with only six populations remaining with moderate to high/very high resiliency. The less optimistic future projection would result in most populations becoming extirpated, and any remaining populations would be in low or very low condition. These types of declines illustrate a loss of resiliency among most populations, as well as a significant reduction in redundancy and representation, with fewer populations on the landscape to withstand catastrophic events and maintain adaptive capacity. Remaining populations in either future scenario will have lower resiliency, leading to lower overall redundancy and representation. Even in the most optimistic future scenario, the species will have low viability and is therefore at risk of becoming endangered within the foreseeable future.

Thus, after assessing the best available information, we conclude that sand dune phacelia is likely to become in danger of extinction within the foreseeable future throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. The court in *Center for Biological Diversity* v. *Everson,* 2020 WL 437289 (D.D.C. Jan. 28, 2020) (*Center for Biological Diversity*), vacated the aspect of the Final Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' in the Endangered Species Act's Definitions of ''Endangered Species'' and ''Threatened Species'' (79 FR 37578; July 1, 2014) that provided that the Service does not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. Therefore, we proceed to evaluating whether the species is endangered in a significant portion of its range—that is, whether there is any portion of the species' range for which both (1) the portion is significant; and (2) the species is in danger of extinction in that portion. Depending on the case, it might be more efficient for us to address the ''significance'' question or the ''status'' question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

Following the court's holding in *Center for Biological Diversity,* we now consider whether there are any significant portions of the species' range where the species is in danger of extinction now (*i.e.,* endangered). In undertaking this analysis for sand dune phacelia, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered.

For sand dune phacelia, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the threats of invasive species and of climate change, including cumulative effects.

The threat of invasive species is pervasive throughout the range of sand dune phacelia. The type of invasive species may vary regionally (gorse, for example, is more prevalent in the northern extent of the range), but the threat of invasive species encroachment in general is equal in severity throughout the range. Similarly, both the efficacy of mitigating the threat of invasive species through habitat restoration, and the uncertainty related to funding availability to do so, appear consistent throughout the species' range.

The effects of climate change appear to be similar across the historical range of sand dune phacelia. Increases in temperature and changes in seasonal precipitation that could increase the risk of drought in the future are expected to occur to a similar magnitude across the range of the species. Storm surge, which can lead to flooding and erosion at coastal sites, is also expected to increase with climate change, and we have no data to indicate that these impacts would not be approximately equivalent across the range of sand dune phacelia.

Sea level rise projections are also nearly identical across the coastal habitat occupied by sand dune phacelia. Specifically, RCP 8.5 indicates that the impacts of sea level rise are essentially equal across all sites: Within the foreseeable future all sites will experience a 1-foot (0.3 m) or less increase in sea level rise, which will not inundate any of the population sites. The synergistic effects of climate change and invasive species, with biological invasions being facilitated by climate change, are also expected to occur in approximately equal magnitude throughout the range of sand dune phacelia and likely represent the more influential effect of climate change on the species given that sea level rise is not projected to inundate any extant population sites.

The threat of small population size also appears to be distributed throughout the range, with low-abundance populations throughout the range and distributed across all three representation units.

While there may be some variation in the source and intensity of each individual threat at each population location, we found no concentration of threats in any portion of the sand dune phacelia's range at a biologically meaningful scale. Thus, there are no portions of the species' range where the threats facing the species are concentrated to a degree where the species in that portion would have a different status from its rangewide status. Therefore, no portion of the species' range provides a basis for determining that the species is in danger of extinction in a significant portion of its range, and we determine that the species is likely to become in danger of extinction within the foreseeable future throughout all of its range. This does not conflict with the courts' holdings in *Desert Survivors* v. *Department of the Interior,* 331 F.Supp.3d 1131, 1136 (N.D. Cal. 2018), and *Center for Biological Diversity* v. *Jewell,* 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017) because, in reaching this conclusion, we did not need to consider whether any portions are significant and therefore did not apply the aspects of the Final Policy's definition of ''significant'' that those court decisions held were invalid.

Determination of Status

Our review of the best available scientific and commercial information indicates that the sand dune phacelia meets the definition of a threatened species. Therefore, we propose to list the sand dune phacelia as a threatened species in accordance with sections 3(20) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The recovery planning process involves the identification of actions that are necessary to halt or reverse the species' decline by addressing the threats to its survival and recovery. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

Recovery planning consists of preparing draft and final recovery plans, beginning with the development of a recovery outline and making it available to the public within 30 days of a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions and describes the process to be used to develop a recovery plan. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery plan also identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) are often established to develop recovery plans. When completed, the recovery outline, draft recovery plan, and the final recovery plan will be available on our website (*https://www.fws.gov/endangered*), or from our Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Oregon and California would be eligible for Federal funds to implement management actions that promote the protection or recovery of the sand dune phacelia. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/grants.*

Although the sand dune phacelia is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of

the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the Bureau of Land Management.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing. The discussion below regarding protective regulations under section 4(d) of the Act complies with our policy.

II. Proposed Rule Issued Under Section 4(d) of the Act

Background

Section 4(d) of the Act contains two sentences. The first sentence states that the Secretary shall issue such regulations as she deems necessary and advisable to provide for the conservation of species listed as threatened. The U.S. Supreme Court has noted that statutory language like ''necessary and advisable'' demonstrates a large degree of deference to the agency (see *Webster* v. *Doe,* 486 U.S. 592 (1988)). Conservation is defined in the Act to mean the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Additionally, the second sentence of section 4(d) of the Act states that the Secretary may by regulation prohibit with respect to any threatened species any act prohibited under section 9(a)(1), in the case of fish or wildlife, or section 9(a)(2), in the case of plants. Thus, the combination of the two sentences of section 4(d) provides the Secretary with wide latitude of discretion to select and promulgate appropriate regulations tailored to the specific conservation needs of the threatened species. The second sentence grants particularly broad discretion to the Service when adopting the prohibitions under section 9.

The courts have recognized the extent of the Secretary's discretion under this standard to develop rules that are appropriate for the conservation of a species. For example, courts have upheld rules developed under section 4(d) as a valid exercise of agency authority where they prohibited take of threatened wildlife, or include a limited taking prohibition (see *Alsea Valley Alliance* v. *Lautenbacher,* 2007 U.S. Dist. Lexis 60203 (D. Or. 2007); *Washington Environmental Council* v. *National Marine Fisheries Service,* 2002 U.S. Dist. Lexis 5432 (W.D. Wash. 2002)). Courts have also upheld 4(d) rules that do not address all of the threats a species faces (see *State of Louisiana* v. *Verity,* 853 F.2d 322 (5th Cir. 1988)). As noted in the legislative history when the Act was initially enacted, ''once an animal is on the threatened list, the Secretary has an almost infinite number of options available to him [or her] with regard to the permitted activities for those species. He [or she] may, for example, permit taking, but not importation of such species, or he [or she] may choose to forbid both taking and importation but allow the transportation of such species'' (H.R. Rep. No. 412, 93rd Cong., 1st Sess. 1973).

Exercising this authority under section 4(d), we have developed a proposed rule that is designed to address sand dune phacelia conservation needs. Although the statute does not require us to make a ''necessary and advisable'' finding with respect to the adoption of specific prohibitions under section 9, we find that this rule as a whole satisfies the requirement in section 4(d) of the Act to issue regulations deemed necessary and advisable to provide for the conservation of sand dune phacelia. As discussed above under Summary of Biological Status and Threats, we have concluded that sand dune phacelia is likely to become in danger of extinction within the foreseeable future primarily due to encroachment by invasive species, small population size, and the effects of climate change. The provisions of this proposed 4(d) rule would promote conservation of sand dune phacelia by encouraging management of the landscape in ways that meet the conservation needs of the sand dune phacelia. The provisions of this proposed rule are one of many tools that we would use to promote the conservation of sand dune phacelia. This proposed 4(d) rule would apply only if and when we make final the listing of the sand dune phacelia as a threatened species.

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

This obligation does not change in any way for a threatened species with a species-specific 4(d) rule. Actions that result in a determination by a Federal agency of ''not likely to adversely affect'' continue to require the Service's written concurrence and actions that are ''likely to adversely affect'' a species require formal consultation and the formulation of a biological opinion.

Provisions of the Proposed 4(d) Rule

This proposed 4(d) rule would provide for the conservation of the sand dune phacelia by prohibiting the following activities applicable to an endangered plant, except as otherwise authorized or permitted: Import or export; certain acts related to removing, damaging, and destroying on areas under Federal jurisdiction; delivery, receipt, transport, or shipment in interstate or foreign commerce in the course of commercial activity; and sale

or offering for sale in interstate or foreign commerce.

As discussed above under Summary of Biological Status and Threats, encroachment by native and nonnative invasive species (Factors A and E), small population size (Factor E), and climate change (Factor E) affect the status of sand dune phacelia. Additionally, a range of activities have the potential to negatively affect individual sand dune phacelia, including recreational impacts such as off-road vehicle use and inadvertent trampling through pedestrian or equestrian activities. To protect the species from these stressors, in addition to the protections that apply to Federal lands, the 4(d) rule would prohibit a person from removing, cutting, digging up, or damaging or destroying the species on non-Federal lands in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law. As most populations of sand dune phacelia occur off Federal land, these protections in the 4(d) rule are key to its effectiveness. For example, any damage to the species on non-Federal land in violation of a State off-highway vehicle law would be prohibited by the 4(d) rule. Additionally, any damage incurred by the species due to criminal trespass on non-Federal lands would similarly violate the proposed 4(d) rule. Regulating these activities will help preserve the species' remaining populations, slow their rate of decline, and decrease synergistic, negative effects from other stressors. As a whole, the proposed 4(d) rule would help in the efforts to recover sand dune phacelia by limiting specific actions that damage individual populations.

We may issue permits to carry out otherwise prohibited activities, including those described above, involving threatened plants under certain circumstances. Regulations governing permits for threatened plants are codified at 50 CFR 17.72, which states that the Director may issue a permit authorizing any activity otherwise prohibited with regard to threatened species. That regulation also states that the permit shall be governed by the provisions of 50 CFR 17.72 unless a special rule applicable to the plant is provided in 50 CFR 17.73 to 17.78. We interpret that second sentence to mean that permits for threatened species are governed by the provisions of 50 CFR 17.72 unless a special rule, which we have defined to mean a species-specific 4(d) rule, provides otherwise. We recently promulgated revisions to 50 CFR 17.71 providing that 50 CFR 17.71 will no longer apply to plants listed as threatened in the future. We did not intend for those revisions to limit or alter the applicability of the permitting provisions in 50 CFR 17.72, or to require that every species-specific 4(d) rule spell out any permitting provisions that apply to that species and species-specific 4(d) rule.

To the contrary, we anticipate that permitting provisions would generally be similar or identical for most species, so applying the provisions of 50 CFR 17.72 unless a species-specific 4(d) rule provides otherwise would likely avoid substantial duplication. Moreover, this interpretation brings 50 CFR 17.72 in line with the comparable provision for wildlife at 50 CFR 17.32, in which the second sentence states that the permit shall be governed by the provisions of 50 CFR 17.32 unless a special rule applicable to the wildlife, appearing in 50 CFR 17.40 to 17.48, provides otherwise. Under 50 CFR 17.72 with regard to threatened plants, a permit may be issued for the following purposes: for scientific purposes, to enhance propagation or survival, for economic hardship, for botanical or horticultural exhibition, for educational purposes, or for other purposes consistent with the purposes and policy of the Act. Additional statutory exemptions from the prohibitions are found in sections 9 and 10 of the Act.

We recognize the special and unique relationship with our State natural resource agency partners in contributing to conservation of listed species. State agencies often possess scientific data and valuable expertise on the status and distribution of endangered, threatened, and candidate species of wildlife and plants. State agencies, because of their authorities and their close working relationships with local governments and landowners, are in a unique position to assist the Service in implementing all aspects of the Act. In this regard, section 6 of the Act provides that the Service shall cooperate to the maximum extent practicable with the States in carrying out programs authorized by the Act. Therefore, any qualified employee or agent of a State conservation agency that is a party to a cooperative agreement with the Service in accordance with section 6(c) of the Act, who is designated by his or her agency for such purposes, would be able to conduct activities designed to conserve sand dune phacelia that may result in otherwise prohibited activities without additional authorization.

Nothing in this proposed 4(d) rule would change in any way the recovery planning provisions of section 4(f) of the Act, the consultation requirements under section 7 of the Act, or the ability of the Service to enter into partnerships for the management and protection of sand dune phacelia. However, interagency cooperation may be further streamlined through planned programmatic consultations for the species between Federal agencies and the Service, where appropriate. We ask the public, particularly State agencies and other interested stakeholders that may be affected by the proposed 4(d) rule, to provide comments and suggestions regarding additional guidance and methods that the Service could provide or use, respectively, to streamline the implementation of this proposed 4(d) rule (see Information Requested, above).

III. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals). Additionally, our regulations at 50 CFR 424.02 define the word ''habitat,'' for the purposes of designating critical habitat only, as the abiotic and biotic setting that currently or periodically contains the resources and conditions necessary to support one or more life processes of a species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such

methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The implementing regulations at 50 CFR 424.12(b)(2) further delineate unoccupied critical habitat by setting out three specific parameters: (1) When designating critical habitat, the Secretary will first evaluate areas occupied by the species; (2) the Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species; and (3) for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

As the regulatory definition of ''habitat'' reflects (50 CFR 424.02), habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not

required to, determine that a designation would not be prudent in the following circumstances:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species;

(ii) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(iii) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(iv) No areas meet the definition of critical habitat; or

(v) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

As discussed earlier in this document, there is currently no imminent threat of collection or vandalism identified under Factor B for this species, and identification and mapping of critical habitat is not expected to initiate any such threat. In our SSA report and proposed listing determination for sand dune phacelia, we determined that the present or threatened destruction, modification, or curtailment of habitat or range is a threat to sand dune phacelia and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The species occurs wholly in the jurisdiction of the United States, and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because the Secretary has not identified other circumstances for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for sand dune phacelia.

Critical Habitat Determinability

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the sand dune phacelia is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist: (i) Data sufficient to perform required analyses are lacking, or (ii) the biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.'' When critical habitat is not determinable, the Act allows the Service an additional year to publish a critical habitat designation (16 U.S.C. 1533(b)(6)(C)(ii)).

We reviewed the available information pertaining to the biological needs of the species and habitat characteristics where this species is located. This and other information represent the best scientific data available and led us to conclude that the designation of critical habitat is determinable for the sand dune phacelia.

Physical or Biological Features Essential to the Conservation of the Species

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species, including, but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkaline soil for seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species.

In considering whether features are essential to the conservation of the species, we may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to, space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

The following features are essential to the conservation of sand dune phacelia:

Sandy Coastal Dune Habitat With Adequate Light Exposure, Water, and Growing Space

Sandy coastal dune habitat above the high tide line that provides a high light environment, room for growth, and adequate moisture is required to support sand dune phacelia populations. Sandy areas must have open (unvegetated) space within them to accommodate population expansion. The physical features of sunlight, space, and water are essential for seedling establishment and growth, and facilitate the development of large, mature plants that produce copious amounts of seed. While we lack information on specific quantities associated with this need (such as maximum percent canopy cover that the species can tolerate), it is clear that sandy habitats that provide the essential features of sunlight, space, and water for sand dune phacelia tend to have lower cover of competitive invasive species, particularly European beachgrass and gorse.

Adequate Pollinator Community

A sufficient abundance of pollinators, particularly leafcutter bees (Family: Megachilidae), are required for genetic exchange among sand dune phacelia individuals. Sand dune phacelia appears to be largely incapable of significant self-pollination (Meinke 2016, p. 3), relying primarily on leafcutter bees (*Anthidium palliventre*) and bumblebees (*Bombus* spp.) for pollination. Ants (*Formica* spp.) and beetles (unidentified spp.) have also been observed in association with sand dune phacelia flowers, but it is unclear how effective they are at pollination (Rittenhouse 1995, p. 8).

Summary of Essential Physical or Biological Features

We derive the specific physical or biological features essential to the conservation of sand dune phacelia from studies of the species' habitat, ecology, and life history as described below. Additional information can be found in the SSA report (Service 2021, entire, available on *https://www.regulations.gov* under Docket No. FWS–R1–ES–2021–0070). We have determined that the following physical or biological features are essential to the conservation of sand dune phacelia:

- Sandy coastal dune habitat above the high tide line that provides a high light environment, room for growth, and adequate moisture;
- A sufficiently abundant pollinator community (which may include leafcutter bees and bumble bees) for pollination and reproduction;

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. In the case of sand dune phacelia, these essential features include sandy dune habitat with high light exposure and adequate moisture and unvegetated space, as well as a sufficiently large and diverse pollinator community, and a minimum of 25 reproductively mature sand dune phacelia plants within dispersal distance of one another to sustain a population.

These features essential to sand dune phacelia conservation may require special management considerations or protection to reduce the threat of invasive species encroachment, and to withstand climate change effects such as drought and sea level rise. In addition, localized stressors related to recreational activity, such as off-road vehicle use and pedestrian or equestrian trampling, may also need to be mitigated by special management practices to maintain viable sand dune phacelia populations.

Management activities that could ameliorate these threats include, but are not limited to: (1) Habitat restoration activities in sand dune habitat that include the removal of invasive species such as nonnative European beachgrass and gorse, or native successional species such as shore pine; (2) efforts to restore a diverse and abundant pollinator community, such as through restricting land management practices that harm pollinator species, or through support of a diverse native nectar plant community; (3) access restrictions and enforcement for off-road vehicle use in areas occupied by sand dune phacelia; (4) recreational restrictions to prevent trampling of sand dune phacelia by pedestrians or equestrians; and (5) augmentation and reintroduction programs to expand phacelia populations.

These management activities will protect the physical and biological features (PBFs) essential for the conservation of sand dune phacelia by providing native sandy dune habitat that allows for sand dune phacelia population growth and expansion, supporting the pollinator community that enables sand dune phacelia reproduction, protecting sand dune phacelia populations from trampling and crushing, and maintaining an adequate number of sand dune phacelia individuals necessary to sustain viable populations.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat. We are not currently proposing to designate any areas outside the geographical area occupied by the species because we have not identified any unoccupied areas that meet the definition of critical habitat. We determined that the areas currently occupied by populations of sand dune phacelia made up of at least 25 individuals, if recovered, would be sufficient to conserve the species. The extant populations with at least 25 individuals are distributed across the three representation units and across the historical range of the species and, therefore, also span any ecological diversity that may exist within the species' range. Therefore, if these populations were recovered to sufficient resiliency, they would provide adequate redundancy and representation for the species. Because currently occupied areas are sufficient to recover the species, we conclude that currently unoccupied areas do not meet the definition of critical habitat because they are not essential to the conservation of the species. In summary, for areas within the geographic area occupied by the species at the time of listing, we delineated critical habitat unit boundaries using the following criteria:

Across the representation units, there are 25 naturally occurring sand dune phacelia populations consisting of a total of 94 polygons (patches of sand dune phacelia). We developed critical habitat units within each representation unit by joining patches of sand dune phacelia within each population to form discrete units; this was accomplished by joining patch vertices and creating minimum convex polygons. We considered patches to be part of the same population if they are within 0.30 miles (0.48 km) of each other in Oregon (as defined by Oregon Natural Heritage Information Center) or 0.25 miles (0.4 km) of each other in California (as defined by the California Natural Diversity Database).

A minimum of 25 reproductively mature plants are required for breeding purposes to maintain viability in a population. Extant sand dune phacelia populations are isolated from one another on the landscape, with no possibility of natural dispersal between populations. As such, each individual population relies on having an adequate number of its own members to sustain itself and avoid extirpation. Although there are no data related to the minimum number of individuals necessary to sustain the viability of a sand dune phacelia population, we assume that at least 25 reproductively mature plants are needed for sufficient reproduction to allow the population to withstand stochastic events.

Because we consider populations comprising fewer than 25 plants as being in low condition and unlikely to contribute meaningfully to recovery, we designated critical habitat only around populations with equal to or greater than 25 individuals. This consideration resulted in the creation of 13 critical habitat units.

Some patches within the same population were separated by habitat that was unsuitable (*i.e.,* does not contain PBFs). We avoided including unsuitable habitat within the critical habitat units by joining patches only if the intervening habitat contained at least one PBF. We further limited the inclusion of unsuitable habitat by removing areas from the unit that were clearly unsuitable (*e.g.,* forest, water bodies) to the maximum extent possible given the scale of mapping.

When determining proposed critical habitat boundaries, we made every

effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for sand dune phacelia. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

We propose to designate as critical habitat lands that we have determined are occupied at the time of listing (*i.e.,* currently occupied). Thirteen critical habitat units are proposed for designation based on the physical or biological features being present to support sand dune phacelia's life-history processes. All of the critical habitat units contain all of the identified physical or biological features and support multiple life-history processes necessary to support the sand dune phacelia's use of that habitat.

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *https://www.regulations.gov* at Docket No. FWS–R1–ES–2021–0070, and on our internet site at *https://www.fws.gov/oregonfwo.*

Proposed Critical Habitat Designation

We are proposing to designate approximately 252 ac (102 ha) in 13 units as critical habitat for sand dune phacelia. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for sand dune phacelia. The 13 critical habitat units we propose are: (1) North Bandon 1, (2) North Bandon 2, (3) Lost Lake, (4) Floras Lake, (5) Cape Blanco, (6) Paradise Point, (7) Pistol River North, (8) Pistol River South, (9) Lone Ranch, (10) Pacific Shores, (11) Tolowa Dunes, (12) Point St. George, and (13) Pebble Beach. All 13 critical habitat units are occupied by the species. Table 4 shows the proposed critical habitat units and the approximate area, broken down by land ownership, for each unit.

We present brief descriptions of all critical habitat units below. Note that all units of critical habitat described below meet the definition of critical habitat for sand dune phacelia because all of the units are occupied by sand dune phacelia, and all units contain all of the physical and biological features essential to the species.

TABLE 4—PROPOSED CRITICAL HABITAT UNITS FOR SAND DUNE PHACELIA

	Private (ac (ha))	Federal (ac (ha))	State (ac (ha))	County (ac (ha))	Total (ac (ha))
Oregon					
North Bandon 1	0.6 (0.2)	0	0	0	0.6 (0.2)
North Bandon 2	54.4 (22)	0	6.9 (2.8)	0	61.3 (24.8)
Lost Lake	2.8 (1.1)	0.8 (0.3)	0.1 (0.04)	0	3.7 (1.5)
Floras Lake	0	5.8 (2.3)	0	0	5.8 (2.3)
Cape Blanco	0	0	2.0 (0.8)	0	2.0 (0.8)
Paradise Point	3.7 (1.5)	0	0	0	3.7 (1.5)
Pistol River North	0	0	3.2 (1.3)	0	3.2 (1.3)
Pistol River South	0	0	0.7 (0.3)	0	0.7 (0.3)
Lone Ranch	0	0	6.5 (2.6)	0	6.5 (2.6)
California					
Pacific Shores	54.4 (22)	0	37.9 (15.3)	0	92.3 (37.4)
Tolowa Dunes	0	0	69.6 (28.2)	0	69.6 (28.2)
Pt. St. George	0.1 (0.4)	0	0	1.0 (0.4)	1.1 (0.4)
Pebble Beach	0	0	1.3 (0.5)	0.4 (0.2)	1.7 (0.7)
Totals	116 (46.9)	6.6 (2.8)	128.2 (51.9)	1.4 (0.6)	252.2 (102.1)

Note: Area estimates reflect suitable habitat within critical habitat unit boundaries, with non-habitat (as identified by textual description) excluded. Area sizes may not sum due to rounding.

Unit 1: North Bandon 1

Unit 1 consists of 0.6 ac (0.2 ha) in Coos County, Oregon. It is at the northernmost limit of the sand dune phacelia's range in Coos County and is located on the privately owned Bandon Dunes Golf Resort. Invasive species are an ongoing threat at this site, and therefore invasive species management may be required. A stated goal of the conservation-minded owner is to protect and enhance sand dune phacelia at the site, and the population here has flourished due to the removal of heavy infestations of gorse (Gunther 2012, no pagination).

Unit 2: North Bandon 2

Unit 2 consists of 61.3 ac (24.8 ha) in Coos County, Oregon, and currently supports the largest population of sand dune phacelia rangewide. The majority (54.4 ac (22 ha)) of the habitat at this site is on the privately owned Bandon Dunes Golf Resort. The population here is now the largest rangewide, with over 24,000 individuals (Brown 2020a database). Invasive species are the primary threat, and therefore invasive species management may be required. Conservation and restoration implemented by the golf resort are largely responsible for the high

condition of this population and its habitat. While there are no formal agreements in place to protect sand dune phacelia at the resort, we have no evidence at this time that management efforts at this site will be discontinued. Part of the population (6.9 ac (2.8 ha)) is in State park ownership (Bullard's Beach) and implementation of invasive species control, particularly gorse, could result in an expanded sand dune phacelia population in the park.

Unit 3: Lost Lake

Unit 3 consists of 3.7 ac (1.5 ha) in Coos County, Oregon. The Lost Lake unit contains land within the Coos Bay New River Area of Critical Environmental Concern (ACEC) (0.8 ac (0.3 ha)) that is federally managed by BLM, State-managed land (0.1 ac (0.04 ha)) within the Bandon State Natural Area (BSNA), and undeveloped private land (2.8 ac (1.1 ha)). Stressors in Unit 3 include illegal off-highway vehicle (OHV) use and the persistent threat of invasive species. As such, managing OHV use may benefit the unit, and invasive species management may be required to maintain it. Sand dune phacelia has greatly benefited from BLM's efforts to remove invasive species in the Lost Lake area, and it is likely that there is room for expansion of this population provided that annual, or nearly annual, vegetation management continues. Augmentation efforts, including transplanting and seeding, have also occurred at Lost Lake on the ACEC.

Unit 4: Floras Lake

Unit 4 consists of 5.8 ac (2.3 ha) in Curry County, Oregon. Like Unit 3, Floras Lake is a part of BLM's New River ACEC. BLM monitors and regularly manages the habitat to maintain the open sand conditions that the sand dune phacelia requires, contributing to the fact that the population of sand dune phacelia at Floras Lake is the largest naturally occurring (*i.e.,* not introduced) population on Federal land. BLM has augmented populations in this subunit with transplants. In addition to the threat of invasive species, other stressors include trampling by hikers and wintertime flooding from Floras Lake. Dependent upon the intensity, these activities could also be beneficial as they mobilize sand and clear habitat of invasive species. As such, mitigating the impacts of pedestrian use, flooding, and invasive species, may be required. Sea level rise may pose an additional threat. As determined by our future condition analysis, a 1-foot rise in sea level by 2060 would barely reach the seaward boundary of the unit; however, other accompanying effects of climate change, like increased storm surge, may also affect sand dune phacelia habitat in this unit.

Unit 5: Cape Blanco

Unit 5 consists of 2.0 ac (0.8 ha) in Curry County, Oregon. The unit is State-managed by the Oregon Parks and Recreation Department (OPRD) and consists of sandy bluffs above the high tide line. A naturally occurring population was augmented with transplants in 2018. Invasive species are a threat at this site, and therefore invasive species management may be required.

Unit 6: Paradise Point

Unit 6 consists of 3.7 ac (1.5 ha) in Curry County, Oregon. It is separated from Unit 5 by the Elk River and bounded to the east by private ranchlands. Unit 6 is made up of undeveloped private land, limited to sandy bluffs between the high tide line and adjacent pastureland. Although it is privately owned, the State (OPRD) has jurisdiction over the land in Unit 6 as well as some adjacent State-owned land. In addition to the threat of invasive species, other factors influencing the population at this site include OHV use, erosion, and storm surge associated with sea level rise. As such, invasive species management may be required, and other management associated with mitigating the impacts of OHV use, erosion, and flooding may also be beneficial.

Unit 7: Pistol River North

Unit 7 consists of 3.2 ac (1.3 ha) in Curry County, Oregon. The land on Unit 7 lies southwest of the Pistol River and is State-managed by OPRD (Pistol River State Park) and the Oregon Department of Transportation. As with all other units, invasive species are a threat, and therefore invasive species management may be required. Another stressor affecting Unit 7 is erosion, as the mouth of the Pistol River changes location annually, scouring the dunes and carrying sand out to sea.

Unit 8: Pistol River South

Unit 8 consists of 0.7 ac (0.3 ha) in Curry County, Oregon. The land is south of Unit 7 and also located on Pistol River State Park. Invasive species are a threat here, and the site is surrounded by European beachgrass and encroaching shore pine. As such, invasive species management may be required.

Unit 9: Lone Ranch

Unit 9 consists of 6.5 ac (2.6 ha) in Curry County, Oregon, and currently supports the third largest population of sand dune phacelia throughout its range. It is composed entirely of land managed by the State (OPRD; Boardman State Park). There is an imminent threat to the population at this site posed by a number of invasive species. As such, invasive species management may be required. Existing control of weedy species for recreational trail access may be maintaining existing suitable habitat.

Unit 10: Pacific Shores

Unit 10 consists of 92.3 ac (37.4 ha) in Del Norte County, California. State lands make up 37.9 ac (15.3 ha) of this site, with the remaining 54.4 acres (22 ha) in private ownership at this time. This area represents an abandoned real estate venture, where lands were subdivided into 0.5-ac (0.20-ha) lots in the 1960s for residential development. Over 1,500 lots were sold and approximately 27 miles of road and electric transmission line were constructed. However, the area remains undeveloped due to permitting issues, and the empty lots are now being acquired for conservation by a coalition of entities for inclusion into the State's Lake Earl Wildlife Area. Approximately 430 lots remain in private ownership. Invasive species are a threat here, and therefore invasive species management may be required. In addition, because much of the sand dune phacelia population in the unit occurs adjacent to roadways or other readily accessible areas, the unit is considered heavily impacted by human activities that include OHV use. Special management considerations to mitigate the impact to sand dune phacelia habitat from these activities may be required.

Unit 11: Tolowa Dunes

Unit 11 consists of 69.6 ac (28.2 ha) in Del Norte County, California, and currently supports the second largest population of sand dune phacelia rangewide. The unit is State-managed in part by California State Parks (on Tolowa Dunes State Park) and the California Department of Fish and Wildlife (on Lake Earl Wildlife Area). Invasive species are a threat here and OHV use also impacts this site. As such, managing OHV use and invasive species may be required. The relatively high abundance of sand dune phacelia in Unit 11 is attributed to a concerted restoration program that has removed invasive species, particularly European beachgrass. These efforts have made this population the stronghold for the

species in California and an important contributor to sand dune phacelia resiliency and redundancy rangewide. However, much of the restoration at this site has been conducted by volunteers, and funding to continue maintaining restored habitat is uncertain.

Unit 12: Point Saint George

Unit 12 consists of 1.1 ac (0.4 ha) in Del Norte County, California. The vast majority of the land (1 ac (0.4 ha)) is county-managed by Del Norte County Parks, and the other 0.1 ac (0.04 ha) is privately owned. Invasive species, particularly annual grasses, are prolific in this unit and therefore invasive species management may be required. However, a large proportion of the sand dune phacelia population at this site occurs near a hiking trail where disturbance has kept the area relatively free of invasive species.

Unit 13: Pebble Beach

Unit 13 consists of 1.7 ac (0.7 ha) in Del Norte County, California. While 0.4 ac (0.2 ha) of the land here is county land, the rest (1.3 ac (0.5 ha)) is State-managed by the California Department of Transportation. Invasive species pose a substantial threat at this site, primarily Hottentot fig or iceplant (*Carpobrotus edulis*), and therefore invasive species management may be required. Additionally, much of this unit is located within a road right-of-way, and therefore road development or maintenance activities could impact sand dune phacelia individuals, some of which are quite large and productive. As such, special management to mitigate the impact to sand dune phacelia habitat from these activities may be required.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final rule revising the definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, Tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat—and actions on State, Tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency—do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation: (1) If the amount or extent of taking specified in the incidental take statement is exceeded; (2) if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) if the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in the biological opinion; or (4) if a new species is listed or critical habitat designated that may be affected by the identified action.

In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designating new critical habitat. See the regulations for a description of those exceptions.

Application of the ''Destruction or Adverse Modification'' Standard

The key factor related to the destruction or adverse modification determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate section 7(a)(2) of the Act by destroying or adversely modifying such habitat, or that may be affected by such designation.

Activities that the Service may, during a consultation under section 7(a)(2) of the Act, consider likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would destroy, alter, or convert sand dune habitat. Such activities could include, but are not limited to, the construction of new roads or utility lines, dune breaching or breaching of water bodies for flood control, bridge work, and the use of heavy equipment for regular maintenance activities (such as roadway maintenance). These activities could eliminate or reduce the sandy dune habitat necessary for sand dune phacelia growth and reproduction.

(2) Actions that would inhibit or reduce native plant communities and the pollinator communities they support. Such activities could include, but are not limited to, herbicide or insecticide application. These activities could limit the ability of sand dune phacelia to reproduce by inhibiting pollinator communities.

(3) Actions that would introduce or promote the proliferation of invasive or successional species plant species into sand dune habitat. Such activities could include, but are not limited to, vegetation management that encourages growth of competing native and nonnative species. These activities could increase competition for space for growth, sunlight, and nutrients between sand dune phacelia and nonnative or successional competitors such as European beachgrass and shore pine, respectively.

Exemptions

Application of Section 4(a)(3) of the Act

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that the Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an integrated natural resources management plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. No DoD lands with a completed INRMP are within the proposed critical habitat designation.

Consideration of Impacts Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and evaluate whether the benefits of exclusion outweigh the benefits of inclusion. If the analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, the Secretary may exercise discretion to exclude the area only if such exclusion would not result in the extinction of the species. In making the determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. We describe below the process that we undertook for taking into consideration each category of impacts and our analyses of the relevant impacts.

Consideration of Economic Impacts

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.''

The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). Therefore, the baseline represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this particular designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for the sand dune phacelia (Industrial Economics, Inc. 2021). We began by conducting a screening analysis of the proposed designation of critical habitat in order to focus our analysis on the key factors that are likely to result in incremental economic impacts. The purpose of the screening analysis is to filter out particular geographic areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes any probable incremental economic impacts where land and water use may already be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the species. Ultimately, the screening analysis allows us to focus our analysis on evaluating the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. If the proposed critical habitat designation contains any unoccupied units, the screening analysis assesses whether those units require additional management or conservation efforts that may incur incremental economic impacts. This screening analysis combined with the information contained in our IEM

constitute what we consider to be our draft economic analysis (DEA) of the proposed critical habitat designation for the sand dune phacelia; our DEA is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation.

In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for the sand dune phacelia, first we identified, in the IEM dated April 14, 2021, probable incremental economic impacts associated with the following categories of activities: (1) Federal lands management (U.S. Bureau of Land Management) for recreational use, western snowy plover management, dune breaching, salt spray meadow restoration, and management plan updates; (2) bridge work; (3) breaching of water bodies for flood control purposes; and (4) road development and maintenance. We considered each industry or category individually. Additionally, we considered whether their activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. If we list the species, in areas where the sand dune phacelia is present, Federal agencies would be required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the species. If, when we list the species, we also finalize this proposed critical habitat designation, our consultation would include an evaluation of measures to avoid the destruction or adverse modification of critical habitat.

In our IEM, we attempted to clarify the distinction between the effects that would result from the species being listed and those attributable to the critical habitat designation (*i.e.,* difference between the jeopardy and adverse modification standards) for sand dune phacelia's critical habitat. Because the designation of critical habitat for sand dune phacelia was proposed concurrently with the listing, it has been our experience that it is more difficult to discern which conservation efforts are attributable to the species being listed and those which will result solely from the designation of critical habitat. However, the following specific circumstances in this case help to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the species, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to sand dune phacelia would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this species. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation of critical habitat.

We are proposing to designate approximately 252 ac (102 ha) of critical habitat for sand dune phacelia across Coos and Curry Counties in Oregon and Del Norte County in California. The designation is divided into 13 units, and all units are occupied by sand dune phacelia. We are not proposing to designate any units of unoccupied habitat. Approximately 51 percent of the proposed designation is located on State-owned lands, 46 percent is on privately owned lands, 3 percent is on Federal lands, and less than 1 percent is on county-owned lands. Any actions that may affect the species or its habitat would also affect critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of sand dune phacelia. Therefore, only administrative costs are expected with the proposed critical habitat designation. While this additional analysis will require time and resources by both the Federal action agency and the Service, it is believed that, in most circumstances, these costs would predominantly be administrative in nature and would not be significant.

The probable incremental economic impacts of the sand dune phacelia critical habitat designation are expected to be limited to additional administrative effort resulting from an estimated 3 programmatic consultations, 10 formal consultations, 3 informal consultations, and 7 technical assistance efforts related to section 7 consultation over the next 10 years. Because all of the proposed critical habitat units are occupied by the species, incremental economic impacts of critical habitat designation, other than administrative costs, are unlikely. The incremental costs for each programmatic, formal, informal, and technical assistance effort are estimated to be $9,800, $5,300, $2,600, and $420, respectively. These estimates assume that consultation actions will occur even in the absence of critical habitat due to the presence of the sand dune phacelia, and the amount of administrative effort needed to address the critical habitat during this process is relatively minor. Applying these unit cost estimates, this analysis estimates that considering adverse modification of sand dune phacelia critical habitat during section 7 consultation will result in incremental costs of no more than $9,300 (2021 dollars) per year, which is well below the annual administrative burden threshold of $100 million of incremental administrative impacts in a single year.

We are soliciting data and comments from the public on the DEA discussed above, as well as on all aspects of this proposed rule and our required determinations. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts we receive during the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90. If we receive credible information regarding the existence of a meaningful economic or other relevant impact supporting a benefit of exclusion, we will conduct an exclusion analysis for the relevant area or areas. We may also exercise the discretion to evaluate any other particular areas for possible exclusion. Furthermore, when we conduct an exclusion analysis based on impacts identified by experts in, or sources with firsthand knowledge about, impacts that are outside the scope of the Service's expertise, we will give weight to those impacts consistent with the expert or firsthand information unless we have rebutting information. We may exclude an area from critical habitat if we determine that the benefits of excluding

the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this species.

Consideration of National Security Impacts

Section 4(a)(3)(B)(i) of the Act may not cover all DoD lands or areas that pose potential national-security concerns (*e.g.,* a DoD installation that is in the process of revising its INRMP for a newly listed species or a species previously not covered). If a particular area is not covered under section 4(a)(3)(B)(i), then national-security or homeland-security concerns are not a factor in the process of determining what areas meet the definition of ''critical habitat.'' However, the Service must still consider impacts on national security, including homeland security, on those lands or areas not covered by section 4(a)(3)(B)(i), because section 4(b)(2) requires the Service to consider those impacts whenever it designates critical habitat. Accordingly, if DoD, Department of Homeland Security (DHS), or another Federal agency has requested exclusion based on an assertion of national-security or homeland-security concerns, or we have otherwise identified national-security or homeland-security impacts from designating particular areas as critical habitat, we generally have reason to consider excluding those areas.

However, we cannot automatically exclude requested areas. When DoD, DHS, or another Federal agency requests exclusion from critical habitat on the basis of national-security or homeland-security impacts, we must conduct an exclusion analysis if the Federal requester provides credible information, including a reasonably specific justification of an incremental impact on national security that would result from the designation of that specific area as critical habitat. That justification could include demonstration of probable impacts, such as impacts to ongoing border-security patrols and surveillance activities, or a delay in training or facility construction, as a result of compliance with section 7(a)(2) of the Act. If the agency requesting the exclusion does not provide us with a reasonably specific justification, we will contact the agency to recommend that it provide a specific justification or clarification of its concerns relative to the probable incremental impact that could result from the designation. If we conduct an exclusion analysis because the agency provides a reasonably specific justification or because we decide to exercise the discretion to conduct an exclusion analysis, we will defer to the expert judgment of DoD, DHS, or another Federal agency as to: (1) Whether activities on its lands or waters, or its activities on other lands or waters, have national-security or homeland-security implications; (2) the importance of those implications; and (3) the degree to which the cited implications would be adversely affected in the absence of an exclusion. In that circumstance, in conducting a discretionary section 4(b)(2) exclusion analysis, we will give great weight to national-security and homeland-security concerns in analyzing the benefits of exclusion.

Under section 4(b)(2) of the Act, we also consider whether a national-security or homeland-security impact might exist on lands not owned or managed by DoD or DHS. In preparing this proposal, we have determined that the lands within the proposed designation of critical habitat for sand dune phacelia are not owned or managed by DoD or DHS. Therefore, we anticipate no impact on national security or homeland security. However, if through the public comment period we receive credible information regarding impacts on national security or homeland security from designating particular areas as critical habitat, then as part of developing the final designation of critical habitat, we will conduct a discretionary exclusion analysis to determine whether to exclude those areas under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90.

Consideration of Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security discussed above. Other relevant impacts may include, but are not limited to, impacts to Tribes, States, local governments, public health and safety, community interests, the environment (such as increased risk of wildfire or pest and invasive species management), Federal lands, and conservation plans, agreements, or partnerships. To identify other relevant impacts that may affect the exclusion analysis, we consider a number of factors, including whether there are permitted conservation plans covering the species in the area—such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances—or whether there are non-permitted conservation agreements and partnerships that may be impaired by designation of, or exclusion from, critical habitat. In addition, we look at whether Tribal conservation plans or partnerships, Tribal resources, or government-to-government relationships of the United States with Tribal entities may be affected by the designation. We also consider any State, local, public-health, community-interest, environmental, or social impacts that might occur because of the designation.

We have not identified any areas to consider for exclusion from critical habitat based on other relevant impacts. In preparing this proposal, we have determined that there are currently no permitted conservation plans or other management plans for sand dune phacelia. There are no partnerships, management, or protection afforded by cooperative management efforts sufficient to provide for the conservation of the species. There are no areas for which exclusion would result in conservation, or in the continuation, strengthening, or encouragement of partnerships.

However, during the development of a final designation, we will consider all information currently available or received during the public comment period. If we receive credible information regarding the existence of a meaningful impact supporting a benefit of excluding any areas, we will undertake an exclusion analysis and determine whether those areas should be excluded from the final critical habitat designation under the authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90. We may also exercise the discretion to undertake exclusion analyses for other areas as well, and we will describe all of our exclusion analyses as part of a final critical habitat determination.

Summary of Exclusions Considered Under Section 4(b)(2) of the Act

At this time, we are not considering any exclusions from the proposed designation based on economic impacts, national security impacts, or other relevant impacts—such as partnerships, management, or protection afforded by cooperative management efforts—under section 4(b)(2) of the Act. In preparing this proposal, we have determined that no HCPs or other management plans for sand dune phacelia currently exist, and the proposed designation does not include any Tribal lands or trust resources. Therefore, we anticipate no impact on Tribal lands, partnerships, or HCPs from this proposed critical habitat designation and thus, as described above, we are not considering excluding any particular areas on the basis of the presence of conservation agreements or impacts to trust resources.

During the development of a final designation, we will consider any additional information received through the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 17.90.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this 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 (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine whether potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

Under the RFA, as amended, and as understood in light of recent court decisions, Federal agencies are required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself; in other words, the RFA does not require agencies to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies would be directly regulated if we adopt the proposed critical habitat designation. The RFA does not require evaluation of the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities would be directly regulated by this rulemaking, the Service certifies that, if made final as proposed, the proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final, the proposed critical habitat designation would not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that this proposed critical habitat designation would significantly affect energy supplies, distribution, or use. We are not aware of any energy-related activities or facilities within the boundaries of the proposed critical habitat designation. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following finding:

(1) This proposed rule would not produce a Federal mandate. In general,

a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or Tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for sand dune phacelia in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed for the proposed designation of critical habitat for sand dune phacelia and it concludes that, if adopted, this designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the proposed rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the species are more clearly defined, and the physical or biological features of the habitat necessary for the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur.

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the species, this proposed rule identifies the physical or biological features essential to the conservation of the species. The proposed areas of critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain information collection requirements, and a submission to the Office of

Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (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.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribal lands fall within the boundaries of the proposed critical habitat for sand dune phacelia, so no Tribal lands would be affected by the proposed designation.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Oregon Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Oregon Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12 paragraph (h) by adding an entry for ''*Phacelia argentea* (Sand dune phacelia)'' to the List of Endangered and Threatened Plants in alphabetical order under FLOWERING PLANTS to read as set forth below:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
*	*	*	*	* * *
Phacelia argentea	Sand dune phacelia	Wherever found	T	[**Federal Register** citation when published as a final rule]; 50 CFR 17.73(j); [4d] 50 CFR 17.96(a).[CH]
*	*	*	*	* * *

■ 3. Revise § 17.73 to read as follows:

§ 17.73 Special rules—flowering plants.

(a)–(i) [Reserved]

(j) *Phacelia argentea* (sand dune phacelia).—(1) *Prohibitions.* The following prohibitions that apply to endangered plants also apply to sand dune phacelia. Except as provided under paragraph (k)(2) of this section, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit, or cause to be committed, any of the following acts in regard to this species:

(i) Import or export, as set forth at § 17.61(b) for endangered plants.

(ii) Remove and reduce to possession the species from areas under Federal jurisdiction as set forth at § 17.61(c)(1) for endangered plants.

(iii) Maliciously damage or destroy the species on any areas under Federal jurisdiction, or remove, cut, dig up, or damage or destroy the species on any other area in knowing violation of any law or regulation of any State or in the course of any violation of a State criminal trespass law, as set forth at section 9(a)(2)(B) of the Act.

(iv) Interstate or foreign commerce in the course of commercial activity, as set forth at § 17.61(d) for endangered plants.

(v) Sale or offer for sale, as set forth at § 17.61(e) for endangered plants.

(2) *Exceptions from prohibitions.* In regard to *Phacelia argentea,* you may:

(i) Conduct activities, including activities prohibited under paragraph (k)(1) of this section, if they are authorized by a permit issued in accordance with the provisions set forth at § 17.72.

(ii) Remove and reduce to possession from areas under Federal jurisdiction, as set forth at § 17.71(b).

(iii) Remove, cut, dig up, damage or destroy on areas not under Federal jurisdiction by any qualified employee or agent of the Service or State conservation agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by that agency for such purposes, when acting in the course of official duties.

■ 4. Amend § 17.96 paragraph (a) by adding an entry for ''Family Boraginaceae: *Phacelia argentea* (sand

dune phacelia)'' after the entry for ''Family Boraginaceae: *Amsinckia grandiflora* (large-flowered fiddleneck)'', to read as set forth below:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Boraginaceae: Phacelia argentea (sand dune phacelia)

(1) Critical habitat units are depicted for Coos and Curry Counties, Oregon, and Del Norte County, California, on the maps in this entry.

(2) Within these areas, the physical or biological features essential to the conservation of sand dune phacelia consist of the following components:

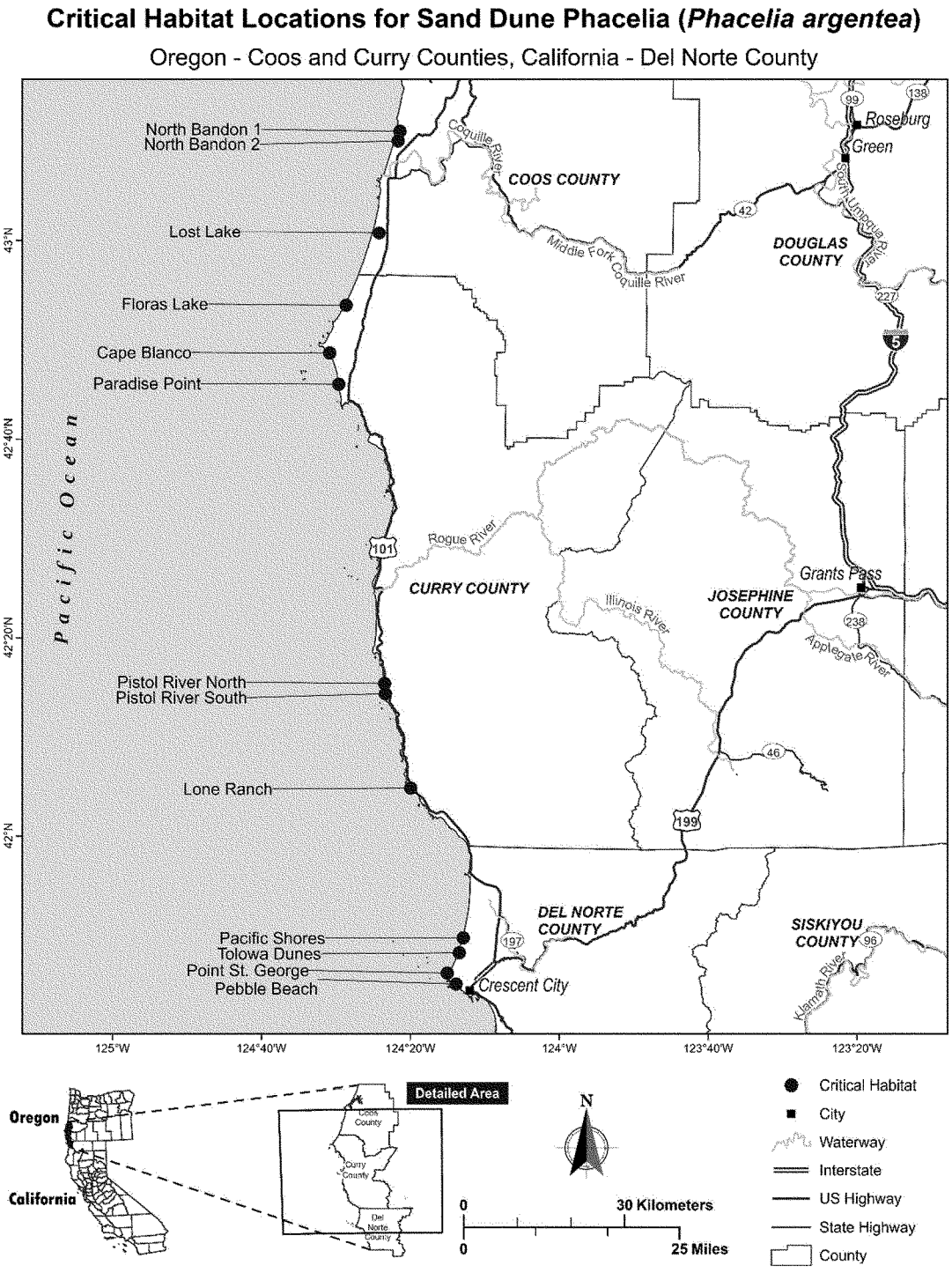
(i) Sandy coastal dune habitat above the high tide line that provides a high light environment, room for growth, and adequate moisture.

(ii) A sufficiently abundant pollinator community (which may include leafcutter bees and bumble bees) for pollination and reproduction.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

(4) Data layers defining map units were created using Geographic Information Systems (GIS) feature classes from known extant populations. Critical habitat units were defined by applying the minimum convex polygon approach in GIS, thereby creating a single polygon from occupied habitat patches within each population consisting of 25 or more individuals. In a few cases, the unit boundaries were modified to align with the coastal boundary based on current National Agriculture Imagery Program natural color imagery. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site at *https://www.fws.gov/oregonfwo,* at *https://www.regulations.gov* at Docket No. FWS–R1–ES–2021–0070, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

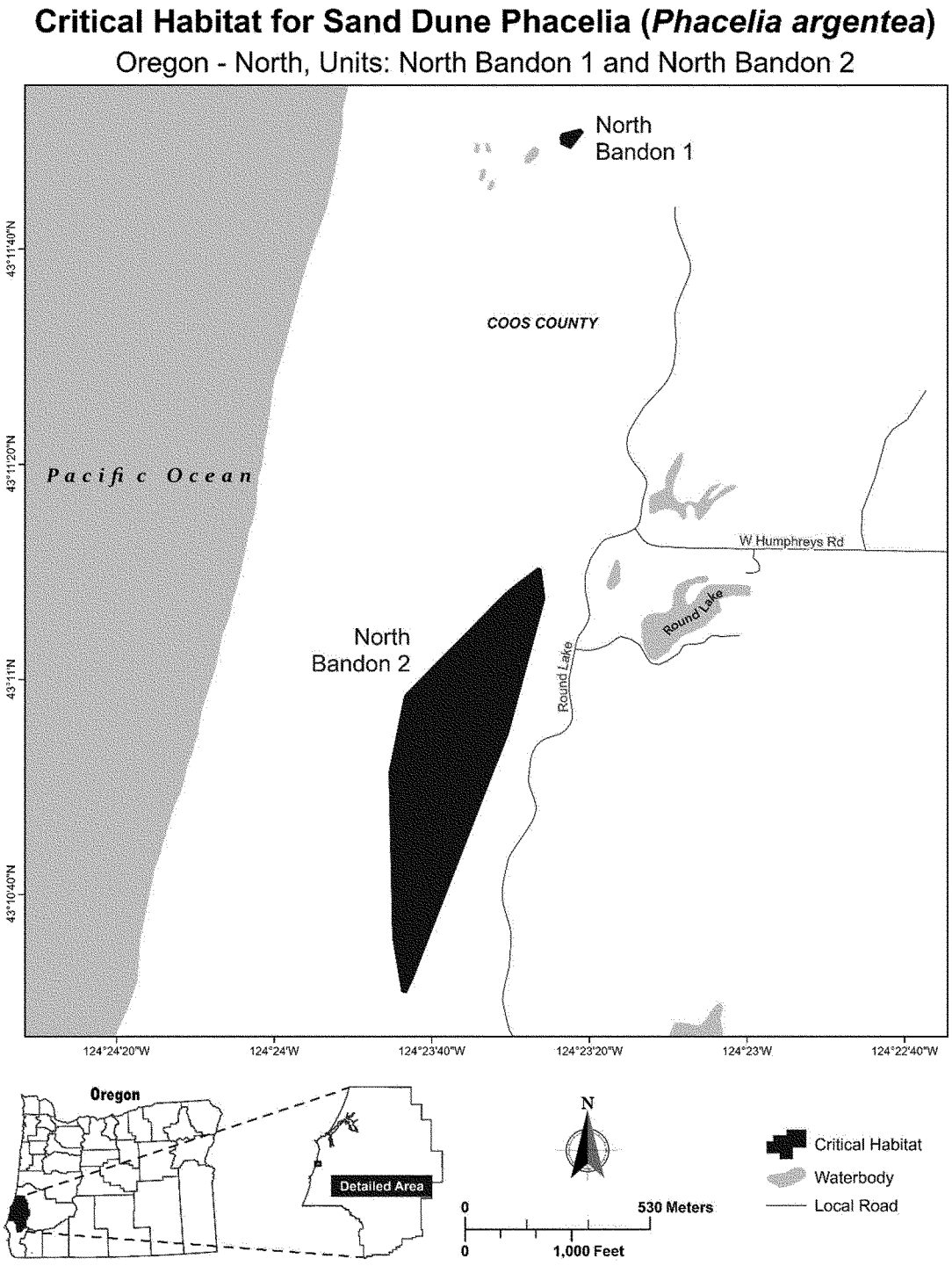
(5) Note: Index map follows:



(6) Unit 1: North Bandon 1, Coos County, Oregon; Unit 2: North Bandon 2, Coos County, Oregon.

(i) Unit 1 consists of 0.6 acres (ac) (0.2 hectares (ha)) in Coos County, Oregon, and is composed of land in private ownership. Unit 2 consists of 61.3 ac (24.8 ha) in Coos County, Oregon, and is composed of land in State (6.9 ac (2.8 ha)) and private ownership (54.4 ac (22 ha)).

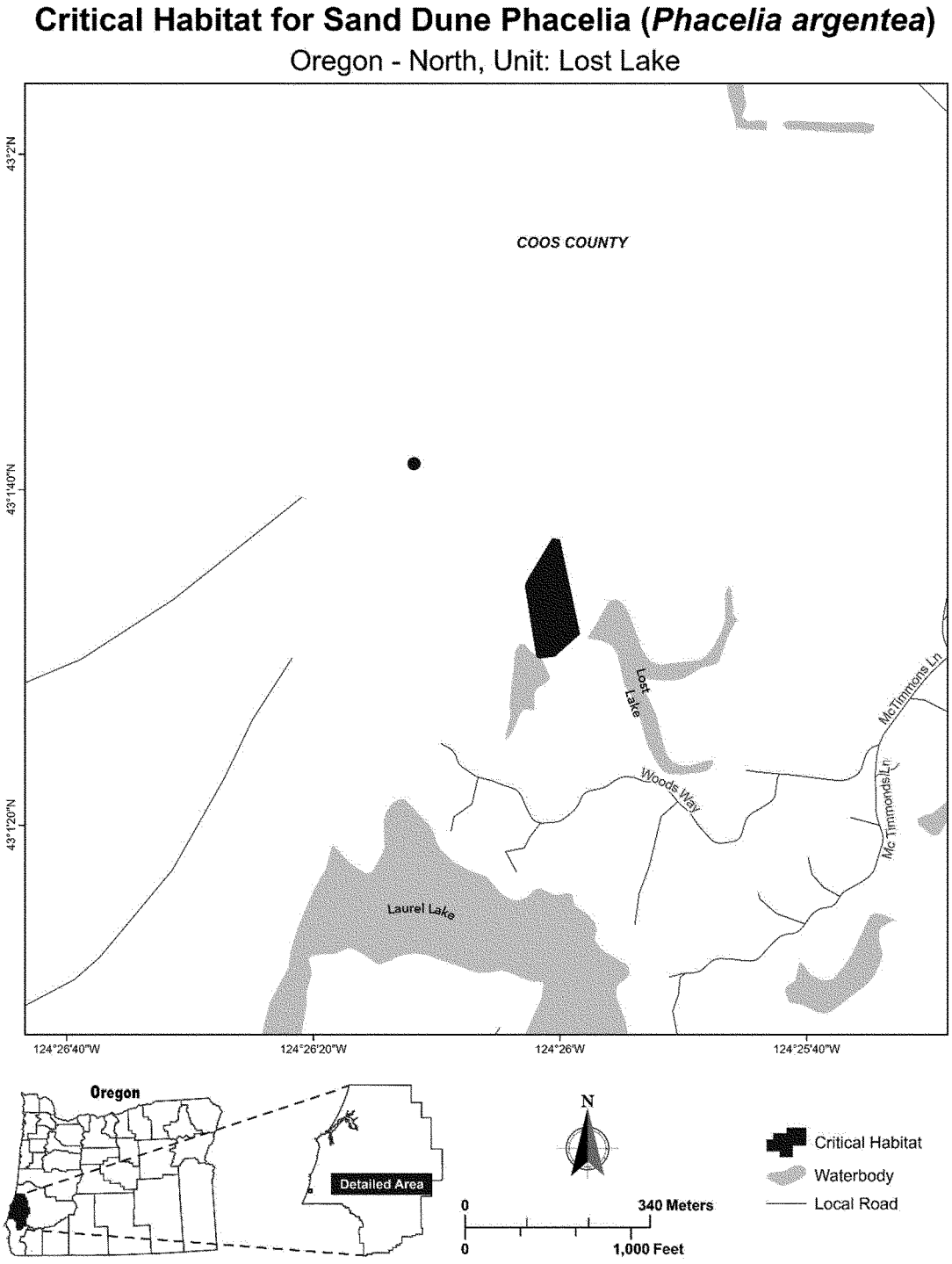
(ii) Map of Unit 1 and Unit 2 follows:



(7) Unit 3: Lost Lake, Coos County, Oregon.

(i) Unit 3 consists of 3.7 ac (1.5 ha) in Coos County, Oregon, and is composed of land in State (0.1 ac (0.04 ha)), Federal (0.8 ac (0.3 ha)), and private ownership (2.8 ac (1.1 ha)).

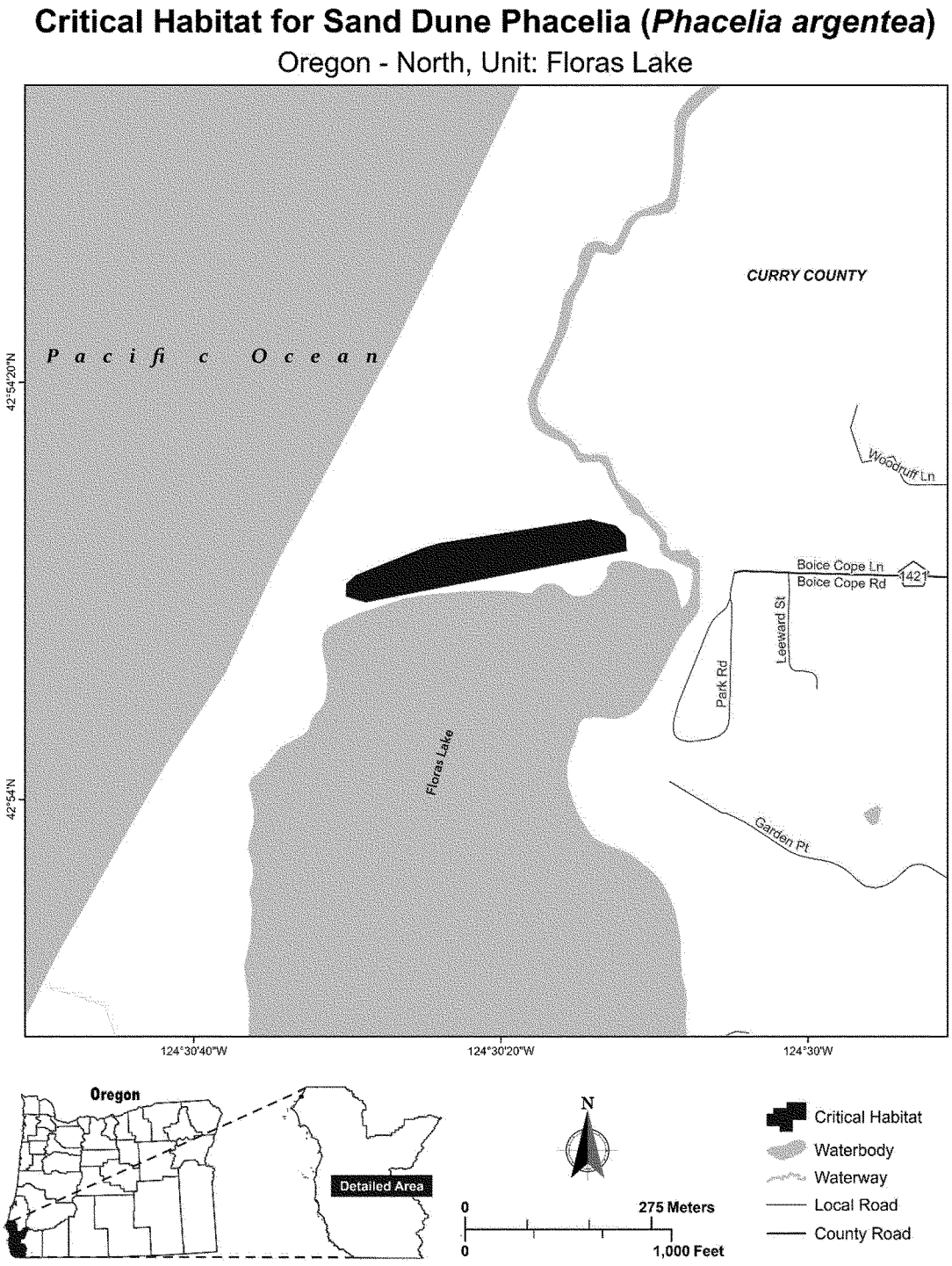
(ii) Map of Unit 3 follows:



(8) Unit 4: Floras Lake, Curry County, Oregon

(i) Unit 4 consists of 5.8 ac (2.3 ha) in Curry County, Oregon, and is composed of land in Federal ownership.

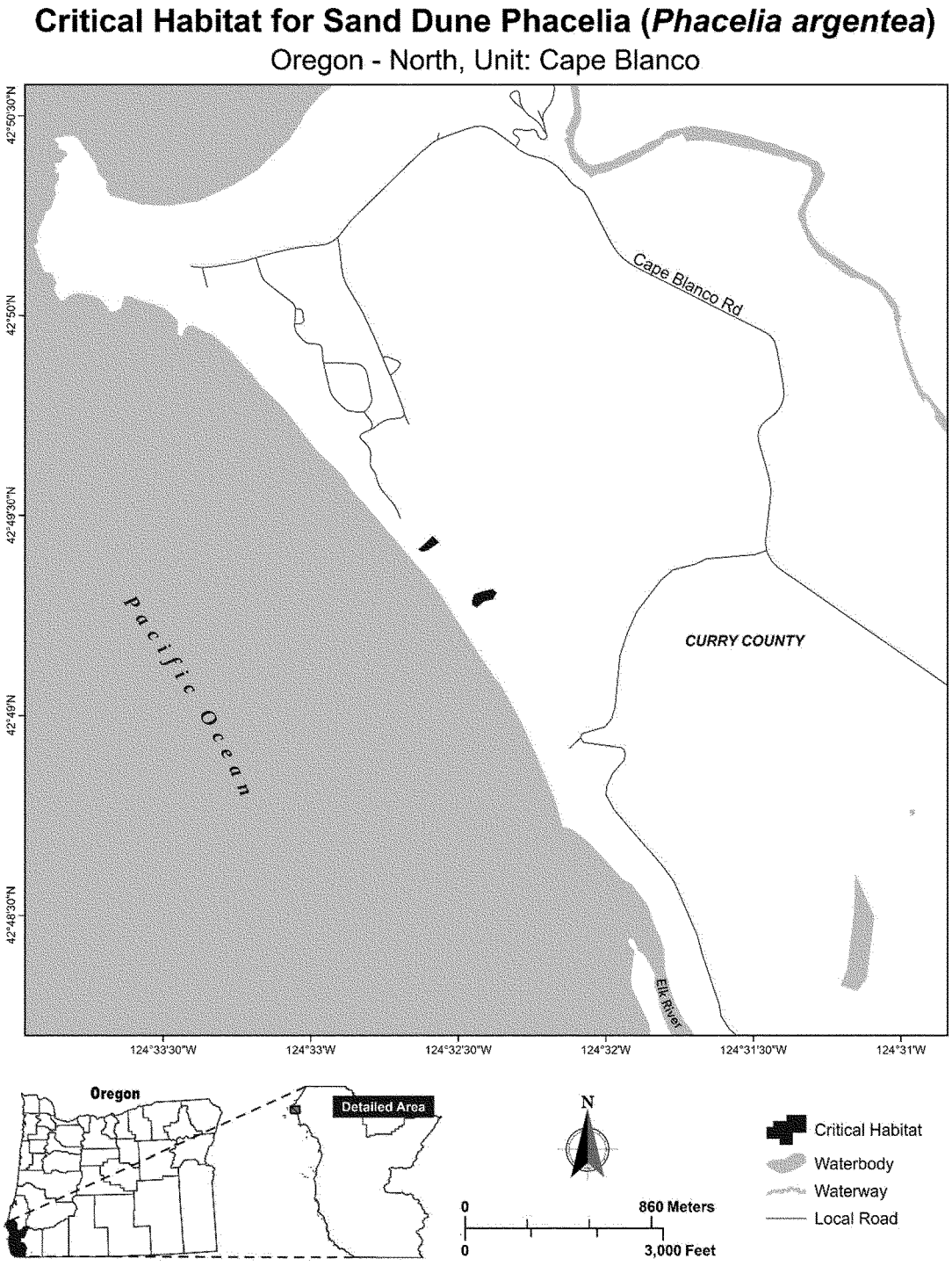
(ii) Map of Unit 4 follows:



(9) Unit 5: Cape Blanco, Curry County, Oregon

(i) Unit 5 consists of 2 ac (0.8 ha) in Curry County, Oregon, and is composed of land in State ownership.

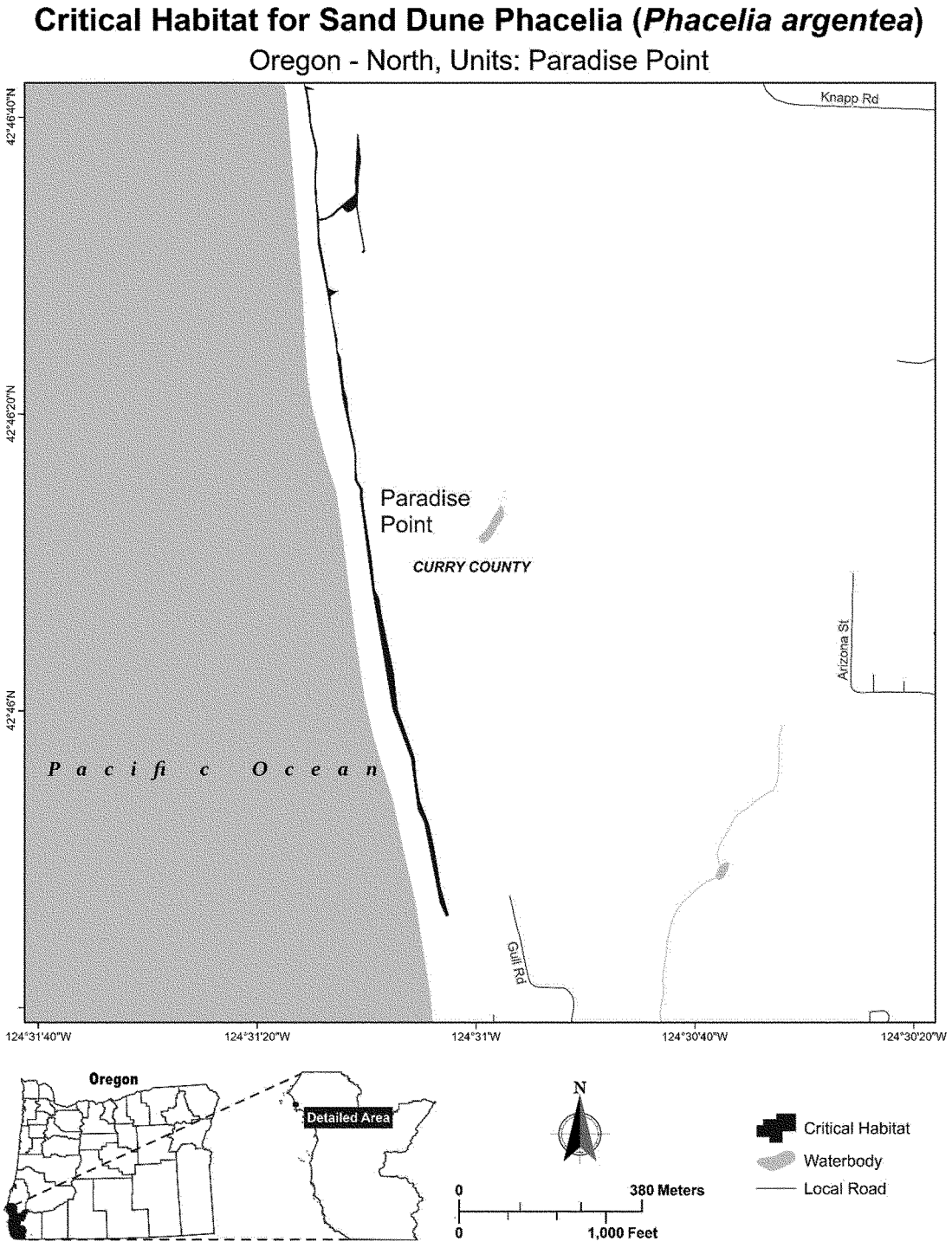
(ii) Map of Unit 5 follows:



(10) Unit 6: Paradise Point, Curry County, Oregon.

(i) Unit 6 consists of 3.7 ac (1.5 ha) in Curry County, Oregon, and is composed of land in private ownership.

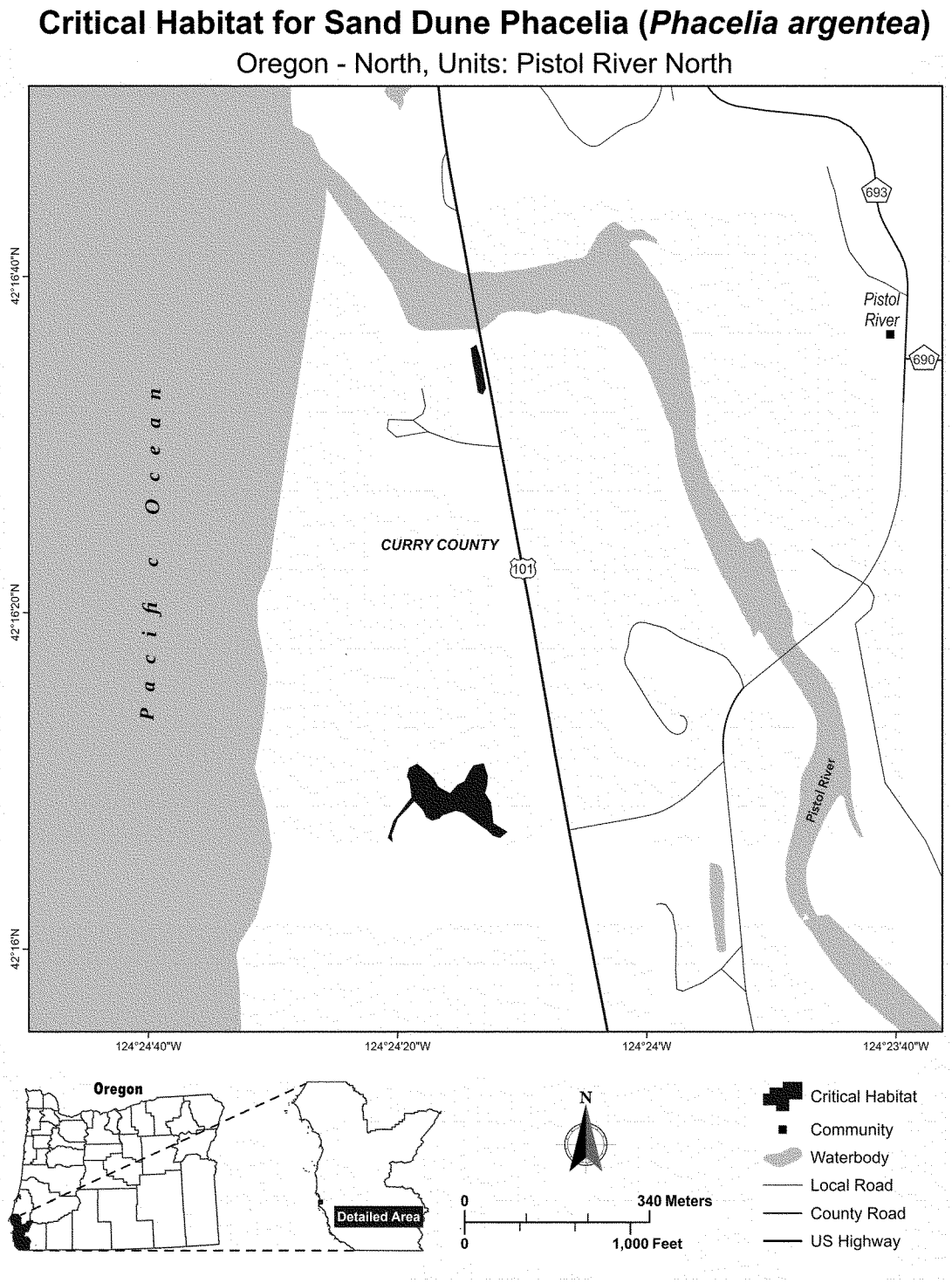
(ii) Map of Unit 6 follows:



(11) Unit 7: Pistol River North, Curry County, Oregon.

(i) Unit 7 consists of 3.2 ac (1.3 ha) in Curry County, Oregon, and is composed of land in State ownership.

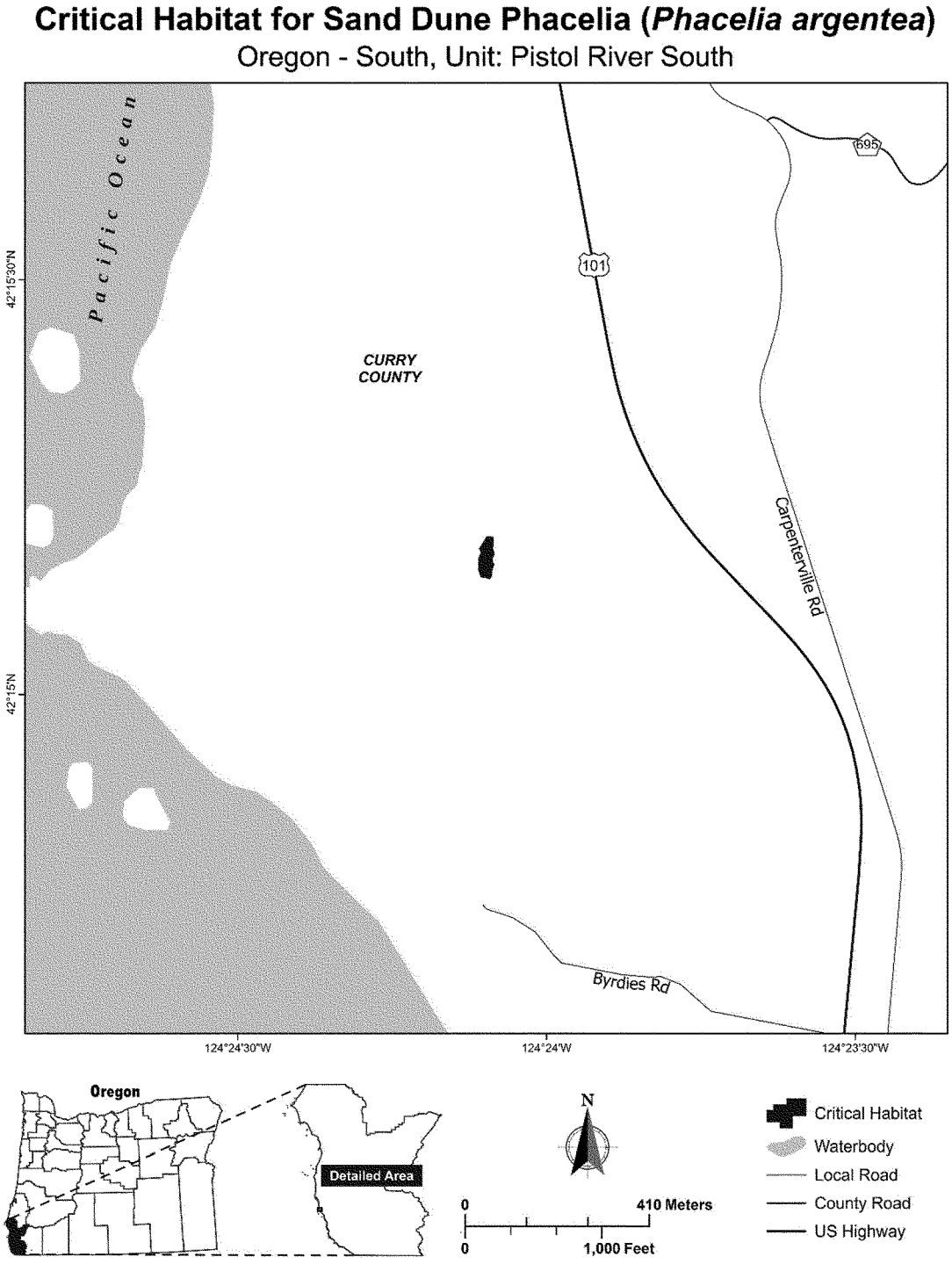
(ii) Map of Unit 7 follows:



(12) Unit 8: Pistol River South, Curry County, Oregon

(i) Unit 8 consists of 0.7 ac (0.3 ha) in Curry County, Oregon, and is composed of land in State ownership.

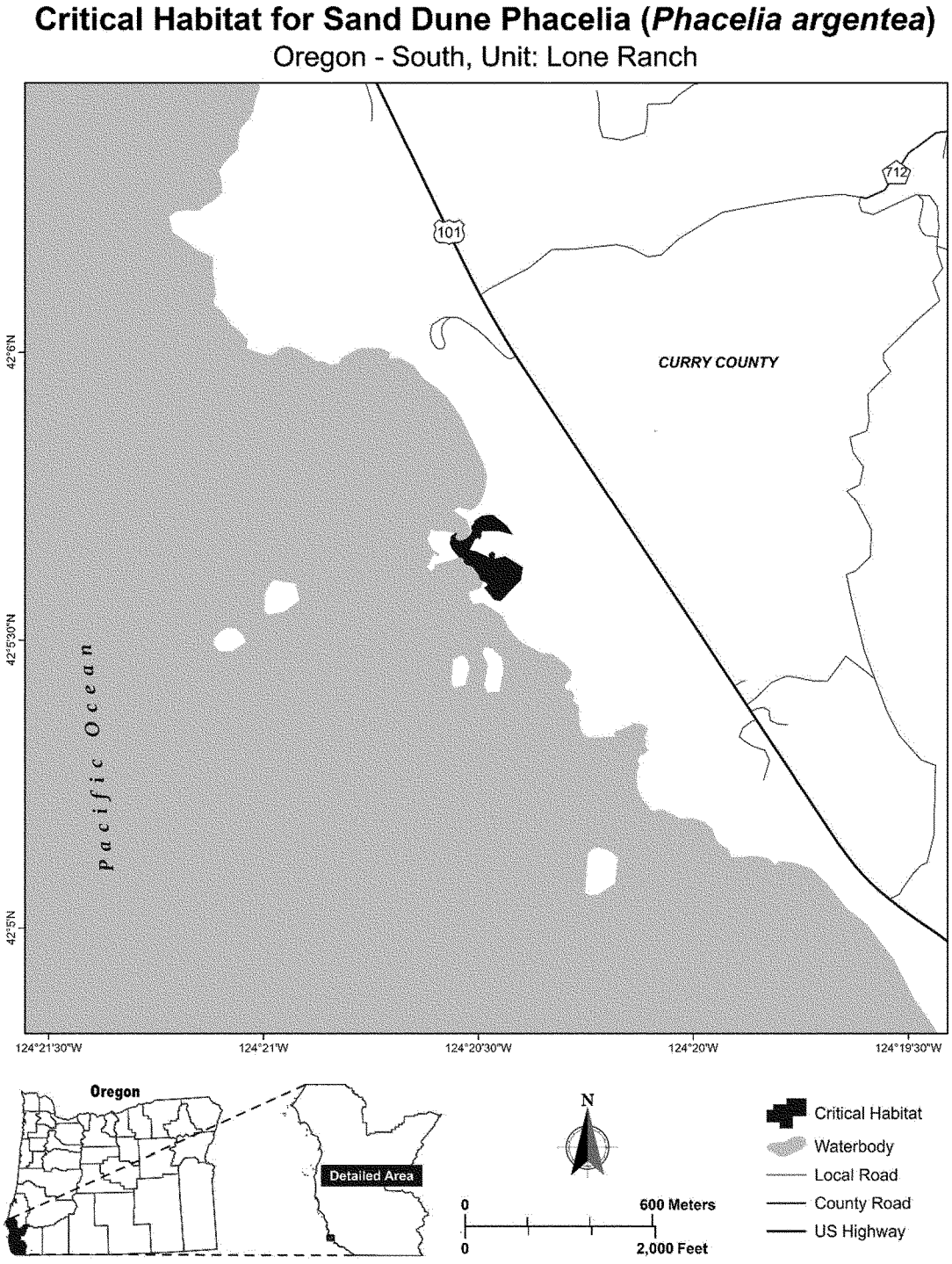
(ii) Map of Unit 8 follows:



(13) Unit 9: Lone Ranch, Curry County, Oregon

(i) Unit 9 consists of 6.5 ac (2.6 ha) in Curry County, Oregon, and is composed of land in State ownership.

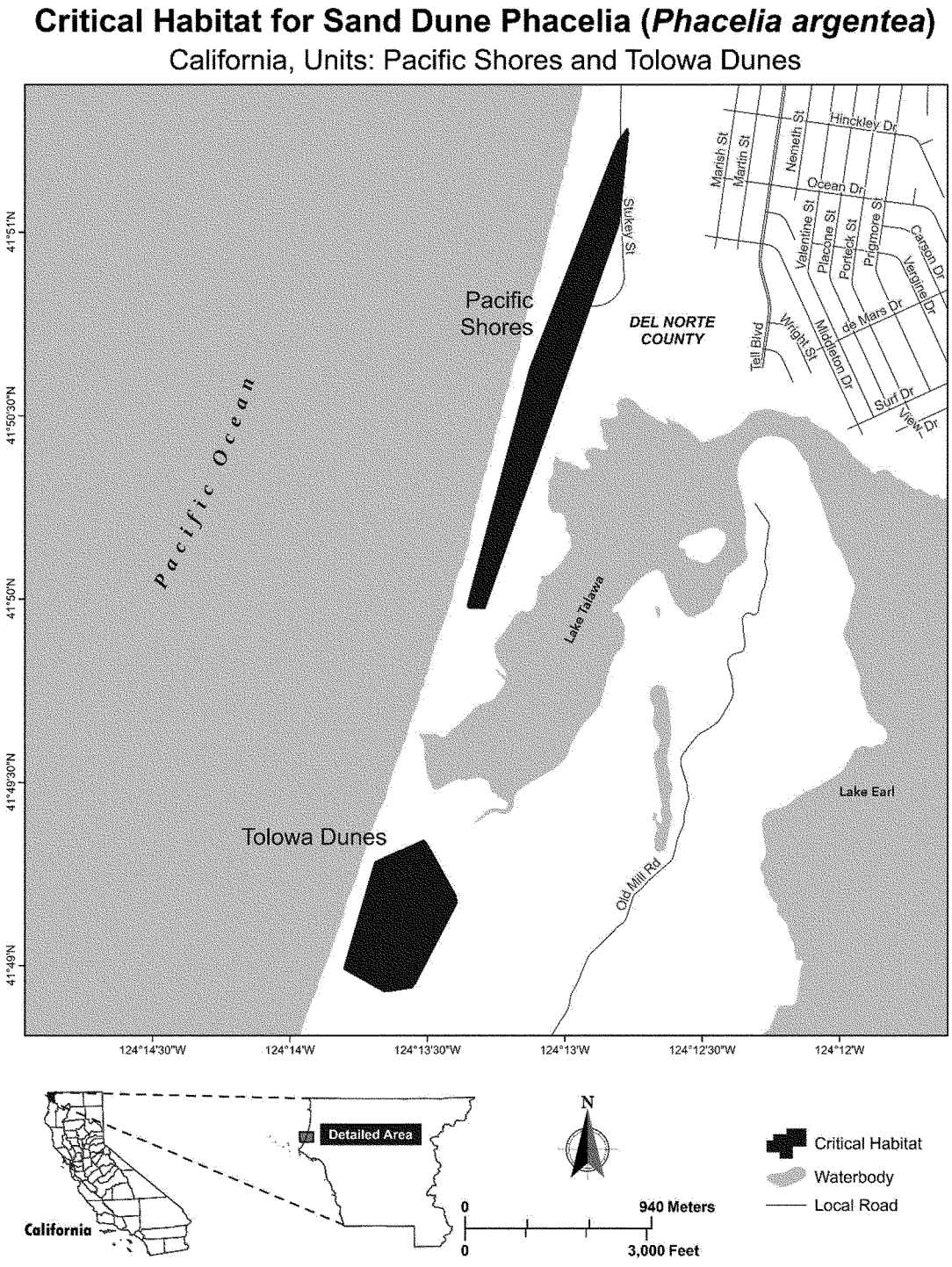
(ii) Map of Unit 9 follows:



(14) Unit 10: Pacific Shores, Del Norte County, California; Unit 11: Tolowa Dunes, Del Norte County, California.

(i) Unit 10 consists of 92.3 ac (37.4 ha) in Del Norte County, California, and is composed of land in State (37.9 ac (15.3 ha)) and private ownership (54.4 ac (22 ha)). Unit 11 consists of 69.6 ac (28.2 ha) in Del Norte County, California, and is composed of land in State ownership.

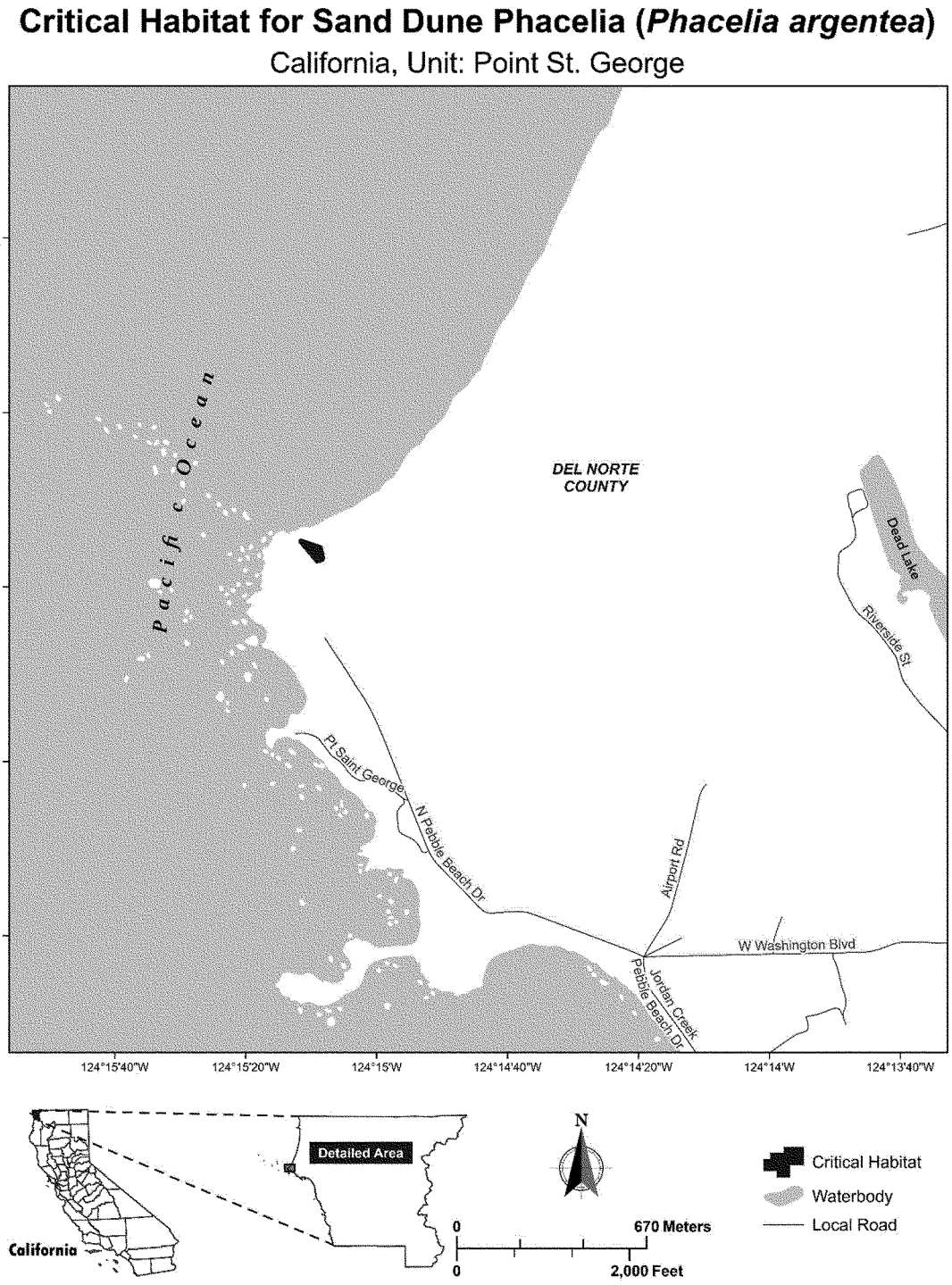
(ii) Map of Unit 10 and Unit 11 follows:



(15) Unit 12: Point Saint George, Del Norte County, California.

(i) Unit 12 consists of 1.1 ac (0.4 ha) in Del Norte County, California, and is composed of land in county (1 ac (0.4 ha)) and private ownership (0.1 ac (0.04 ha)).

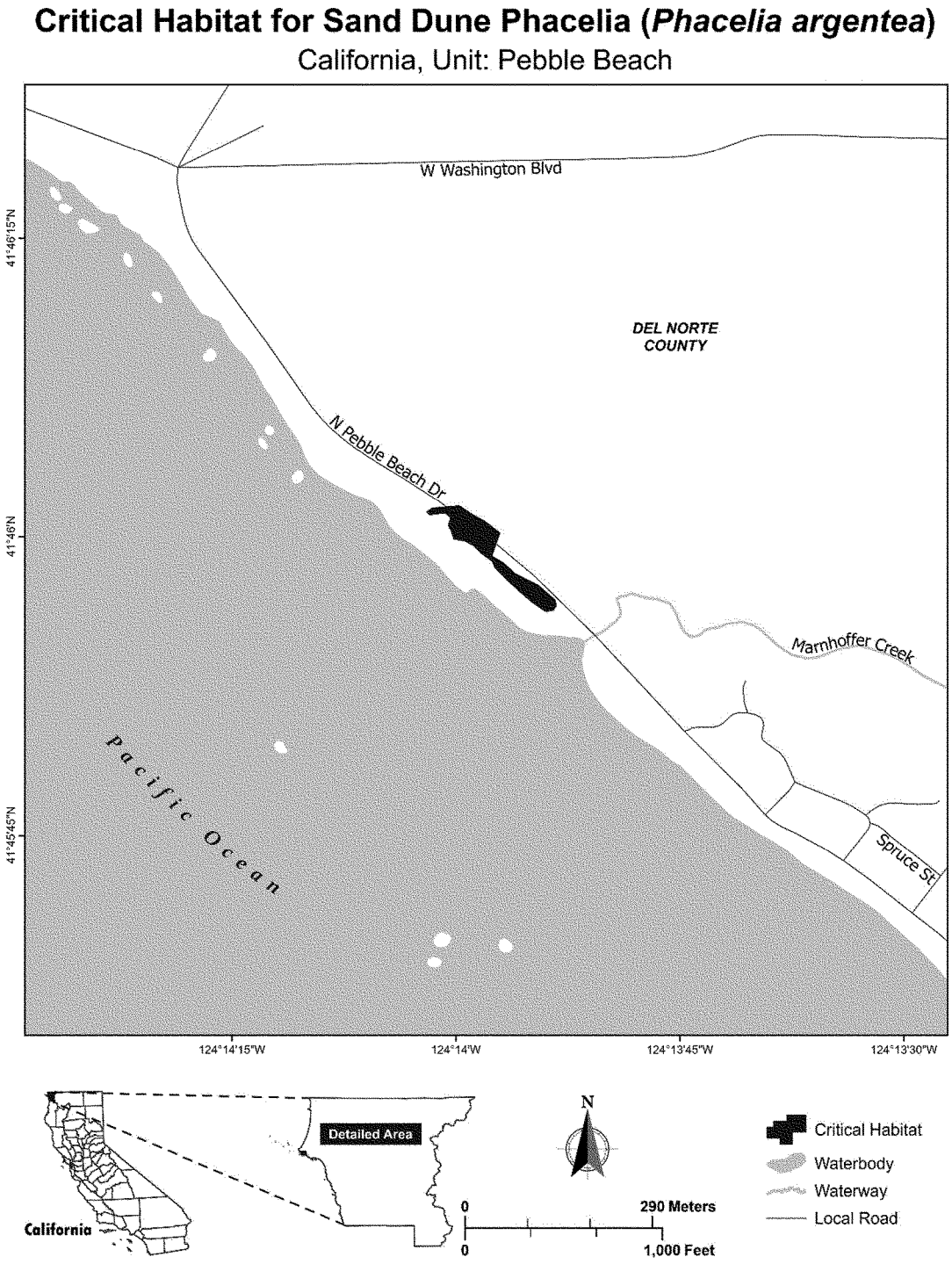
(ii) Map of Unit 12 follows:



(16) Unit 13: Pebble Beach, Del Norte County, California.

(i) Unit 13 consists of 1.7 ac (0.7 ha) in Del Norte County, California, and is composed of land in State (1.3 ac (0.5 ha)) and county ownership (0.4 ac (0.2 ha)).

(ii) Map of Unit 13 follows:



* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–05326 Filed 3–21–22; 8:45 am]

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Federal Register

Vol. 87, No. 55

Tuesday, March 22, 2022

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The United States Government Manual	**741–6000**
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FEDERAL REGISTER PAGES AND DATE, MARCH

11275–11580 1
11581–11922 2
11923–12388 3
12389–12554 4
12555–12852 7
12853–13114 8
13115–13624 9
13625–13900 10
13901–14142 11
14143–14380 14
14381–14756 15
14757–15024 16
15025–15314 17
15315–15838 18
15839–16092 21
16093–16364 22

CFR PARTS AFFECTED DURING MARCH

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

910 15317

3 CFR

Proclamations:
10342 11923
10343 11925
10344 11927
10345 11929
10346 12389
10347 13115
10348 15029

Executive Orders:
14066 13625
14067 14143
14068 14381
14069 15315

Administrative Orders:
Presidential Determinations:
Presidential Determination No. 2022–10 of March 10, 2022 15025
Memorandums:
Memorandum of February 25, 2022 14755
Memorandum of March 1, 2022 12391
Memorandum of March 12, 2022 15027
Notices:
Notice of March 2, 2022 12387
Notice of March 3, 2022 ..... 12553, 12555, 12557

5 CFR

185 16093

Proposed Rules:
1600 11516
1601 11516
1605 11516
1620 11516
1631 11516
1640 11516
1645 11516
1650 11516
1651 11516
1653 11516
1655 11516
1690 11516
7001 12888

7 CFR

460 15839
761 13117
762 13117
764 13117
765 13117
766 13117
768 13117
785 13117
1735 15031
1737 15031
3560 11275

8 CFR

204 13066
205 13066
208 14757
245 13066

9 CFR

201 11933

Proposed Rules:
381 14182
390 16105

10 CFR

11 12853
25 12853
50 11934
95 12853
431 13901

Proposed Rules:
20 12254
26 12254
50 ..... 11986, 12254
51 12254
52 12254
72 12254
73 12254
140 12254
429 ..... 11892, 13648, 14622
430 ..... 11326, 11327, 11892, 11990, 12621, 13648, 14622
431 ..... 11335, 11650, 12802, 14186

11 CFR

111 11950

12 CFR

21 15323
163 15323
Ch. X 11286, 11951
1238 14763
1240 14764

Proposed Rules:
404 16107
700 11996
701 11996
702 11996
708a 11996
708b 11996
750 11996
790 11996

14 CFR

13 15839
21 ..... 15032, 15044, 15055, 15067
23 13911

211.....15820
212.....12923, 15820
213.....15820
215.....15820
216.....15820
217.....15820
219.....15820
222.....15820
223.....15820
225.....12923, 15820
226.....15820
227.....15820
232.....15820
234.....15820
237.....15820
239.....15820
242.....15820
243.....15820
244.....15820
245.....15820
246.....15820
247.....15820
252.....12923, 15820
802.....13598
807.....13598
808.....13598
810.....13598
813.....13598
819.....13598
832.....13598
852.....13598
853.....13598

49 CFR

107.....15839
171.....15839
190.....15839
209.....15839
213.....15839
214.....15137, 15839
215.....15839
216.....15839
217.....15839
218.....15839
219.....15839
220.....15839
221.....15839
222.....15839
223.....15839
224.....15839
225.....15839
227.....15839
228.....15839
229.....15839
230.....15839
231.....15839
233.....15839
234.....15839
235.....15839
236.....15839
237.....15839
238.....15839
239.....15839
240.....15839
241.....15839
242.....15839
243.....15839
244.....15839
272.....15839
380.....15344
385.....13192
386.....15839
390.....13192
391.....13192
393.....12596
565.....13209
566.....13209
567.....13209
578.....15839
586.....13209
591.....13209
595.....14406

Proposed Rules:

40.....16160
383.....13247, 13249
571.....12641

50 CFR

11.....13948
17.....14662, 15143
229.....11590, 11978
300.....12604
622.....11596, 14419
635.....11322
648.....15146
660.....11597
679 .....11599, 11626, 12406, 15345

Proposed Rules:

17 .....12056, 12338, 14227, 16320
92.....14232
100.....15155
300.....12409
635.....12643, 12648
648.....11680, 12416
660.....11382

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. This list is also available online at *https://www.archives.gov/federal-register/laws*.

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H.R. 189/P.L. 117–104
John Lewis NIMHD Research Endowment Revitalization Act of 2021 (Mar. 18, 2022; 136 Stat. 1117)

H.R. 1667/P.L. 117–105
Dr. Lorna Breen Health Care Provider Protection Act (Mar. 18, 2022; 136 Stat. 1118)

H.R. 2497/P.L. 117–106
Amache National Historic Site Act (Mar. 18, 2022; 136 Stat. 1122)

Last List March 18, 2022

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